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Intercountry Adoption (ICA) in Australia

A BRIEFING NOTE ON

WHY A NATIONAL

INVESTIGATION IS NEEDED

*“I believe that I was human trafficked”*

—Anna (adopted Korean Australia) in ABC Background Briefing August 3, 2024

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## EXECUTIVE SUMMARY

### Risks of Child Trafficking and Illegal Intercountry Adoption

Intercountry adoption (ICA) in Australia began in the 1970s, including instances of illegal adoptions that violated prohibitions against the abduction, sale, and trafficking of children<sup>1</sup>. In certain cases, these illegal adoptions may also contravene the prohibition of enforced disappearances<sup>2</sup> and could constitute serious crimes against humanity<sup>3</sup>, including genocide<sup>4</sup>.

Since the inception of ICA in the 1970s, over 10,000 intercountry adoptions to Australia have been documented. However, earlier private, proxy and expatriate adoptions remain unrecorded, leaving the true number of illegal adoptions unknown. Initially, the Australian government opposed ICA, asserting that it was not in children's best interests to be removed from their families, cultures, and countries. Despite this stance, persistent lobbying by politically influential adoptive parents eventually led to a shift in government policy, facilitating privately funded adoptions of overseas children to Australia.

This "privatised adoption industry" lacked oversight, resulting in numerous accounts of human rights violations, illicit practices, and inadequate safeguards. Many of these illegal adoptions involved serious human rights breaches, including violence against children, child trafficking, and the falsification of birth registration documentation<sup>5</sup>. These practices underscore the need for an independent public inspection of children's institutions and the establishment of rigorous systems for monitoring the services provided by such institutions<sup>6</sup>. In the mid-1980s, the Australian government intervened and centralised ICA under state and federal control. The 1993 Hague Convention on Intercountry Adoption, which Australia ratified in 1998, was intended to standardise and safeguard ICA practices. However, illegal ICAs have continued to occur, demonstrating persistent systemic issues that require urgent attention. These acts and practices "reflect deficiencies in child protection systems which are exploited by criminal networks, often with the involvement of

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<sup>1</sup> Convention on the rights of the child, art. 35; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, art. 1 et 3; Hague Convention on protection of children and cooperation in respect of intercountry adoption, 29 May 1993 (1993 Hague Convention), art. 32; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), art. 3.

<sup>2</sup> ICPPED, art. 1; Declaration on the Protection of All Persons from Enforced Disappearance, preamble and art. 20; WGEID, General Comment on children and enforced disappearances, A/HRC/WGEID/98/1, paras. 19-23; Special Rapporteur on trafficking in persons, especially women and girls, Joint Other Letter concerning the General Scheme of the Birth Information and Tracing Bill, the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill and the proposed Restorative Recognition Scheme, OL IRL 2/2021, p. 8

<sup>3</sup> Rome Statute of the International Criminal Court, art. 7, para. 1-i (enforced disappearance); art. 7, para. 1-c (enslavement); ICPPED, art. 5; WGEID, General Comment on enforced disappearance as a crime against humanity, 2009, A/HRC/13/31.

<sup>4</sup> Convention on the Prevention and punishment of the crime of genocide, 9 December 1948, art. II-(e).

<sup>5</sup> Committee on the rights of the child (CRC), Concluding Observations, Russian Federation, 2005, CRC/C/RUS/CO/3, paras 8-11

<sup>6</sup> Committee on the rights of the child (CRC), Concluding Observations, Russian Federation, 2005, CRC/C/RUS/CO/3, paras 40-41

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State officials or as the result of permissive State policies”<sup>7</sup>

## CURRENT STATUS AND NUMBERS

Since 1986, data collection on ICA has improved, documenting over 10,000 adoptions from at least 44 countries. However, earlier private and expatriate adoptions were not formally recorded, making the true number higher. Including adoptees’ families (parents, partners and children), ICA’s impact extends far beyond the documented adoptee population.

## ISSUES WARRANTING A NATIONAL INVESTIGATION

### Historical and Ongoing Human Rights Violations

- Australia’s ICA history includes illicit and illegal practices, such as trafficking and inadequate protections for adoptees.
- Cases, such as the Julie Chu cohort from Taiwan in the 1980s, illustrate failures to safeguard against illegal adoptions and subsequent failures to provide any recognition or supports to the victims already adopted into Australia.

### Inadequate Government Accountability

- The delineation of responsibilities between federal (e.g., Department of Social Services, Home Affairs) and state authorities creates gaps in support and accountability.
- Victims face bureaucratic obstacles when seeking justice, with state and federal entities often deflecting responsibility.

### Insufficient Support for Adoptees

- Illegal adoptions have devastating consequences on the lives and rights of adoptees as victims and current funding, such as the Intercountry Adoptee and Family Support Service (ICAFSS), is inadequate, providing less than \$90 per adoptee annually which barely covers emotional counselling.
- Adoptees lack access to comprehensive care specifically designed to assist in cases of illicit and illegal adoption practices – services such as search and reunion services including within birth countries, translators, DNA and genealogy professionals, legal support and funding of comprehensive peer supports.

### Global Context and Precedents

- Countries like the Netherlands, Sweden, and Canada have conducted national investigations into ICA practices, uncovering systemic issues and taking corrective actions. Australia has yet to undertake a similar investigation despite evidence of systemic failures.
- South Korea’s Truth and Reconciliation Commission is investigating over 380 cases, including 16 from Australia, highlighting widespread human rights abuses.

### Parallels with Other Apologies:

Australia has issued apologies and provided support for victims of Forced Adoptions, the Stolen Generations, and Forgotten Australians. ICA victims, similarly impacted by systemic injustices, remain excluded.

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<sup>7</sup> Special Rapporteur on the Sale and Sexual Exploitation of Children, Statement by Ms. Maud De Boer-Buquicchio, 34th session of Human Rights Council, 7 March 2017.

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# RECOMMENDATIONS

## Launch a National Investigation

Establish, where appropriate, an independent commission of inquiry to establish the facts regarding allegations of illicit and illegal practices in ICA, to determine the responsibilities of the parties, and to propose measures of adequate reparation for the victims<sup>8</sup>.

## Legislative and Policy Reform

- Update the Commonwealth-State Agreement to address gaps in accountability and delineation of responsibilities.
- Strengthen migration laws and protocols to prevent future illicit and illegal practices.
- Create legislation to criminalise illicit and illegal practices in intercountry adoption and ensure perpetrators can be held accountable.

## Support for Victims

- Provide dedicated funding for post-adoption support services, including search and reunion assistance.
- Offer legal, financial, translation, and emotional support akin to those provided to trafficking and forced adoption victims.

## International Collaboration

- Work with countries of origin to address historical injustices and establish transparent practices moving forward.
- Incorporate learnings from international investigations into Australia's policies and procedures.
- Work with adoptee-led groups and networks in Australia to support the ongoing needs of adoptees (eg, InterCountry Adoptee Voices (ICAV), Korean Adoptees in Australia (KAIAN), Australia United States Korean Rights Group (AUSKRG), Haitian Adoptees, Sri Lankan Adoptees, Ethiopian Adult Adoptees in Australia, Adopted Vietnamese International (AVI), Greek Born Adoptees).

# CONCLUSION

Australia's ICA history is fraught with systemic failures, human rights abuses, and inadequate support for adoptees. A national investigation is essential to acknowledge past wrongs, provide justice for victims, and prevent future injustices. By taking responsibility, Australia can align its practices with international standards and uphold the rights of intercountry adoptees and their families.

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<sup>8</sup> Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/24/42, para. 90.

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