

What is an Illegal or Illicit Intercountry Adoption?

Special Rapporteur on the Sale of Children in her speech to the United Nations in March 2017, Ms Maud de Boer-Buquicchio stated:

“All adoptions which result from the commission of crimes such as the abduction, sale and trafficking of children, and from illicit practices such as lack of proper informed consent by biological parents, improper financial gain by intermediaries and related corruption, are illegal, and must be prohibited, criminalised and sanctioned as such by all Member States.”

To help us further understand what Ms de Boer-Buquicchio refers to, and acknowledging legal experts such as Prof David Smolin who also outlines the many complex issues of what constitutes an illegal or illicit intercountry adoption in his paper Intercountry Adoption as Child Trafficking, together based on their work, we will use the terms “illicit” and “illegal” adoption in our survey to mean the following, noting, these definitions and terms are to be used as guidelines to help the community think through some of the adoption practices we have concerns about.

It's not up to you to 'prove' or provide hard evidence that these illicit or illegal practices occurred. The purpose of the survey is to identify, in a more systematic way, some of the irregularities we've discovered and the concerns we have. The survey simply asks you to tick the situations and/or violations that you have experienced.

Illegal adoption

- Obtaining a child by force or abduction, such as when the child is stolen out of a maternity hospital, the child's neighbourhood, or home, etc., with the child then officially or unofficially placed with another family.
- Inducing relinquishment, physical or legal transfer, or consent to adoption by the promise or payment of remuneration (money or another valuable consideration), with the child then officially or unofficially placed with another family.
- Obtaining children from the original family through fraud or misrepresentation, whether explicit or implied; typically, this involves a representation that the child is being given some kind of opportunity, such as education, temporary care, etc., which does not involve the permanent legal severance of the parent-child relationship.
- The subsequent sale or transfer of a child illegally obtained (as described above) for payment, as when a child is sold by intermediaries to an orphanage or child-placing agency.
- Payments made by adoptive parents for the purpose of inducing original family members to transfer a child physically or legally, relinquish a child, or consent to adoption; adoptions may still be illegal without this element, as in most illegal adoptions the adoptive parents are unaware of the illegal purposes to which the “adoption fees” they pay are used.
- An adoption where consents were obtained from the original family without counselling which accurately informs the original family as to the effects of such consent, including whether an adoption would terminate the legal relationship between the child and the child's original family.
- An adoption where government officials were paid bribes or improper payments for personal or governmental use in order to induce them to approve adoptions or steps to adoption or international travel without regard to the best interests of the child or the legality of the adoption.

Illicit adoption

- The original family were not offered any financial assistance to keep them together but were offered only the option of adoption, in instances where poverty was a precipitating motivation in the placement of the child.
- Payments to intermediaries, such as agencies, orphanages, attorneys, judges, social workers, or others arranging the adoption, are in excess of normal costs to process an adoption, in light of standards for comparable work within the country where the work is performed. For example, payments for intermediaries in the country of origin for intercountry adoption-related services should be similar to payments for similar work for domestic adoption.
- Where placement options within the child's country of origin were not given due consideration, and/or were unduly discounted due to demand pressures from receiving countries for children or financial inducements toward intercountry adoption.
- Where the country of origin severely restricted domestic adoption, including standards for adoptive parents, while being more permissive toward intercountry adoption; an example would be adoptions from China during periods when the government's population control policies were applied to make it difficult to adopt domestically in China.
- Adoptions conducted during or immediately after natural disasters (earthquakes, floods), or other circumstances (war, COVID) where large numbers of children are temporarily separated from their family, and it is not possible to provide safeguards for the rights of the child or determine the location or situation of the original parents and family members.
- Adoptions of lost children where reasonable efforts are not made to locate the original family members.

These definitions are being used based on a number of international conventions, namely, The 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography ("OP-CRC"); the Convention on the Rights of the Child (CRC); The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the Palermo Protocol.

As Prof David Smolin concludes in his excellent article, "the very system of intercountry adoption has no effective legal means to prohibit and prevent the sale and commodification of children" and this is why so many of our intercountry adoptions fit within these categories of being considered illegal and/or illicit.

Huge thanks to Prof David Smolin for helping create this easy to read/understand document for the purposes of our Survey.