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EDITORIAL

Is intercountry adoption linked with trafficking for exploitation?

*While some children are certainly “trafficked **for** the purpose of adoption”, there is no evidence, as far as we know, that children have been “trafficked **through** adoption for subsequent exploitation.”*

Few would deny that there is a great deal wrong with current practices in intercountry adoption from a number of countries in terms of the effective protection of children’s rights. We are very conscious of the ways in which intercountry adoption is vulnerable to questionable, illegal, and sometimes criminal activities.

However, we note with concern sweeping but unsubstantiated statements such as “intercountry adoption is among the most frequent ways in which minors are trafficked for sexual purposes or exploitative labour” and that illegal adoptions are used “to procure children for organ trafficking”. Such allegations need to be examined very closely indeed.

Terminology

We first need to be clear about two concepts usually used in such allegations.

- *What is “trafficking”?* According to the Palermo Protocol¹ trafficking means the recruitment, transportation, transfer, harbouring or receipt of persons, through various illegal practices, for the purpose of exploitation.² Thus, for an act to be qualified as “trafficking” under this Protocol, it must be shown to have an exploitative aim,

defined as including, at a minimum, the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery, servitude or removal of organs.

However, the United Nations Convention on the Rights of the Child (CRC) has a broader approach, as *no exploitative aim is necessary* for an act to be qualified as “trafficking” (CRC art. 35). Under the terms of the CRC, then, trafficking can also be deemed to take place for a legal purpose such as adoption. This approach is supported, moreover, by the 1994 Inter-American Convention on International Traffic in Minors³ whereby, for an act to be qualified as trafficking, its purpose does not have to be illegal if the means used are unlawful.

- Allegations discussed frequently assimilate – unduly, as will be demonstrated further below – illegal adoptions with trafficking. *But what is an “illegal adoption”?* A decision on adoption is made in a court of law. The “illegality” of that decision could thus result from situations where, variously, the required procedures have not been followed, documents have been falsified, the child has been declared adoptable without due cause or as a result of manipulation, money

¹ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, supplementing the United Nations Convention against Transnational Organized Crime.

² Art. 3 a).

³ “International traffic in minors” means the abduction, removal or retention, or attempted abduction, removal or retention, for **unlawful purposes** (prostitution, sexual exploitation, servitude) **or by unlawful means** (kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child) (art. 2). This Convention entered into force on the 15 of August of 1997.

has changed hands... *but if it is truly an adoption, rather than some other form of transfer or removal, it will necessarily and by definition have been approved by a judge. It follows that all events and acts that would make it "illegal" must therefore have taken place up to and including, but not after, the judgement.* "Illegal international adoptions", therefore, are not the same as "illegally moving children abroad": in cases of the former, children are moved abroad legally following an adoption process that contains illegal elements.

Lack of evidence

Rumours of trafficking through intercountry adoption for the purposes of exploitation or the removal of organs have been circulating in relation to a number of countries world-wide since the mid-1980s. If there were serious grounds to fear human rights violations of this nature in the context of intercountry adoption, it is strange that over these two decades there are no proven cases, as far as we know, that could justify concern. In illegal underground operations, bodies are found in the end, criminal rings are identified and victims are rescued. To our knowledge, this has not been the case in the sphere of exploitation of adopted children, from or to any country in the world. This total lack of evidence must considerably undermine the credibility of allegations and the legitimacy of concerns in this regard.

Moreover, it is hard to imagine why anyone would take on both the costs and risks involved in using a very public judicial process like intercountry adoption to "traffic" children – as opposed to kidnapping or smuggling them, for example – in order to remove their organs.

So why do the allegations persist?

Several factors are germane to the persistence of these rumours.

First, perhaps, is the *unwarranted credence lent to the existence of such unproven "problems"* in the context of certain studies or in public pronouncements by certain individuals or entities. Sometimes this can apparently be attributed to a lack of rigour in the use of terms and concepts; sometimes, however, it is nothing

less than empty speculation or the search for sensationalism.

Second, and linked to the above, is the problem of *deliberate "amalgam"*. In various countries, there are documented cases of parents abusing their adopted children physically, psychologically and sexually, sometimes with fatal consequences. Similar acts are regrettably facts of life too in biological families. But these acts are abuse, not "exploitation". They were not an intended outcome of the adoption and, as far as we are aware, the children were never "trafficked" to this end. No one denies that these acts took place, and clearly similar instances need to be prevented notably by improved professionalism in selecting and counselling prospective adoptive parents and in matching them with children in need of adoption. To imply that such acts constitute evidence of "trafficking" and "exploitation" is, however, both unfounded and grossly misleading.

Finally, certain groups undoubtedly have a *vested interest* in keeping these rumours alive in order to divert attention from other issues that indeed constitute rights violations in the context of intercountry adoption.

Avoiding the wrong focus

In sum, to the best of anyone's knowledge, there is no evidence at present to suggest that children are trafficked for exploitation through intercountry adoptions. However, this conclusion in no way denies the existence of other disturbing phenomena, including:

- a) trafficking and other illicit acts to procure children *for* adoption, and
- b) cases of abuse and rejection of children on the part of individual adopters once they have returned home with the child.

It is vital to distinguish systematically between children "trafficked for the purpose of adoption", and children supposedly "trafficked through adoption for subsequent exploitation." Only on that basis can the real problems be targeted in the fight against illegal and unprofessional practices in the adoption process.

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