Expert Group on International Adoption

Final report

For the attention of the Federal Office of Justice

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the Expert Group

Zurich, 27 June 2024

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Introduction

The background and reason for the preparation of this final report are the serious irregularities that have occurred in Switzerland, as in other countries, in the context of international adoptions in the past.[1] In order to investigate these incidents and draw conclusions from them, the Swiss Federal Council adopted a series of measures, including the establishment of the Expert Group on International Adoption (hereinafter referred to as the "Expert Group").[2]

The expert group was *tasked* with presenting recommendations for a Swiss policy on international adoption and concrete proposals for reforms. The guiding principle was that what had happened in the past must never be repeated. All efforts should therefore be aimed at ensuring that, in future, there would be no more adoptions that violated the rights of those affected and were detrimental rather than beneficial to their welfare.

The Federal Office of Justice (FOJ) appointed the members of the expert group. The ten members were selected on the basis of their relevant expertise, their involvement in the authorities and their status as adoptees, some of whom have themselves been affected by abusive practices.

The expert group's *work* was carried out in two stages. In the first stage of the mandate, the expert group was tasked with developing two scenarios for a Swiss policy on international adoption. In fulfilment of this mandate, the interim report of 28 March 2023 presented the reduction-plus-reform scenario (hereinafter referred to as the "reform scenario") and the exit scenario.(3) After the Federal Council had taken note of this interim report, the expert group was to evaluate weaknesses in the system and submit proposals for reform.(4)

The considerations, findings and recommendations compiled in this final report are the result of an overall assessment. They are intended to provide decision-makers and those responsible for implementation with a solid basis on which they can take appropriate steps to protect the welfare and rights of children and adult adoptees with regard to the past, present and future of international adoption in a prudent but purposeful manner. The proposals and recommendations presented here all pursue the goal of effectively committing Switzerland to complying with the above-mentioned guiding principle of protecting the welfare of children and safeguarding the rights of all parties involved. However, it has not yet been possible to develop more detailed proposals for legislative changes and further measures. The necessary steps can only be taken once a final decision has been made on the question of "reform vs. withdrawal".

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[1] In particular, Federal Council Report 2020; ZHAW Report 2020 and ZHAW Report 2023; for the most important information, see <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/illegale-adoptionen.html>; for further information, see the list of literature and materials.

[2] For the press release of 14 December 2020, see <https://www.bj.admin.ch/bj/de/home/aktuell/mm.msg-id-81577.html>.

[3] See interim report, chapter three.

[4] For the media release dated 8 December 2023, see <https://www.bj.admin.ch/bj/de/home/aktuell/mm.msg-id-99228.html>.

Chapter One – Key Findings and Guidelines

This final report is extensive for good reason. The expert group's analyses were developed in a dynamic environment[5] and relate to several closely intertwined and often overlapping fields. This leads to a high degree of complexity, which makes it necessary to pursue some very specific detailed questions. This can sometimes make it difficult to keep track of the main thread. For this reason, the most important findings, which can serve as a "mental map" in the following, are presented here. Two important notes in advance:

Firstly, the key findings and guidelines presented here should be read *in conjunction with the compilation of all recommendations* derived in the course of this analysis. A corresponding overview can be found at the end of the final report under the title "Elements of a Swiss policy on international adoption – Recommendations of the expert group" on p. 89 ff.

Secondly, the analyses presented in the interim report guided not only the first stage of the mandate, but also the work on the final report in the second stage. *The interim and final reports should therefore not be treated as separate documents, but must be read together*.

1 Key findings

11 The top priority is to address the irregularities of the past.

Adoption is a child protection measure. Its primary purpose is to ensure the welfare and rights of the child. This requires consistent adherence to high standards in each individual case. This condition applies to all stages of the procedure and material aspects of adoption, which is considered a lifelong issue. Irregularities such as those uncovered in the past must no longer be allowed to occur.[7]

In the opinion of the expert group, while acknowledging the systemic risks inherent in the international adoption regime, the guiding principle mentioned at the outset is a very ambitious goal.[8]It is unclear whether and, if so, how it will be possible to ensure, not only formally but also in practice, that there will never again be cases of adoption in Switzerland in which the rights of those affected are violated and which are detrimental rather than beneficial to their welfare. In accordance with its mandate, the expert group has pooled all the expertise of its members in order to develop proposals and

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[5] The work of the expert group largely ran parallel to the work of other bodies in Switzerland. However, the topic of international adoptions is being discussed intensively not only in Switzerland but also in other countries. Developments are therefore proceeding at a rapid pace. The expert group has endeavoured to take into account and integrate the rapidly emerging new findings as far as possible.

[6] There is no right to adopt a child, cf. in this regard Art. 8 ECHR, Message on the Revision, 57; cf. on the welfare of the child and children's rights as "paramount considerations", whereby the rights of other members of the family of origin must also be taken into account, PFAFFINGER 2007, 269 ff.

[7] See Federal Council press release of 8 December 2023, <https://www.admin.ch/gov/de/start/dokumentation/medien-mitteilungen.msg-id-99228.html>.

[8] Systemic risks are also already acknowledged by ABRAHAM/STEINER/STALDER/JUNKER 2020, 5 and 99; for further contributions, including from other countries, see the list of literature and materials.

Recommendations for the development, planning and implementation of a scenario for the continuation of international adoption in Switzerland under improved framework conditions and security measures. Nevertheless, it considers it its duty to point out that it continues to regard the exit scenario as a viable option (see 3 below). Which scenario will be implemented is a political decision. However, the expert group is certain that the guiding principle can only be adhered to if all receiving and sending countries, as well as all actors involved in the adoption process in both the sending and receiving countries, are fully aware of the structural risks of international adoption and fulfil their *joint, collective responsibility* in all dimensions.

For Switzerland, this means, according to the unanimous opinion of the members of the expert group, that the focus should primarily be on the past. It is a question of whether and, if so, how international adoptions can continue to be processed in Switzerland in the future. However, an urgent question is how to deal with irregular adoptions carried out in the past and with the claims of the persons concerned that are currently not yet or at least not fully guaranteed. Switzerland's main responsibility is to ensure that the concerns of these persons are adequately addressed: *they must receive justice.*

The latest developments in Switzerland are very welcome in this regard. By setting up various committees and implementing several projects, by taking note of the reports produced and by adopting subsequent measures, the federal government and the cantons have sincerely signalled their willingness to consistently address irregularities in international adoptions in Switzerland.[11] The implementation of the reform scenario would be another link in this chain. [12] The reduction of countries of origin to those that meet fixed minimum requirements (see Chapter Three, First Constitutive Element) could, in combination with the other reforms (see Chapter Three, Second Constitutive Element) could contribute to achieving the goal of continuing to carry out international adoptions in Switzerland – provided that they are carried out without exception in the best interests of the adopted children and in accordance with the rights of all parties involved. However, it should be remembered that even in combination, these two measures may not be sufficient. Due to the systemic risks inherent in international adoption, it remains uncertain in reality whether the formally guaranteed standards for the protection of all parties involved are actually fully implemented in every single case. Empirical questions such as these cannot be answered from the theoretical perspective of a report.

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[9]For the reasons explained in the interim report (see interim report, Chapter 2, 2.1), this final report also generally refers to "irregular adoptions" or "irregular adoption practices". In the context of international adoptions, a wide range of irregularities can occur, ranging from violations of ethical standards to minor violations of low-threshold requirements to serious violations of national and international law. Only in cases where there are serious violations of human rights standards and criminal law norms
In cases such as child trafficking, explicit reference should be made to unlawful (illegal) adoptions or adoption practices. In all other cases, the term "irregular adoptions" or "adoption practices" is used generically (where "adoptions" refers to specific individual cases and "adoption practices" refers to all procedures generally involved in adoptions and the institutions involved).

[10] The Federal Supreme Court's ruling of 5 May 2023 (2C_393/2022) documents the need to address the issue of national adoptions as well. vgl. <https://www.bger.ch/files/live/sites/bger/files/pdf/de/2c_0393_2022_2023_06_01_T_d_08_45_51.pdf> and final report, introduction, first chapter, 1.1, third chapter, 2.2 and 2.5.

[11] See bibliography; then, for example, the research project initiated by the governments of the cantons of Zurich and Thurgau, see <https://www.bfh.ch/de/forschung/forschungsprojekte/2022-036-180-727/>.

[12] The same would apply *a fortiori* to the phase-out scenario.

However, it is clear that implementing the reform scenario will involve an immense amount of time and money. In view of the fact that only 30 to 40 international adoptions per year have recently been carried out in Switzerland – and the trend is downward – the question of proportionality arises, and with it the question of whether the exit scenario should not be considered the more preferable option after all.([13])

Any Swiss policy on international adoption is a policy for shaping the future: how should international adoption be handled in the future? It is important to remember that this question has *two aspects*, namely a prospective and a retrospective one: The prospective aspect, with a view to the future, focuses on any international adoptions that may be carried out in the future, i.e. on the comprehensive measures that may need to be implemented as part of the reform scenario. Here, it would be necessary to ensure that the idea of shared responsibility permeates the institution of international adoption for the protection of children. Accordingly, coordination and cooperation with the countries of origin would need to be intensified. However, Switzerland should also make a concerted effort to support people who were adopted in the past and who are affected by irregularities (retrospective reference). Contrary to the wording, this is not a matter of the past. Even if the files in question are from the past, they are a painful present and, depending on the case, also a painful future for those affected – a profound, life-changing experience. A Swiss policy on international adoption has a duty to formulate answers to the questions that arise in this context. The first step in this process is to conduct studies and produce reports such as this one. However, it must not remain at the level of words and paper. It will be crucial to follow up with action. The irregularities of the past can only be dealt with appropriately if concrete packages of measures are implemented. This includes*, as a matter of priority, guaranteeing the right to know one's own ancestry and providing appropriate support and counselling to those affected in the course of their search for their origins.* It is also necessary *to provide appropriate psychological, social and financial support.*([14])

The final report thus confirms the most important finding of the interim report: *retrospective reference must* be given *specific recognition*. This has a very important implication: regardless of whether the final decision is to reform or phase out the system, the *support offered to adoptees* must be *expanded* – both in general and specifically to guarantee their right to know their own origins.

12 Continuation of international adoptions only under strict conditions

With regard to any future adoptions (prospective reference), the expert group considers it imperative that a thorough review of the relevant standards and compliance with them be carried out. In this respect, a *consistent paradigm shift* is called for: if international adoptions are to continue to be carried out in Switzerland in the future, they may – in sharp contrast to previous practice – only be carried out with countries that have also signed the 1993 Hague Adoption Convention

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[13] See final report, Chapter 1, 1.3 and interim report, Chapter 3, 2.2.

[14] In this regard, reference should also be made to the findings of the "Search for Origins" working group.

have ratified (hereinafter referred to as "HAÜ states"). Proceedings with non-HAÜ states are therefore excluded from the outset. However, HAÜ states must also fulfil more criteria than just ratification of the HAÜ in future as part of the so-called reduction element (see Chapter Three, First Constitutive Element). In this regard, the expert group has formulated a catalogue of formal, relational and material criteria as the essence of the reduction element, all of which must be fulfilled both in the countries of origin and in Switzerland as the receiving country. It is therefore not only the countries of origin that are subject to critical scrutiny. Switzerland, in its role as the receiving country, must also be evaluated with the same care. The fact that irregularities have been uncovered in the countries of origin should not obscure the fact that these were partly caused by Switzerland as the receiving country and that there were serious structural problems not only in the countries of origin but also in Switzerland. The authorities and actors involved in international adoptions in Switzerland must therefore be aware of their role both in the past and in the future and take responsibility in a coordinated manner, working together with the countries of origin on an equal footing.

This call for accountability requires the following clarification: the members of the expert group are aware that the legal framework in the past was different from that of today. It is therefore possible that certain actions within the scope of the irregularities uncovered did not violate applicable law at the time they were carried out and were therefore not strictly illegal. Secondly, it is clear that the persons who are now faced with the demand to take responsibility were not themselves involved in these events. When it is demanded that someone take retroactive responsibility for these events and actions, the question arises as to who exactly that someone should be. This reaction is understandable, but it misunderstands the expert group's concern at this point: the demand for retroactive accountability is not about making organisational units or even individuals acting today into "scapegoats". That would help neither those affected by past irregularities nor those who will be adopted in the future. When the expert group calls for actors in Switzerland to be aware of their shared responsibility and to act on an equal footing with the countries of origin, it is not referring to individual action, but to *a coordinated approach at the institutional level between the cantons and the federal government*. In recognition of this shared responsibility, it is also necessary to appoint a body with leadership responsibility that acts as *primus inter pares* and thus guides the development process ("pilot function").

In this regard, the expert group has examined *five key aspects* of international adoption in detail and developed specific proposals for reforms to the legal framework and the expansion of implementation measures and support and assistance services (particularly with regard to the search for origins by people adopted in the past) (see Chapter 3, Second Constitutive Element)..[15] Specifically, these relate to institutional organisation in Switzerland, including the role of accredited intercountry adoption agencies, the search for origins, the Private International Law Act (PILA), financial aspects and the handling of irregular practices. The optimisation of the institutional framework is discussed in relation to adoption procedures in the narrower and broader sense, but also with regard to

[15]The expert group has identified further areas where action is needed, e.g. in connection with the effects of adoption; see Interim Report, Chapter 2, 2.12 and Chapter 3, 1.1; Final Report, Chapter 3, in particular 2.2.5.

Support after adoption, particularly in light of the irregularities that have come to light. The search for origins should be seen as a focal point where many urgent questions converge.[16] Dealing appropriately with the search for origins, especially in view of the irregularities in the past, is of immense importance for any future Swiss policy on international adoption. This is because the right to know one's own origins must be granted regardless of which scenario the final decision favours. A separate subchapter is therefore devoted to the specific questions of institutional organisation that arise in the context of searching for one's origins. The expert group also recommends various measures at the legislative and implementation level to ensure that no further inadmissible financial advantages accrue in the context of international adoptions. It also formulates proposals for legislative changes with regard to the IPRG. For similar reasons, the handling of irregular practices is dealt with under a separate heading, as is the search for origins.

13 Withdrawal from the practice of international adoptions as an equivalent option

In the first stage, the expert group was tasked with developing at least two scenarios for a Swiss policy on international adoption. In its interim report, it developed a reform scenario and a phase-out scenario.[17] In line with the mandate for the second stage to present in-depth clarifications on reforms, the exit scenario is not the focus of the final report; nevertheless, the expert group would like to reiterate that it continues to consider the exit scenario a valid option based on compelling arguments that were first mentioned in the interim report and are reiterated in this final report. Accordingly, certain subchapters are also relevant in the event that the decision is made to pursue the phase-out scenario. These include guaranteeing the right to know one's own ancestry, expanding support and counselling services, dealing with irregular practices, and revising the IPRG.

[16] Final report, Chapter Three, 2.2.

[17] Interim report, Chapter Three, 2.2; see also, in brief, final report, Chapter One, 1.3 and Chapter Two, 4.2.

2 Strategic guidelines for a Swiss policy on international adoption

A holistic approach is required when dealing with the issue of international adoption. With this overall perspective in mind, the expert group has put forward *five strategic guidelines* for a responsible approach to international adoption. These guidelines commit Switzerland to safeguarding the welfare and rights of all those involved in the adoption process and to consistently preventing any recurrence of irregularities:

1. *Looking at the past and the future (bidirectionality)* – Action is needed both with regard to adoptions carried out in the past, especially irregular adoptions (retrospective reference), and with regard to any adoptions that may be carried out in the future (prospective reference). Both aspects must be taken equally seriously. In implementation, however, the highest priority must be given to addressing irregularities in the past.
2. *Shared responsibility* – In the context of international adoptions, the responsibility of all parties involved does not end at territorial or domestic or international borders. Rather, assuming responsibility is a task that must be fulfilled jointly and collectively by all countries involved, as well as by the parties involved within the federalist structure of Switzerland. It would be advisable to appoint a body with leadership responsibility that acts as *primus inter pares* and thus guides the development process ("pilot function").
3. *Coordination and cooperation* – In order to establish a coherent policy for tackling the tasks at hand, it is necessary to intensify cooperation and coordination both at the international level – with the countries of origin, but also with other host countries – and at the federal level – with the cantons and other stakeholders involved (in particular placement agencies). In addition, efforts in this field must be coordinated with those in related fields with which there are numerous overlaps in terms of content and organisation.
4. *Actual implementation* – words must be followed by deeds. In order to consistently implement the findings developed here and elsewhere[18]and the conclusions derived from them, a committee must be appointed or created to ensure effective and efficient action between the actors involved. Here, too, a central body or person with leadership responsibility ("leadership") should be appointed. The necessary technical, time and financial resources must be made available.
5. *Commun*ication – Given the importance and complexity of the issue, it is necessary to communicate all information relevant to individuals and society as a whole in an appropriate manner. This applies to the findings from the review of irregular adoptions carried out in the past, the support offered to guarantee the right to know one's own ancestry, and reform plans with a view to any adoptions that may be carried out in the future.

[18] See the work and report of the "Search for Origins" working group.

3 Recommendations

The expert group formulates the following overarching recommendations, which are presented as a "mental map" preceding all further considerations and specific recommendations elaborated in this final report:

Recommendations

The interim and final reports are not to be treated as separate documents, but as *a single entity*. All recommendations from both reports *must* therefore be read *in conjunction with each other*.

The recommended measures must be taken as a whole in order to bring about a consistent paradigm shift. The individual recommendations are not isolated, but interact with each other. Only taken as a whole do they provide the leverage needed to consistently implement international adoption as a child protection measure.

The continuation of international adoptions in Switzerland within the framework of the reform scenario is *only* possible *under strict conditions*. A complete withdrawal from the practice of international adoptions remains a *serious option*.

Any future Swiss policy on international adoption must take into account the *bidirectional nature of the action required*. It must be recognised that the *highest priority* must be given to dealing with adoptions carried out in the past, especially irregular adoptions (retrospective reference). Depending on which of the two scenarios the final decision falls on, adoptions to be carried out in the future (prospective reference) must also be taken into account.

Consistency is required when dealing with all cases of international adoption, whether prospective or retrospective. The need for action that has been identified must be taken seriously. The findings and conclusions drawn from them must be implemented decisively ("walk the talk"). The paradigm shift that is required as a minimum in the case of the continuation of international adoption, but also the continued support of persons who have already been adopted in the event of withdrawal, requires the provision of the necessary human and financial resources.

Responsibility in the context of international adoption does not end at territorial, domestic or international borders. *Joint and shared responsibility* must be recognised. This applies between states and to all actors involved within the federalist structure of Switzerland. International adoption must be viewed in its networked structure. In order to accomplish the tasks at hand, Switzerland should intensify its cooperation with both countries of origin and other receiving countries. The cantons and other actors (especially adoption agencies) should be appropriately involved in the work ahead.

In order to implement the recommendations effectively, a *committee* should be appointed or created to coordinate the actions of the cantons, the federal government and other stakeholders. The necessary skills, in particular specialist expertise, and the involvement of those affected must be ensured. It is advisable to appoint a body with management responsibility that acts as *primus inter pares* and thus leads the development process ("pilot function").

A *communicative effort* on the part of the authorities towards society is indicated. This relates to the explanation of any reforms to be carried out at the Institute of International Adoption in Switzerland, as well as the support services that need to be expanded in any case to guarantee the right to know one's own ancestry.

In order to establish a coherent policy, coordination with the challenges and revision projects in *related fields* is required.

Chapter Two – Expert Group, Mandate and Procedure

The following section provides a brief chronological overview and summary of both stages and thus of the overall mandate. However, this cursory account of the most important aspects does *not* replace the need to review all of the expert group's considerations as set out in *the interim report and final report*. Due to the sensitivity of the subject matter and the complexity and dynamics of the challenges, it is advisable to study the analyses in both reports in detail.

1 Constitution – Procedure and Selection Criteria

The OFJ appointed the members of the expert group, taking into account the recommendations of the chairperson.[19] The cooperative selection of members was based on several criteria: complementary professional expertise ("expert group") and diversified know-how, integrity, independence, appropriate representation of the actors involved in international adoptions and their functions, taking into account the federal structure and its implications for international adoption, in particular the integration of those affected and specifically adopted persons, linguistic diversity, and balanced gender and language representation. This led to the following composition of the expert group:

Chair:

PD DR. IUR. HABIL. MONIKA PFAFFINGER

Legal scholar and expert in private law, information law and law and new technologies, particularly family law and adoption law (postdoctoral thesis: *The right to informational system protection. A plea for a paradigm shift in data protection law*; dissertation: *Secret and open forms of adoption. Effects of Information and Contact on the Balance in the Adoption Triangle)*; former Vice-President of the Swiss Federal Commission for Family Affairs (EKFF); owner of MP – *only connect*

Members of the expert group, in alphabetical order:

PRITI AESCHBACHER

Social anthropologist, head of an adoption agency, herself adopted and an adoptive mother

DR. IUR. YVO BIDERBOST

Head of Legal Services at the Child and Adult Protection Authority (and Adoption Authority) of the City of Zurich, board member of PACH (Foster and Adoptive Children Switzerland), member of the KOKES (Conference for Child and Adult Protection) working committee, lecturer at the Universities of Lucerne, Fribourg and Zurich

[19] See interim report, Chapter 1, 2.

LIC. IUR. HERVÉ BOÉCHAT

Self-employed lawyer specialising in children's rights. Former member of the central federal authority for international adoption at the time of its establishment. Has carried out numerous assessment missions in countries of origin with the SSI (International Social Service Switzerland) and published numerous studies and reports on the subject of irregular adoptions.

SARAH INEICHEN

President of the Back to the Roots association, certified midwife

(FH) LIC. IUR. MARYSE JAVAUX VENA

Research assistant in the Private International Law Division, Federal Office of Justice, Central Authority of the Swiss Confederation for International Adoptions

MLAW SANDRO KÖRBER

Lawyer, Head of the Central Adoption Authority of the Canton of

Thurgau PROF. DR. IUR. GIAN PAOLO ROMANO

Associate Professor at the University of Geneva, lawyer, expert in private international law, in particular international family law

LIC. IUR. JOËLLE SCHICKEL-KÜNG

Co-Head of the Private International Law Section, Federal Office of Justice, Central Authority of the Swiss Confederation for International Adoptions

PROF. DR. IUR. JUDITH WYTTENBACH

Professor of Constitutional and International Law, barrister, expert in fundamental and human rights, particularly children's and women's rights

2 Mandate and task of the expert group

The mandate given to the expert group is as follows:[20]

1. To develop recommendations for establishing a Swiss policy on international adoption and, in particular, to issue a statement on the system best suited to promoting the welfare of children and protecting their rights.
2. Developing concrete proposals on
   a) issues relating to the optimisation of institutional organisation, including the position of accredited intercountry adoption agencies;
   b) harmonising the treatment of procedures under the 1993 Hague Adoption Convention (HAC) and those not under the HAC;
   c) a revision of the chapter on adoption in the Federal Act on Private International Law;
   d) reviewing financial issues in adoptions, incorporating instruments and recommendations developed at international level;
   e) Reviewing issues relating to unlawful practices, incorporating instruments and recommendations developed at international level.

Depending on the conclusions of the CCJD and FOJ working group on tracing origins (hereinafter referred to as the "Tracing Origins Working Group" report), legislative changes could also be considered in this area.[21]

The work is divided into two stages: in the first phase, the expert group is to develop at least two possible scenarios for the FOJ for establishing a Swiss policy on international adoption. The expert group fulfilled this mandate with its interim report of 28 March 2023.[22]

The interim report was noted by the Federal Council on 8 December 2023, together with the so-called
"10-country report"[23] fromthe Zurich University of Applied Sciences (ZHAW): "For the Federal Council, it is clear that such irregularities must not be allowed to happen again. Even though the federal government and the cantons have already done a great deal to make the practice of international adoptions more transparent and secure, an independent group of experts commissioned by the federal government concludes in an interim report that a revision of international adoption law could significantly reduce the potential for abuse in the future. The Federal Council has taken note of the interim report and commissioned the group of experts to submit detailed clarifications for a revision by the end of 2024."([24]) With this final report dated 27 June 2024, the group of experts is fulfilling this mandate and presenting concrete proposals for reform.

[20] Not a verbatim reproduction, but largely consistent with the original wording.
[21] See in this regard the corresponding report by the Federal Council 2020, 65 f.
[22] See <https://www.newsd.admin.ch/newsd/message/attachments/85088.pdf>.
[23] See ZHAW report 2023.
[24] See <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-99228.html>.

3 Methodology and chronology

3.1 Methodology

A *holistic approach* was used for the methodology.[25] Various sources were examined in detail, reflecting documents, findings and developments from science, law, politics and media reporting.[26] The Federal Council report's call to integrate the perspective of those affected was consistently taken into account.[27]

3.2 Chronology

The expert group met for thirteen plenary sessions. In between, working groups were set up to prepare individual topics in greater depth.

3.2.1 First stage

The following is a brief chronological overview of the work and progress of the expert group in the first stage:

First meeting on 30 August 2022, kick-off meeting – distribution of preparatory required reading and supplementary reading with a brief assignment for the experts to present the core challenges of international adoption from their own perspective; round of introductions and presentation of the assignment; Input round with the following objectives: clarification of terminology (e.g. 'international adoption', "adoption of a child from outside the family", "intra-family adoption" or "illegal adoption"), discussion of the factual and legal situation, identification of weaknesses/risks in the system, including prioritisation, outlining of possible solutions, development of an initial outline of scenarios; in this respect, a brief exposé on relevant aspects from each member's perspective/experience; after the "tour de table" round: mutual reflection on the findings presented; in this way: distillation of core problems and guiding principles.

Second meeting on 19 September 2022 – Summary of key findings from the first meeting by the chair; presentation on the international adoption process, focusing on various cases and particularly on Thailand as a statistically important country for Switzerland, by J. SCHICKEL-KÜNG; followed by a discussion of the process and the cases (tour de table).

Third meeting on 26 September 2022 – Advance assignment for members to develop individually convincing political scenarios; presentation and discussion of these proposals; examination of the relationship between the scenarios under discussion and the sub-questions, i.e. how to deal with the two-stage nature of the assignment and the scenarios themselves.

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[25] For this demand, see the Joint Statement on Illegal Intercountry Adoption, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf>.

[26] See bibliography and list of materials.

[27] For the methodology of the expert group, see the interim report, Chapter 1, 4.

29 September 2022 – Establishment of working groups/triage of work; development of working documents on the sub-questions, in some cases with conclusions on the scenarios; preparation of a working document on the scenarios and a first draft of the interim report by the chair. This "multi-faceted approach" enabled the development of a granular picture of the international adoption system with its challenges and the formulation of possible solutions.

16 October 2022 – The final draft of the report by the "Search for Origins" working group is made available to all members of the expert group.

27 October 2022 – Request for extension of the deadline for submission of the interim report (new deadline: 31 March 2023); reasons: date of establishment of the expert group, subsequent frequent meetings, volume of information to be integrated and new relevant information and documents, general complexity of the subject matter.

16 November 2022 – Written submission by the Conférence Latine de Promotion et de Protection de la Jeunesse (CLASS) to the chair; sent to the members of the expert group on 18 November 2022, discussed at the 4th meeting.[28]

Fourth meeting on 9 December 2022 – First block: Presentation/discussion of newly submitted documents (in particular the draft from the "Search for Origin" working group, letter from the Conférence Latine de Promotion et de Protection (CLASS), Lucerne ruling, statement from the UN Treaty Bodies, in-depth literature); Second block: Presentation/discussion of the working groups' findings on the specific sub-questions; Third block: Discussion of the scenarios proposed by the chair, rejection of certain scenarios/modalities by process of elimination, refinement of other scenarios.

Fifth meeting on 2 February 2023 – Discussion of the draft interim report further developed by the chair with regard to structure/layout and arguments; consolidation of two recommended scenarios as conclusions.

Sixth meeting on 13 March 2023 – Finalisation/approval of the draft interim report.

Submission of the interim report on 28 March 2023.

[28] The letter welcomes the reform of the international adoption system. The HAÜ has brought about changes. It also refers to the "slump" in international adoptions. An expansion of federal powers (ACF) is proposed. At cantonal level, the social assessment should remain in accordance with Art. 268a of the Civil Code. Regional, neutral and independent agencies should be set up to assist with searches for origins. It is noted that international adoption is still not where it should be. A moratorium would send a clear signal.

3.2.2 Second stage

The expert group continued its work from June 2023 onwards. While the first stage involved presenting at least two policy scenarios in an interim report, the second stage focused on developing concrete proposals for the elaboration, planning and implementation of the reform scenario, integrating the specific issues identified in the mandate. Below is a brief chronological overview of the work and progress of the expert group in the second stage (consecutive meeting numbering):

Seventh meeting on 5 June 2023 – Project planning and structuring of the second stage; initial analysis of the reduction element; establishment of a working group to prepare a rough concept for the reduction element.

Eighth meeting on 28 August 2023 – Discussion of the paradigm shift, adoption of recommendations on the reduction element.

Ninth meeting on 25 September 2023 – Discussion of possible scenarios regarding the organisation of authorities, the position of intermediary agencies (including advantages and disadvantages) and models discussed abroad; adoption of recommendations for institutional reorganisation; Discussion of organisational issues with regard to the topics of "searching for origins" and "dealing with irregular adoption practices".

Tenth meeting on 6 November 2023 – Discussion and adoption of recommendations on institutional reorganisation; development and adoption of proposals for reform of the IPRG.

Eleventh meeting on 18 December 2023 – Discussion of the latest developments in the field of international adoption with conclusions for the work of the expert group.

Twelfth meeting on 29 January 2024 – Discussion and adoption of recommendations on the topics of "Dealing with irregular practices", "Search for origins" and "Financial aspects in the context of international adoption".

Thirteenth meeting on 29 April 2024 – Discussion of the draft final report.

Several readings took place, with the final report being approved on 25 June 2024 and finalised and submitted on 27 June 2024.

4 First stage and interim report – Brief description

In the first stage, from August 2022 to March 2023, *two scenarios* for a Swiss policy on international adoption were to be developed. To implement this mandate, the expert group drew up a catalogue of findings, recommendations and essential requirements. The members of the expert group *unanimously* agreed that continuing with the current practices is legally and morally unacceptable. Although progress has been made in the course of the Hague Convention, there has been no comprehensive evaluation of its effectiveness. The expert group is therefore convinced that minimal adjustments to the current regime are not sufficient. *Instead, fundamental change is required.*

4.1 Key findings of the interim report

The first key finding is that *Switzerland's responsibility in the context of international adoption does not end at its own borders.* It is not solely the countries of origin that are responsible for ensuring the quality of adoption procedures. Countries of origin and receiving countries share this responsibility. In this respect, the expert group refers to a shared responsibility (see introduction). For Switzerland as a receiving country, this means in concrete terms increasing transparency, accountability, due diligence, verification and verifiability beyond its own borders, as well as establishing more intensive, trust-building intergovernmental cooperation. Action is needed in several areas to achieve this. The details will have to be worked out at a later stage.

The second key finding from the first stage of the mandate is that any future Swiss policy on international adoption must have a *two-pronged focus*: retrospectively, with regard to those who were adopted in the past and may have been affected by irregularities, and prospectively, with regard to any international adoptions that may be carried out in the future. Both dimensions must be taken into account.

For Swiss policy on international adoption, this means:

1. Regardless of whether and, if so, how international adoption will continue to be practised in Switzerland, it is imperative that the *rights of those affected*, especially those adopted through irregular procedures, are addressed. Psychological, social and financial support are required as a matter of priority, as is the implementation of the right to know one's own ancestry.
2. If the practice of international adoption is to continue, the welfare and rights of adopted children *must be protected not only formally but also in practice*.

Of course, not all international adoptions in the past have been marred by irregularities. Some of the procedures were carried out correctly, in the best interests of the adopted children and with due regard for the rights of those involved. The expert group is not seeking to condemn adoptions across the board. Of course, they can do good. The point is simply that "they can" is not enough here. Adoption – viewed not only as an individual case but also as an institution – must do good for the adoptees and be free of extraneous and reprehensible influencing factors.

The mandate for the first stage was therefore refined in terms of content: scenarios were to be developed for a Swiss policy on international adoption that would ensure that international adoptions *are always and exclusively in the best interests of those concerned and that the rights of all parties involved are respected.* With this in mind, the expert group drew up two proposals.

4.2 Two scenarios

The *first scenario*, the *reduction-plus-reform scenario* (or "reform scenario" for short), is designed for the event of a decision in favour of continuing international adoptions. It is named after its two key requirements:

1. Reduction element – Cooperation should be reduced to countries of origin that demonstrably comply with essential minimum guarantees not only formally but also in practice.
2. Reform element – It is necessary to establish a robust support system and implement far-reaching reforms, particularly with regard to the issues of "institutional reorganisation", "searching for origins in the context of irregular adoptions", "aspects of private international law", "finances" and "dealing with irregular practices".

The *second scenario* is the *exit scenario* – a radical step. So let's briefly look at the main argument: international adoption inevitably involves major risks inherent in the system. Even with the deployment of enormous resources (as in the reform scenario), it remains uncertain whether these risks can be controlled: it is one thing to create the formal framework conditions to prevent irregularities and abuse. However, it is quite another to guarantee that they are actually complied with in reality. If irregularities cannot be ruled out, then in order to protect the welfare of children and the rights of all those affected, the possibility must be considered that Switzerland has no alternative but to abandon the practice of international adoption altogether.

[29] Interim report, Chapter 3, 2.2; Final report, Chapter 1, 1.3 and Chapter 2, 4.2.

4.3 Brief summary of the most important aspects

The following brief summary of the key findings, guiding principles and critical challenges as set out in the interim report, Chapter 2, 2.1–2.14, is intended to help readers better understand and contextualise the considerations of the second stage.

4.3.1 Terminology

4.3.1.1 Constellations of international adoption

The expert group bases its interpretation of the term "international adoption" on Art. 2 of the Hague Convention:

(1) The Convention applies when a child habitually resident in a Contracting State ("home State") has been, is being or is to be moved to another Contracting State ("receiving State"), either after his or her adoption in the home State by spouses or a person habitually resident in the receiving State, or with a view to such adoption in the receiving or home State.

(2) The Convention only applies to adoptions that establish a permanent parent-child relationship.

The Hague Convention applies to *intercountry adoptions* (where there is no family relationship or prior acquaintance between the child and the adoptive parents) and *intra-family adoptions*.[30] This means that the same procedural rules and principles apply. Nevertheless, the two situations differ fundamentally in some respects (in this regard, the case law of the ECtHR should also be noted).

The irregularities in the 1970s to 1990s that led to the establishment of the expert group (see introduction) occurred mainly in the context of adoption of children by strangers. Accordingly, the expert group focused its attention on *international adoption of children by strangers*.

4.3.1.2 Irregular adoptions and adoption practices

In connection with the discovery of irregularities in international adoptions in the 1970s to 1990s, various terms are used to describe the exact nature of the irregularities. There is talk of unlawful, illegitimate or illegal adoptions, but also of unethical or abusive practices and child trafficking. From a formal legal perspective, an adoption is unlawful if it violates the applicable law. However, this is not the only way in which the integrity of adoption procedures can be violated. In order to cover as wide a spectrum as possible of potential legal or moral violations – some serious, some less so – the expert group proposes the use of the generic term "irregular adoption" or "irregular adoption practice".(31)

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30 See HCCH 2008, Guide No. 1, N 513.

31 See already Interim Report, Chapter Two.

4.3.2 Statistical and empirical data

Domestic adoption of children from outside the family has declined significantly in Switzerland since the 1970s and is now a rarity. In contrast, international adoption has become much more common. However, after peaking in 2004, the numbers have fallen steadily. In recent years, they have levelled off at a low level of 30 to 40 cases per year.[32]

Influenced by social, technological and legal developments, the figures show a steady decline in adoption procedures in Switzerland. This amounts to a trend away from adoption. Currently, Thailand, a Hague Convention country, is the most important country of origin for Switzerland. International adoptions from non-Hague Convention countries are rare;
and are usually intra-family adoptions.

The profile of children who have been adopted internationally has changed. They are more often children with *special* needs, especially older children, siblings or sick or disabled children.

International adoption during the period under review (1970s to 1990s) was not only characterised by irregularities in individual cases. Rather, the practice was riddled with irregularities and dysfunctions of varying degrees of severity in various areas. A *structural deficit* has therefore been documented.[33]

It also became clear that there *is a lack* of *systematic evaluations of regulatory compliance in the period following the decades examined in the last century*. There are no in-depth studies on the extent to which the 1989 UN Convention on the Rights of the Child (UNCRC) with its relevant additional protocol or the 1993 Hague Convention have brought about progress and consistently eliminated sources of danger and weaknesses. ([34])

4.3.3 Compliance and accountability – trust and control – due diligence

Probably the greatest challenge in the context of international adoptions is that the period before and around the birth of a child is difficult to "control" in terms of the influence of events at that time on a later adoption, which may be affected by actions taken during that period. In light of the findings on the approach taken in the context of irregular adoption practices, it must be noted that this is the most critical phase of the "adoption process". The conditions prevailing in the country of origin, which often influence facts and events that precede the actual adoption procedure, combined with the "demand" for children from people wishing to adopt in the receiving countries, place *immense pressure on adoption procedures.* In view of the risks inherent in the system, the breadth and severity of the irregularities, and the systematic nature with which irregularities occurred in the second half of the 20th century, a Swiss policy of

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[32] For figures, see <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/statistiken.html>.
[33] For Switzerland, see in particular the ZHAW 2020 report and the ZHAW 2023 report; see the contributions by BOÉCHAT; for findings and analyses from other countries, see the list of literature and materials.
[34] See interim report, Chapter 2, sections 2.2 and 2.3.

international adoption, we cannot naively and uncritically assume that irregularities are now a thing of the past. Switzerland's responsibility does not end at its own borders. Rather, *due diligence* is required with regard to compliance with the requirements in the countries of origin. Evidence of *compliance* with all requirements must be obtained at all stages. In this regard, greater transparency, cooperation and accountability are required. It is also recommended that gaps in knowledge regarding any irregularities in international adoptions in the recent past and present be closed. "Quasi-wild" adoptions in the course of a "fait accompli", in which parents "bring" children from abroad outside of regular procedures and structures, must be consistently prevented[35].

4.3.4 Short- and long-term perspectives on child welfare and rights and their implications

International adoption is a child protection measure that must respect the principle of subsidiarity and is therefore *a last resort*. It is also a legal act that terminates the original parent-child relationship while establishing a new legal parent-child relationship, and is therefore a family law institution. The welfare and rights of the child are *paramount considerations*, but not exclusive ones. It is a matter of the welfare and rights of minors and adults who have already been adopted, as well as any children who may be adopted in the future, in terms of their legally protected integration into family and cultural relationships. The rights of the biological parents must also be taken into account. It is important to remember that, as explained above, it is not only the "transfer" of the child, but also the phase of pregnancy and birth that are critical moments for compliance with legal requirements. Against this background, the following are indicated

1. a critical examination of the effects of adoption as currently implemented (incognito full adoption vs. semi-open and open adoption);
2. a systematic survey of the current well-being of people who were adopted in the past;
3. a consistent investigation and review of any violations of standards;
4. the recognition of the protection of the child's original integration into their traditional (family, cultural, state) systems;
5. the implementation of sustainable and free services to provide support in general and in the context of searching for origins in particular (*post-adoption services*); and
6. verification of the compliance of adoptions from the recent past with the rules.

[35] See also the recommendations in the final report, Chapter Three, 1 and 2.3.

4.3.5 Adoption as a multidimensional institution

To this day, there persists a misleading (formal legal) notion that adoption is a one-time legal act that erases all realities and makes the child virtually the biological child of the adoptive parents (*clean break*).[36] In reality, however, adoption is a lifelong process within a complex system involving numerous relational and personal connections. It is particularly important to recognise that the biological family or family of origin has a specific role to play. Furthermore, the conditions in the countries of origin must be taken into account: poverty and economic precariousness, social values and realities, stigmatisation, lack of contraception and abortion options, environmental disasters and wars, weak or collapsing state systems or poorly established registration systems, corruption, etc. Added to this is the power asymmetry that often exists between the country of origin and the host country, which provides fertile ground for interests unrelated to the matter at hand, corrupting adoption as a child protection measure.

4.3.6 "Adoptability" put to the test

There are documented cases in which proof of a child's "adoptability" was fabricated/falsified. There are also reports of situations in which considerable pressure, even coercion, was exerted on the biological parents. These include influence through money or gifts, desperate situations of excessive demands, and ignorance/uncertainty or false or misleading information about the consequences of consenting to adoption. The viability of "adoption clearance" and "informed and voluntary consent to adoption" must therefore be critically questioned in light of the realities of poverty, inadequate support, stigmatisation, etc. Against this background, Switzerland is obliged to exercise *due diligence* in verifying the correctness of the relevant documents and the integrity of the processes in the respective country of origin. In this regard, criteria for the documentation and verification of the correctness of all information relating to the relinquishment of a child must be established. Well-developed transparency and control must also be ensured. However, doubts remain as to whether such control mechanisms can be established in countries affected by disasters, in countries without robust registration and organisational structures, and in third world and emerging countries.

4.3.7 The principle of subsidiarity put to the test

The principle of subsidiarity requires that "a child may only be released for international adoption after all measures in the country of origin to enable the child to remain in its current family or to find a suitable foster family have failed."[37] The following therefore applies to all types of adoption: parents must be found for "parentless" children for whom no other care can be found that better ensures the promotion of the children's welfare and respect for their rights. On the other hand, children must not be "procured" for childless parents.

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[36] For further details, see PFAFFINGER 2007, with additional references; cf. also the various contributions by COTTIER and the relevant commentary literature.

[37] See <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/haue.html&gt>; note critically in this context HÖGBACKA 2019.

The principle of subsidiarity is of paramount importance and excludes poverty, stigmatisation (e.g. of unmarried mothers) and similar factors as sole reasons for international adoptions. However, compliance with this principle has been questionable in some cases to date.

4.3.8 Formal law and actual implementation or enforcement deficits

The UNCRC, with its protocols, and the Hague Convention are milestones in guaranteeing the fundamental rights of children and ensuring the integrity of adoption procedures. At present, however, it is not possible to assess conclusively and on the basis of a broad data set whether the standards, guarantees and requirements of the UNCRC and the Hague Convention are effective and whether they are consistently complied with, or whether there is a more or less pronounced "enforcement deficit". The recommendation to review practices from at least the last five years was concluded[38], whereby initiatives at the level of international bodies active in relation to the Hague Convention and the UNCRC should also be pursued.

4.3.9 Narratives of international adoption in light of reality

For decades, international adoption was characterised by a "rescue narrative" according to which parents were found for "parentless" children. In reality, however, this narrative was often turned on its head. The expert group acknowledges that some international adoptions were carried out in accordance with the rules and in the best interests of the children. However, the practices examined show that international adoption often did not deserve to be called a child protection measure in reality, or only did so by ignoring difficult aspects. *The idea that the end justifies the means is not appropriate.*

4.3.10 Risks inherent in the system and interests external to the system

The way international adoption works and the conditions under which it takes place give rise to various systemic risks of irregularities and abuse. [39] In addition, international adoption is confronted with the problem that interests outside the system – namely financial, but also political and sometimes even imperialistic interests – corrupt its actual goals and rationales. The risks of such effects eroding the institution of child protection measures are accentuated when power asymmetries exist.

[38] See Interim Report, Chapter Three, 2.1.1.3; Final Report, Chapter Three, 1.2.3.
[39] See also ABRAHAM/STEINER/STALDER/JUNKER 2020, 5 and 99.

4.3.11 Search for origins – right to know one's own ancestry

The right to know one's own ancestry is a human right. Many adults who were adopted as children are confronted with poor, incomplete, non-existent or falsified documentation regarding their origins, history, family and identity – the truth[40]– and consequently with significant and sometimes overwhelming burdens. This represents an enormous burden for those affected. A central element of Swiss policy on international adoption must therefore be the development and implementation of effective and free support services for those searching for their origins.([41)]

4.3.12 Clean break – review of secret full adoption as an effect of adoption

The introduction of so-called secret full adoption (incognito full adoption) in the last century established the fiction that adopted children were the biological children of their adoptive parents, as if they had no family of origin and no culture of origin. This approach, known as *a clean break*, has long been viewed critically in adoption research. Accordingly, certain relaxations have been made in law and practice in recent years, cf. Art. 268b f. ZGB. Today, it is *expressly* recognised by law that adoptees must be informed about their history and the fact of their adoption, cf. in particular Art. 268c para. 1 and para. 2 ZGB. The right to know one's own ancestry is laid down in Art. 268c para. 2 and para. 3 ZGB. It is appropriate to go even further in overcoming the underlying mechanism. This is because incognito full adoption (including fictitious registrations) has, in a sense, encouraged irregular practices and made it difficult or impossible to uncover them. Against this background, the expert group recommends an evaluation of secret full adoption and an even more consistent implementation of semi-open and open forms of adoption. The latter offer transparency, honesty, trust and integrity. Children are better protected in their relationships with their family and culture of origin, as well as with their adoptive family and country of adoption. Semi-open adoptions require the creation of appropriate administrative responsibilities and processes.

4.3.13 Expansion of pre- and post-adoption care, counselling and support

The expert group considers the expansion of counselling, guidance and support services (*pre- and post-adoption services;* not limited to searching for origins) for current and future adoptees, as well as for birth families and adoptive parents/families, to be an indispensable part of Swiss policy on international adoption. These services should be substantially expanded as elements of consistent child and family protection and made available free of charge, regardless of the considerable costs involved.

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[40] See report by the "Search for origins" working group, 8.

[41] See also the final report, Chapter 3, 2.2, for more details; for the requirements in this regard, see the interim report, Chapter 3, 1.1.

[42] See also PFAFFINGER 2007, *passim*, for a fundamental overview of the relevant literature and developments; for the latest research, see BRÄNZEL 2019.

4.3.14 Further reading

In addition to the points mentioned above, the expert group identified three aspects in the first stage and its interim report that require particular attention:

1. *Too many actors* are *involved* in the adoption process. This applies to the federalist organisation in Switzerland and the placement agencies, as well as, where applicable, the number of countries of origin with which Switzerland cooperates. Consolidation is recommended as the most viable strategy for the future.[43]
2. It can be assumed that the implementation of the agreed scenario will have an impact on *related areas*, in particular surrogacy. Coordinating the recommendations developed in the interim and final reports with efforts to guarantee the rights of those affected and involved in this area is beyond the scope of this mandate and must therefore be dealt with separately.[44]
3. A consistent reform of the international adoption system requires that *adequate resources* be made available. [45]

[43]Interim report, Chapter 2, 2.14; final report, Chapter 3, 2.1, but also 1.
[44] Interim report, Chapter 3, 1.2; Final report, Chapter 3, 5.2.
[45] Interim Report, Chapter Two, 2.14 and Chapter Three; Final Report, Chapter Three, 2.2 and 2.4.

5 Second stage and final report – Location

5.1 Chronology of the transition phase between the two stages

The interim report of the expert group to the Federal Office of Justice dated 28 March 2023 was first reviewed by the then head of the Federal Department of Justice and Police (FDJP). In accordance with the instructions of the head of the FDJP, the expert group was to continue its analyses for the upcoming second stage immediately and develop concrete proposals for the reform scenario.

On 8 December 2023, the dossier on international adoption was discussed by the Federal Council as a whole. Two things are relevant here:

Firstly, the Federal Council took note of the findings of the ZHAW's "10-country report".[46] The report examines international adoptions between Switzerland and ten countries – Bangladesh, Brazil, Chile, Guatemala, India, Colombia, Korea, Lebanon, Peru and Romania – between the 1970s and 1990s. The Federal Council commissioned this report in response to an earlier report by the ZHAW – the so-called "Sri Lanka Report"([47] – which examined international adoptions between Switzerland and Sri Lanka. As in the "Sri Lanka Report", the ZHAW also concluded in the "10-Country Report" that there were indications of "illegal practices, child trafficking, forged documents and missing information on origin"([48]. The Federal Council expressed its regret to those affected.([49]

Secondly, the Federal Council *as a whole* took note of the analyses set out in the interim report, which included the two scenarios for Swiss international adoption policy developed by the expert group – the reform scenario and the exit scenario. The Federal Council confirmed the need for action on international adoption law. The expert group was tasked with presenting in-depth clarifications for a revision by the end of 2024. The FDJP was tasked with presenting the Federal Council with the expert group's final report and a proposal for further action by the end of 2024. ([50]

[46] ZHAW report 2023.
[47] ZHAW report 2020.
[48] ZHAW report 2023, 58 ff.
[49] See press release dated 8 December 2023, available at <https://www.bj.admin.ch/bj/de/home/aktuell/mm.msg-id-99228.html>.
[50] The press release reads: "Bern, 8 December 2023 – In the past, there have been more irregularities in international adoptions than previously known. This is the conclusion of a report commissioned by the Federal Council that examined adoptions from a total of 10 countries of origin. The Federal Council took note of the report at its meeting on 8 December 2023. It acknowledges and regrets that the Swiss authorities failed to take appropriate measures despite significant indications. In order to prevent such irregularities in the future, a revision of international adoption law is necessary. An independent group of experts will present the Federal Council with detailed findings by the end of 2024; see <https://www.bj.admin.ch/bj/de/home/gesellschaft/gesetzgebung/internationale-adoptionen.html>.

5.2 References, related fields of action and interfaces

The multi-faceted mandate given to the expert group calls for solutions in a field that *does not exist in isolation*. It borders on several other challenging areas that will also need to be taken into account. In addition, the mandate includes challenges that are both focal points and interfaces, which is why they become relevant from different perspectives under different headings. The expert group precedes the presentation of its analyses in the second stage with the following four aspects (some of which have already been mentioned):

Firstly, as in the first stage, the expert group also encountered related topics in the second stage. For example, discussions on the right to know one's own ancestry repeatedly revealed parallels with the topics of egg donation and surrogacy. Despite the obvious connections, the expert group is limiting itself to its core mandate, referring to the working group on ancestry law and other revision projects in related fields.

Secondly, the establishment of the expert group with its mandate to present recommendations for action to address the challenges of international adoption was a response to the irregularities uncovered in the past. The irregularities documented in the "Sri Lanka Report" and the "10-Country Report" largely concern international adoptions *without* an existing family relationship (so-called foreign child adoption). As a rule, these were cases in which Swiss couples adopted children from abroad/in foreign countries who were strangers to them (children with whom they had neither an acquaintance nor a family relationship). Only in isolated cases were files found relating to international adoptions by relatives. This type of adoption, known as intrafamilial adoption, represents a very specific situation with its own challenges, which requires separate analysis.[52]

Thirdly: According to the mandate given to the expert group, "depending on the conclusions of the KKJPD and FOJ working group on searching for origins, [...] legislative changes could also be considered in this area."[53] This is where we find a crucial turning point: the search for origins, or rather the right to know one's own ancestry, set the ball rolling. Asserting this right was one of the tools used to uncover irregularities in international adoption procedures, e.g. when those affected discovered that the biological mother named in their documents was a surrogate mother. If the expert group considers it a top priority of any future Swiss policy on international adoption – regardless of the scenario ultimately chosen – to address the past appropriately and, in particular, to support those affected by irregularities in the effective enforcement of their rights, then the key lies in the short-, medium- and long-term measures to be taken at this point. Taking into account the complexity of the challenges and the time constraints – the final report of the "Search for Origins" working group was only made available to the expert group at a very advanced stage of its own work – the expert group limits itself with regard to

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[51] See the report dated 27 October 2023 <https://www.kkjpd.ch/newsreader/internationale-adoptionen.html&gt>; a draft of the report was sent to the expert group on 29 November 2022; see also the final report, Chapter 2, 4.3.14.

[52] See final report, Chapter 2, 4.3.1.1; interim report, Chapter 3, 1.2.

[53] See in this regard the 2020 Federal Council report, 65 f.; report of the "Search for Origin" working group of 27 October 2023.

the topic of tracing origins to provide guidance (but not without emphasising that further efforts in this broad field are indispensable).[54]

Fourthly, when dealing with the parameters of the revision plans developed for the reform scenario with a view to overcoming the challenges in the context of international adoptions, overlaps and thus at least partial repetitions are unavoidable. Certain areas of action, in particular ensuring the right to know one's own ancestry, must be considered from different perspectives and approached from different angles.

[54] See final report, Chapter Three, 2.2.

Chapter Three – Specification of the Reduction-plus-Reform- s Scenario

In fulfilment of the mandate from the Swiss Federal Council, this chapter elaborates on the reform scenario in more detail. It primarily refers to the adoption of foreign children in an international context. How to deal with intra-family adoptions and whether or to what extent the paradigm shift proposed here should also apply to them remains to be examined.

1 First constituent element – reduction of the number of cooperating states

This subchapter presents a concept for the first constitutive element of the reform scenario, namely *reduction*. The establishment of a regime in which Switzerland will in future limit cooperation in international adoptions to countries of origin that meet defined criteria and standards is intended to ensure high quality standards. The reduction to certain cooperating countries also corresponds to a development trend in several other receiving countries.

In accordance with its mandate, the proposal also addresses the issue of harmonising procedures with ECHR and non-ECHR countries. The expert group is convinced that this mandate can only be fulfilled by eliminating this harmonisation: in future, there should be no more procedures with countries that have not ratified the ECHR.

The reduction of countries of origin should be addressed *in a timely manner*. The authorities responsible for decisions and the relevant procedures must be defined. In addition, the following will be necessary: a reorganisation of the institutions involved, the regulation of financial flows and amendments to the Private International Law Act (IPRG).

11 Paradigm shift

Under the current regime, there is "free choice of country of origin" unless federal directives have suspended cooperation with a country (as is the case with Haiti and, more recently, the United States) or a country of origin has taken a corresponding decision. In future, however, cooperation will only be possible with countries that comply with the minimum standards for international adoptions.

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[55] See final report, Chapter 2, 4.3.1.1 and 5.2; for possible coordination with requirements relating to national adoption, see the Federal Supreme Court ruling of 5 May 2023 (2C_393/2022); intrafamilial national and international adoption must also be examined.

[56] See for Flanders <https://www.opgroeien.be/nieuws-en-pers/nieuws/rapport-expertenpanel-interlandelijke-adoptie-in-vlaanderen> and <https://pers.opgroeien.be/vlaanderen-beeindigt-samenwerking-met-vier-herkomstlanden-voor-adoptie>; for Australia's restrictions on cooperation, see Partner countries | Intercountry Adoption; for France, see <https://so-lidarites.gouv.fr/publication-du-rapport-de-la-mission-dinspection-interministerielle-relative-aux-pratiques>; for the Netherlands, see <https://nos.nl/artikel/2517029-tweede-kamer-wil-stop-op-buitenlandse-adopties>.

[57] See the final report, Chapter 2, 2.

[58] Regarding the question of whether such a reduction is legally possible, a request for clarification was sent to the FOJ. As the Permanent Bureau of the Hague Conference informed the FOJ upon request, there is no obligation for a ratifying state to allow international adoption. Complete or partial withdrawal would therefore be compatible with the Hague Convention: "There is no obligation to carry out international adoptions, so each country can establish its own criteria and decide with whom to work."

This marks a *paradigm* shift *or change in the system*. Whereas previously every country was considered a potential partner for international adoptions unless there was a reason to exclude it, the opposite will now be the case: as part of a multi-stage evaluation process, fixed criteria will be used (proposal: by the FOJ) to assess whether a country should be included in the group of potential partner countries. On the basis of this evaluation, a positive or negative cooperation decision will be made (proposal: by the FOJ). The decision will only be positive if all the required criteria are met. Only then can cooperation in the context of international adoptions be continued or resumed on the basis of a formal decision with the specific country of origin. In this respect, one could also speak of a
"Approval" or "accreditation". In the event of a positive decision, a rolling re-evaluation, or "re-accreditation", will also take place over time, based on a new legal framework to be created.[59]

It should be emphasised at this point that it is not the sole responsibility of the country of origin to ensure the quality of adoption procedures. As a receiving country, Switzerland is not an uninvolved party, but a partner on an equal footing. It is therefore inappropriate to pass judgement on the countries of origin from above. Rather, the evaluation procedure should be understood as an integral part of shared responsibility and carried out accordingly. When introducing an "accreditation" procedure, it should not be forgotten that the aim is to ensure that international adoptions are carried out correctly for the welfare of the adopted children and to protect the rights of all parties involved. This is always a joint, shared responsibility of *the country of origin and* the receiving country.

The principle whereby not all countries are automatically considered cooperation partners of Switzerland in international adoptions, but only those which have undergone careful evaluation and received a positive cooperation decision, should be *enshrined in law in the same way* as the specific elements of the offence and responsibilities.

The proposed reduction in the number of cooperating states effectively means ending cooperation with all non-HLEA contracting states and with all HLEA contracting states that do not meet all the criteria required under the reform (more on this in the following subchapter). The necessary decisions, measures and legal adjustments must be worked out for this "partial withdrawal". In particular, legislative measures are needed to prevent attempts to circumvent the ban, namely by creating a "fait accompli". In this respect, a revision of the IPRG and mechanisms to safeguard the partial adoption ban are necessary. (62)

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59 See final report, Chapter 3, 1.2.5.1.
60 See final report, introduction.
61 For more details, see Final Report, Chapter Three, 1.2.2 and 1.2.6.1.
62 For further details, see the interim report, Chapter 2, 3.3, summary of the IPRG revision, and in particular the explanatory memorandum; final report, Chapter 3, 2.3.

12 Cooperation decision to ensure high standards

The decision to establish, continue or terminate cooperation with a country of origin in the context of international adoption is made after evaluating *three main criteria that must be cumulatively fulfilled*. Cooperation with a country of origin can therefore only be established or continued if the evaluations of all three criteria are positive.

All evaluation criteria must be laid down in a law in a formal and material sense, in accordance with the relevant level.

121 The catalogue of evaluation criteria *de lege ferenda*

De lege ferenda, the assessment and decision on whether to establish, continue or terminate cooperation with a country of origin should be based on *three main sets of criteria*. The first main criterion covers the so-called *formal criteria*, the second the so-called *relational criteria* and the third the so-called *material criteria*. The three sets of main criteria each contain *several sub-criteria.* Specific and, where necessary, deviating formulations for a legal text are to be developed. The criteria are based on *the* following *considerations of purpose ("ratio legis"):*

The *formal criterion* ensures that in future, cooperation will only take place with countries of origin that have ratified the relevant conventions on the protection of the welfare and rights of children. Formal legal recognition of the conventions is a *necessary but not sufficient condition for cooperation.* Secondly, relational criteria and thirdly, material criteria must also be met. The examination of these additional criteria is intended to ensure that, in addition to formal ratification, high standards are actually upheld in international adoptions. Specifically, these additional evaluation steps based on relational and material criteria serve the following purposes:

The *relational criteria catalogue* is used to assess the intensity of the relationship and the level of trust between Switzerland and the respective country of origin, as well as the needs of the countries of origin (in relation to the principle of subsidiarity). The criterion reflects the fact that ensuring the full integrity of international adoptions requires cooperation, shared responsibility and a relationship of trust between states. As explained above, however, this does *not* mean that Switzerland, as the receiving country, unilaterally scrutinises the countries of origin.

The *material criterion* covers information about the social and legal realities in the country of origin in question which – partly triggered by demand pressure from the receiving countries – could undermine the integrity of international adoption procedures. The reliability of the implementation guarantees for the above-mentioned formal standards should therefore be reviewed. This *"reality* check" is intended to ensure compliance with the formal guarantees in practice. This, in turn, can then justify existing or new legitimate confidence in the handling of adoption procedures in accordance with the rules.

Note: Whether and, if so, to what extent the implementation of a paradigm shift through a reduction in the number of cooperating countries is also sensible or appropriate for the constellation of intra-family international adoption would have to be determined in the context of a separate evaluation.[63] If the answer is positive, the list of substantive criteria should also be enshrined in law for intra-family adoption and would have to be examined on a case-by-case basis.

12.1.1 The formal list of criteria

The formal criterion, as the first main criterion, is based on a formal legal list of criteria. It serves as an initial "filter" for potential cooperating countries: ratification of key legal instruments that guarantee minimum standards for the protection of children and their rights in the context of international adoptions is required.

The formal criterion comprises three elements, which must be fulfilled *cumulatively*:

1. Ratification of the HAÜ[64] *plus*
2. ratification of the UN CRC[65] *plus*
3. ratification of the Second Optional Protocol to the UN CRC[66]

Only states that recognise the three conventions mentioned as legally binding are eligible for Switzerland to cooperate with in the implementation of international adoptions. In this way, the binding recognition of minimum standards for international adoptions, in particular for the protection of the welfare and rights of children, is established at a formal level.

It is easy to check whether these formal legal requirements are met. This results in a clear "yes/no decision" and is, in this sense, mechanical and purely formal in nature; no substantive assessments or considerations are necessary.[67]

12.1.2 The relational list of criteria

Following a positive evaluation regarding the ratification of the three international conventions relevant to international adoptions (formal list of criteria), the so-called relational list of criteria must be examined. For the purposes of cooperation in the context of international adoption, this list sets out requirements for the quality of the relationship between Switzerland as the receiving country and the respective country as the potential country of origin:

1. *Intensity and regularity of cooperation with the country of origin* – In future, countries should only be recognised as cooperating countries for the practice of international adoption if cooperation with them is sufficiently intensive (interpretation aid: "no purely individual cases of international adoption"). This element is intended to ensure that the relevant processes are established and implemented accordingly.

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[63] See also Final Report, Chapter Two, 4.3.1 and 5.2; in the context of international intra-family adoption, other instruments under the Hague Convention on the Protection of Children (HKsÜ) and the Foster Care Ordinance (PAVO) must be observed.
[64] For Switzerland SR 0.211.221.311; for the list of HAÜ states, see <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>.
[65] For Switzerland SR 0.107; for the list of UN CRC states, see <tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en>.
[66] For Switzerland SR 0.107.2, Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
[67] No discretionary decision, cf. however, with regard to the substantive element, Final Report, Chapter Three, 1.2.1.3.

function well, so that there is a relationship of trust between the country of origin and Switzerland as the receiving country. Specifically, effective and trusting cooperation is necessary, particularly with the respective foreign central authority. In the opinion of the expert group, it is unrealistic to set specific thresholds in this regard. It will be a discretionary decision as to when the intensity and regularity of cooperation is sufficient.

2. *Needs and interests of the country of origin* – Consultations should be held to determine the needs and interests of the country of origin with regard to cooperation with Switzerland in the context of international adoptions. In the course of this, it should be ascertained whether there is a willingness to engage in good, trusting and transparent cooperation in the interests of protecting children and their rights and with a view to the effective implementation of standards. This also involves the cooperative integration of the countries of origin within the framework of the newly implemented international adoption system. The countries of origin must be included in this assessment. During on-site visits, it must also be explained what is expected of the countries of origin and what can actually be expected of them.

Unlike with the formal criterion, no mechanical "yes/no decision" can be made here. Accordingly, a discretionary decision is made.[68]

If a country of origin does not respond (even after a further request), it should be assumed that it is not interested. It is not appropriate to assume that there is a need and interest despite the lack of a positive response; moreover, a (possibly repeated) lack of response does not meet the expectations of reliable cooperation.

For the constellation of a potentially new cooperating state, for which these relational criteria are obviously not relevant, see the comments in subsection 1.2.5.2.

1213 The list of material criteria

If, following a positive evaluation of the formal criterion, the two relational requirements are also deemed to have been met, the third step is to evaluate the material criterion. This serves to verify whether the formally guaranteed rights and obligations are actually guaranteed in reality, or to establish that there is no enforcement deficit (compliance analysis). At the same time, risk factors for the violation of formally guaranteed rights and obligations are taken into account. In addition, the substantive criteria catalogue, which is a continuation of the relational criteria, serves to further confirm and establish trust in and between the partner states through transparency.

Here, too, a discretionary decision is made, which is either positive or negative and thus tips the balance in favour of establishing or continuing cooperation with the country of origin in question, or of terminating it.

[68] See Art. 4 of the Civil Code for the area of private law and the method established therein.

The three *sub-criteria of the main substantive criterion* are:

1. General description of the situation and risks ("background information");
2. Evaluation of the actual implementation of the formally guaranteed legal framework with a focus on the HAÜ as *lex specialis* ("implementation assessment");
3. In particular: actual guarantee of the right to know one's own ancestry.

Regarding the first element ("background information"): The analysis carried out as part of the description of the situation and risks in the country of origin in question is intended to provide a better assessment of risk factors that could compromise the protection of the welfare and rights of the children to be adopted, as well as other legally protected interests. It is not possible to define *a priori* which criterion should be decisive. Only an assessment of the various elements in combination can provide a sufficiently detailed picture.

The evaluation of the first element of the substantive criterion involves weighing up the relevant aspects. Specifically, the following aspects should be taken into account in the evaluation of the first element of the substantive criterion (the list is not exhaustive):

1. Corruption index;
2. Political stability/rule of law;
3. Security/crime;
4. Swiss embassy or consulate in the country of origin;
5. Criteria discussed/applied in other host countries;
6. General analysis of:
    a) Child protection system;
    b) Poverty;
    c) Situation of women, children and minorities in the country;
    d) Birth registration/civil status system.

Second element ('assessment of implementation'): In addition to evaluating the general situation in the country of origin and the resulting risks for the proper implementation of international adoptions, the substantive criterion provides for a well-founded assessment of whether the formally recognised standards, in particular the Hague Convention, are actually implemented in the country in question.[70] In this evaluation of the actual implementation of legal guarantees in reality *("reality check")*, any shortcomings in the implementation of conventions on the protection of children in international adoptions must be identified to the best of one's knowledge and belief. If shortcomings are identified, this must lead to appropriate conclusions.

[69] For more details on its significance, see also Final Report, Chapter Three, 2.2; Interim Report, Chapter Three, 1.
[70] Regarding the importance of this issue, see the considerations of the expert group in the interim report, Chapter 2, sections 2.4, 2.8 and 2.9, and the final report, Chapter 3, in particular section 1.2.1.3.

When evaluating the second element of the substantive criterion, the following aspects should be taken into account (not exhaustive):

1. Integration of findings from case analyses of adoption procedures from the last five years (see 1.2.3 below for more details; in this respect, see also the interim report, Chapter 2, 2.2 and 2.3);[71]
2. Use of the documents and templates provided by the Hague Conference;
3. Plausible evidence of the implementation of the principle of subsidiarity, whereby concrete measures should be developed where necessary;
4. Compliance with the requirements relating to the adoptability of the child (in particular consent requirements, quality of the child report);
5. Situation with regard to the regulation and transparency of costs (see final report, Chapter 3, 2.4);
6. Other matters, if applicable.

Regarding the third element: the right to know one's own parentage is enshrined in Swiss law, see specifically Art. 268c of the Swiss Civil Code (ZGB) in the context of adoption law.[72] It must therefore be concluded that its actual guarantee, which goes beyond the formal guarantee, must in future be taken into account in the context of the cooperation decision. Guaranteeing the right to know one's own ancestry must be a prerequisite for a country of origin to be considered a cooperating country of Switzerland in future. By making this guarantee in the respective country of origin a prerequisite for a cooperation decision, Switzerland is fulfilling its duty to protect the right to know one's own ancestry.

1.2.2 Brief description of the step-by-step evaluation *de lege ferenda*

The expert group proposes *de lege ferenda* the establishment of a *multi-stage evaluation procedure*, in the course of which three types of criteria or criteria catalogues are reviewed with regard to the question of whether cooperation in the context of international adoption should be initiated, continued or terminated. While the evaluation of the formal criterion refers to "hard" formal facts, the assessments of the relational and material criteria are based on considerations and are therefore more vague and dependent on evaluation. These two criteria must be examined particularly carefully, taking into account all relevant aspects. It seems appropriate to anchor the material criterion at a higher legislative level, supplemented by enumerative elements of specification and implementing provisions elsewhere (e.g. directive/ordinance).

The first step is to check the formal criteria. This involves a formalistic "yes/no decision" is made: Länder, which the three above mentioned formal legal

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[71] Various periods between three and five years were discussed; the decision was made to conduct a five-year analysis.

[72] With regard to international securitisation, see in particular Art. 7(1) UNCRC, Art. 8 ECHR, Art. 30 HAÜ; then, for national recognition, Art. 10 para. 2 and Art. 119 para. 2 lit. g BV, Art. 268c ZGB and Art. 28 ZGB, Art. 27 FMed; BGE 134 III 241; see also the bibliography for various contributions on the right to know one's own ancestry, including from Switzerland.

[73] On the right to know one's own ancestry, see Final Report, Chapter Three, 2.2, in particular on the proposal to e.g. by means of genetic testing.

Those that do not meet the ratification requirements at the time of evaluation will receive a negative decision. [74]For states that meet the formal criterion with its three sub-criteria, the evaluation process will continue.

In the second step, the intensity and quality of cooperation with the country of origin being evaluated is considered under the term "relational criteria catalogue". In addition, the "need" of the country in question – i.e. the "necessity" for a cooperation partner to provide for children via the institution of international adoption – is examined.

In the third step, the material criteria catalogue is evaluated. The aim here is to determine the extent to which the formally guaranteed rights and obligations are ensured in reality and whether a relationship of trust can be established or developed with the country in question.

This multi-stage process results in a list of countries with which cooperation in international adoptions can be established or continued, or must be terminated. This list is not rigid, as the validity of cooperation decisions is *limited in time*. Periodic re-evaluations must be carried out to ensure that the countries on the list continue to meet all criteria.[75]

With regard to countries with which cooperation in the field of international adoption must be terminated because they do not meet the criteria, care must be taken to ensure that adequate information is provided. The communication of the decision must not result in the country in question feeling offended. In this context, guaranteeing the right to know one's origins requires particular care to ensure that an evaluation and any termination of cooperation does not undermine efforts to trace origins in the country of origin in question. The willingness of countries of origin to cooperate in tracing origins must be protected.

123 Introduction of an evaluation tool – examination of recent procedures

[The]recent investigations in Switzerland and their reports focus primarily on adoptions from the 1970s to the 1990s. [In]the meantime, the UN CRC with its additional protocols and the Hague Convention have come into force, which strengthen the protection of the welfare and rights of children, including specifically in international adoptions. It can be assumed that these agreements are not limited to a formal guarantee of standards, but have de *facto* increased the protection of the welfare and rights of children.[77] Nevertheless, the expert group has repeatedly pointed out gaps in knowledge regarding recent international adoption practices. There is a lack of consistent monitoring of compliance with the legal requirements formally enshrined in the relevant documents. On

[74] For information on the need for a periodic review of the cooperation decision and the possibility of a re-evaluation, see the final report, Chapter 3, 1.2.5.

[75] For more details, see Final Report, Chapter Three, 1.2.5.1, and on dealing with new states, see Final Report, Chapter Three, 1.2.5.2.

[76] See in particular the "Sri Lanka Report" (ZHAW Report 2020) and the "10-Country Report" (ZHAW Report 2023).

[77] See Final Report, Chapter Three, 1.2.1.1 and 1.2.1.3.

Systematic evaluations of adoption practices in the recent and very recent past, i.e. the last 20 to 30 years, are not available.

As already stated in the interim report, against this background, the expert group suggests initiating analyses of adoption practices since the turn of the millennium, taking into account the relevant international conventions and guarantees for the protection of children in the context of adoption. Gaps in knowledge should be closed in order to generate further conclusions that may be relevant for the future handling of international adoptions and the upcoming reforms in Switzerland in this regard.

The expert group advocates embedding a five-year analysis in the evaluation procedure presented to date, in the course of which the adoption practices of the last five years will be examined. This should provide a deeper understanding of the functioning, risks and possible weaknesses in the practice of international adoptions with the respective countries of origin.[78]The five-year analysis would be used as a tool for evaluating the relational and, in particular, the material criteria catalogue.

Note: Conducting a five-year study takes time, which should not lead to a delay in the implementation of the reform scenario. Therefore, mitigation through *moratoriums* is appropriate.[79]

12.4 On the question of incorporating an exception clause

The expert group discussed whether an exemption clause should be created for very specific circumstances with regard to international adoptions with countries that have not undergone the above-described evaluation process with a positive cooperation decision. One example discussed was a situation in which persons wishing to adopt had already established a relationship with a child residing in a "non-accredited" country of origin.

With regard to the adoption of children who are not related to the prospective parents, the expert group *does not* consider it appropriate to provide for an exemption clause in law. Such a clause would counteract the aim of the paradigm shift and open the door to a phenomenon that must be prevented: the creation of a fait accompli by prospective adoptive parents. Exceptions must not become the rule or a way of circumventing the newly established system. In the interests of the child's welfare, which must remain the highest priority at all times, only a pure hardship clause could be considered, but only if it were ensured that this clause would be enshrined and applied in an extremely restrictive manner. Such cases would be decided by the FOJ, based on a reasoned request from the cantonal central authority. If, contrary to the conviction of the expert group, a hardship clause is enshrined in the new legal framework, the following also applies to such cases: it must be ensured at all times that a correct procedure with the country of origin is possible and that all other criteria (suitability of the parents, adoptability of the child, subsidiarity, etc.) are met. If a

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[78] Assessments of current adoptions have been carried out by the Netherlands, for example.

[79] See final report, Chapter Three, 1.2.6.2.

[80]Another situation may arise when a person works in development aid for a long period of time and builds a relationship with a child. In this context, however, other measures must also be taken into account, e.g. the instruments under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996 Hague Convention on the Protection of Children; HKsÜ, AS 2009 3085).

If exceptions and hardship clauses are waived, in blatantly offensive cases, settlement via the rules on abuse of rights remains conceivable.

1.2.5 Recurring review, ad hoc review and review of new states

In view of the considerable risks inevitably associated with international adoptions, positive cooperation decisions made during the initial evaluation cannot be final. This also applies to negative decisions, where applicable. The list of "accredited" cooperating countries is therefore not set in stone. In this respect, the expert group considers three specific scenarios to be legally relevant: regular review in the sense of re-evaluation, ad hoc review and the review of new countries. ([81])

1.2.5.1 Establishment of a re-evaluation process and ad hoc review

For quality assurance purposes, *regular re-evaluation* must be provided for. At regular intervals – every three years, or every five years at most – it must be reviewed whether the established standards for cooperation continue to be met by the respective countries of origin and whether cooperation can be continued or must be terminated. The expert group therefore recommends providing for a re-evaluation process *de lege ferenda*.

The expert group also recommends *establishing an ad hoc review process*. If there are indications of problems or suspected irregularities, re-evaluations must also be possible outside the established periodic review cycle and must even be required by law. In such cases, cooperation should be temporarily suspended with immediate effect as a provisional measure.

1.2.5.2 Dealing with new states

In addition to the re-evaluation of "accredited" cooperating states, there should also be the reverse possibility of adding new states to the list of cooperating states. To
"Accreditation" requires a positive evaluation in accordance with the formal, relational and material criteria explained above. This evaluation should be initiated in particular at the request of countries of origin that assert a need for international adoptions and provide evidence that the required criteria are met. Caution is advised when answering the question of whether such requests for a cooperation decision should also be made by intermediary agencies or potential adoption candidates. In the opinion of the expert group, the latter should not be possible, or should only be possible in exceptional cases. After all, for countries with which there is no experience of cooperation in international adoptions, it is not possible to integrate considerations based on the five-year assessments embedded in the substantive criterion. In such cases, recourse should instead be had to the experience of cooperation that other receiving countries have had with the country in question.

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[81] See final report, Chapter 3, 1.2.5.1 and 1.2.5.2.

In addition, a "trial period" may be provided for in order to evaluate the new cooperation.

1.2.6 Specific implementation and application issues

Implementation and application issues arise primarily in three areas:

Firstly, the *legal framework* for reducing, initiating or continuing cooperation must be created (legislative levels must be examined, and appropriate anchoring at the relevant level is necessary). *De lege ferenda*, in addition to the criteria, the legal framework must also include the evaluation and decision-making powers, the evaluation and re-evaluation procedures, and any legal protection or legal remedies ("general abstract level", legal anchoring of the reduction element).([82])

Secondly, it concerns the *concrete implementation of the evaluations* and the *decision, applying the legal norms created,* to define the cooperating states recognised in the sense of an initial examination ("individual-concrete level", application after the reduction has been established).[83]

Thirdly, there are questions regarding implementation and application from *a temporal perspective*. Specifically, it is unclear how pending cases should be handled during the revision phase until initial implementation.[84] The imposition of *moratoriums* is worth considering, especially since the formal criterion could be implemented efficiently and quickly and, in the opinion of the expert group, would quickly yield progress in its concrete examination. From a political perspective, this raises the question of whether immediate action should be taken (moratoriums) and to what extent this is possible in the current situation based on low-threshold directives.

The expert group formulates some guidelines below for the implementation and application issues raised in this section.

1.2.6.1 On the factual responsibilities, in particular for enforcement

In the opinion of the expert group, the implementation of the new legal framework and, specifically, the assessment of the formal criterion with regard to the respective country of origin should be the responsibility of the FOJ, as the regulatory and legislative authority.

The examination of the relational criterion also appears to be appropriately located at the FOJ.

However, the expert group believes that the material criterion should be evaluated by an external body. Two scenarios are conceivable in this regard: the external body consulted should either provide a description of the facts for the attention of the body responsible for the final decision (cf. below; the FOJ is also proposed here) or formulate a recommendation to the FOJ as the decision-maker. For such a mandate,

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[82] See in particular the final report, Chapter 3, 1.2.6.1, Competence and jurisdiction for the enactment of the legal framework.
[83] See also Final Report, Chapter Three, 1.2.6.1, Competence and jurisdiction for the application of the newly enacted legal framework.
[84] See also Final Report, Chapter Three, 1.2.6.2.
[85] For a list of HAÜ states, see <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>; For a list of UN CRC states, see <tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en>.

The selection criteria, the necessary competences and the mandate should be defined in advance.

The final decision on whether or not to establish or continue cooperation with a particular state should also be the responsibility of the FOJ.

12.6.2 On the timing aspects, in particular moratoriums

In view of the systemic risks inherent in international adoptions, it is necessary to terminate cooperation with those countries of origin that (presumably) do not meet the above-mentioned formal, relational and material criteria as quickly and consistently as possible. This must be taken into account when considering the timing of adoption procedures that may be carried out in the near future.

From a temporal perspective, various questions arise, in particular: What applies until the reduction element has been legally enacted at the appropriate level? What applies in the period from the entry into force of the reduction element until the concrete implementation of the requirements contained therein? To what extent can adjustments at the directive or ordinance level lead to acceleration? Which procedures or stages of pending adoption proceedings should be affected and from when? Should moratoriums be imposed immediately and before these legal amendments are adopted? Should only those states that do not meet the formal criterion be affected by moratoriums, or should all states be affected?

At least in part, a pragmatic approach on the part of decision-makers will be appropriate. It should be borne in mind that the decision regarding the course of action to be taken in future must be justified to the adopted persons (and their families of origin). Even if the legal framework is reformed in the near future (e.g. through directives and staggered legislation), various "transitional or interim legal" questions will arise, particularly with regard to *moratoriums.* In the opinion of the expert group, the continuation of adoption procedures, including adoption decisions, during the transition phase to a new regime with countries that do not meet the formal criteria in particular requires legitimation. Conversely, a *temporary* suspension of practices by means of directives appears appropriate ("rapid legal protection", quasi in the sense of a provisional measure).[86] In case of doubt, a *suspension* should be ordered for the upcoming adjustment phase as a precautionary measure. The expert group therefore advocates provisionally placing at least those adoption procedures that are in the early stages on hold by means of a moratorium. Under the previous regime, as few adoptions as possible should be granted.

[86] See the entry under country-specific directives at <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/weisungen.html> for the moratorium on the United States issued by the FOJ on 22 December 2023.

The expert group reached a consensus on the *imposition of moratoriums* in the following constellations:

1. Moratoriums in relation to all countries for all procedures in which no certificate of suitability has yet been issued (no new certificates of suitability);
2. Moratoriums for countries that do not meet the formal criteria, namely for procedures in which a certificate of suitability has already been issued but no child has yet been proposed;
3. No moratoriums or continuation of adoption procedures until completion for all pending procedures in which a matching decision has already been made (continuation until the adoption decision).

The expert group was unable to reach a consensus on the other constellations of pending proceedings in relation to the process of implementing the reduction element.

13 Recommendations for reducing the number of cooperating states

The expert group has formulated the following specific recommendations for reducing the number of cooperating states. This will enable progress to be made in ensuring high standards for international adoption as a child protection measure in an international context:

Recommendations

With regard to international adoption, and in particular the international adoption of children from other countries, a paradigm shift must be implemented immediately, unless the exit scenario is chosen. This means, in particular, ending the free choice of countries of origin. A new multi-stage evaluation process will be introduced to ensure compliance with international adoption standards. Cooperation will only be possible with countries that meet all of the following criteria:

1. Formal list of criteria
   - Ratification of the Hague Convention *plus*
   - Ratification of the UN CRC *plus*
   - Ratification of the Second Optional Protocol to the UN CRC
2. Relational criteria catalogue
   - Sufficient intensity and regularity of cooperation in the context of international adoption *plus*
   - Declaration of need by the country of origin
3. Material criteria catalogue
   - General description of the situation and *risks plus*
   - Actual implementation of legal guarantees, in particular in accordance with HAÜ *plus*
   - In particular, guaranteeing the right to know one's own ancestry

In addition to the appropriate legal anchoring of this catalogue of criteria, responsibilities and procedures for implementation must be established. This requires not only the adoption of a process for the initial evaluation of countries of origin. The evaluation also includes an analysis of adoption practices over the last five years (five-year review). For the purpose of quality assurance over time, periodic re-evaluation and, in cases of suspicion, ad hoc review must also be provided for.

The evaluation process must not be interpreted as a one-sided process. It is expressly *not* intended to pass judgement on the quality of the countries of origin from above. As a receiving country, Switzerland is not a neutral third party, but a partner on an equal footing. Taking a stance of shared responsibility is not "nice to have" but a duty. It is an essential component of any future Swiss policy on international adoption. Against this background, the evaluation procedure should be understood as an instrument for ensuring the cooperation-based, correct handling of international adoptions as a child protection measure for the welfare of the adopted children and with respect for the rights of all parties involved.

The *introduction of moratoriums* is one of the necessary consequences of the guidelines developed by the expert group for dealing with the systemic risks inherent in the institution of international adoption. However, moratoriums should not lead to resistance to the political or legal implementation of the reform scenario or to delays. With regard to the transition or adjustment phase, the necessity of precautionary measures should be assessed. The expert group recommends that ongoing adoption procedures in which a matching decision has already been made should be continued until the adoption decision is made. Moratoriums should be imposed on all procedures in which no certificate of suitability has yet been issued (no new certificates of suitability). In addition, moratoriums should also be imposed on those countries that do not meet the formal criterion, namely for procedures in which a certificate of suitability has already been issued but no child has yet been proposed. The expert group was unable to reach a consensus on the other constellations of pending procedures in relation to the process of implementing the reduction element.

Whether and to what extent the paradigm shift should also apply to intra-family adoption remains to be examined. It seems appropriate to establish a set of material criteria, compliance with which must be examined on a case-by-case basis.

2 Second constitutive element – Further need for reform of the Adoption Act ( )

As already made clear in the interim report, the paradigm shift brought about by the reduction in the number of countries of origin requires a fundamental reform of the legal framework. The implementation of the various parts of this reform must be consistently pursued, particularly with a view to guaranteeing the right to know one's own ancestry vis-à-vis the systemic dimensions of irregularities. This subchapter aims to show where to start and which issues need to be clarified.

The starting point for developing concrete proposals must be a comprehensive view of all systemically relevant dimensions of international adoption. In sections 2.1 to 2.5 below, a total of five areas are subjected to in-depth discussion:

1. *Institutional optimisation, including the role of intermediary agencies* – The implementation of the necessary reforms involves reviewing and, where necessary, restructuring the organisational structures of all institutions involved in the international adoption process.
2. *Hub: Search for origins* – Particular attention must be paid to guaranteeing the right to know one's own origins. Both retrospective and prospective aspects are relevant in this hub. For a Swiss policy on international adoption that respects the welfare and rights of adoptees in their relationships with their family of origin and culture, it is essential to provide adoptees in Switzerland with the best possible support in the event of any problems relating to their search for their origins. Accordingly, the effects of adoption and, in particular, the concept of *a clean break (*incognito adoption) must be critically examined. At the same time, pre- and post-adoption counselling and support services must be expanded. The costs of using these services must not be borne by the adoptees. Related and specific challenges must be addressed in context (in particular national adoptions and irregularities, intra-family adoption, surrogacy, descent law, data protection law).
3. *IPRG revision* – Eliminate identified weaknesses and implement the proposed changes.
4. *Financial aspects* – Under the UN Convention on the Rights of the Child, Switzerland must ensure that
   "there are no improper financial advantages for those involved in international adoption". The topic of "finances and resources" extends to other tasks.
5. *Dealing with irregular practices* – Regardless of whether international adoptions will continue to take place in Switzerland or not, an appropriate approach to dealing with irregular practices must be developed.

21 Aspects of optimising institutional organisation

In the second stage of the mandate, "concrete proposals on the issues of optimising the institutional organisation, including the position of accredited intermediary agencies" should be developed.

211 Key points to be considered

With regard to the following proposals by the expert group, these references should be noted:

1. Although the expert group focuses on international adoptions, throughout the course of its work it repeatedly encountered issues relating to national adoptions, in particular coordination issues concerning national and international adoptions. Coordination with the national adoption system is particularly advisable in projects involving institutional reorganisation.
2. The evaluation of plausible models for institutional reorganisation led to the conclusion that a comparison with reorganisations in other countries (i.e. the Netherlands and Belgium/Flanders) is only of limited use due to the different political systems (federalism; government and coalition systems). Nevertheless, the considerations made in these countries were taken into account by the expert group.
3. The question of institutional optimisation encompasses a wide range of issues. It relates to various aspects and stages of the adoption process, including topics such as 'procedures in accordance with the Hague Convention', "adoption procedures in the narrower sense", "post-adoption procedures", "procedures for tracing origins" or "adoption as a lifelong issue" (with post-adoption counselling being of particular importance) – but also to questions of responsibilities and competences that are relevant in the context of adoption. Considerations regarding institutional optimisation with a view to guaranteeing the right to know one's own ancestry are given their own heading due to their importance and complexity.([88])
4. The following aspects must be taken into account when deriving proposals for institutional optimisation:
    a) Weaknesses in the applicable law or its implementation;
    b) Substantive and formal legal guidelines that must be guaranteed and implemented by an institutional organisation regime;
    c) Integration of considerations regarding organisation and responsibilities from areas of law with parallel issues (see Federal Council report 2021);
    d) Developments in other countries;
    e) Efficiency and proportionality both with regard to the adoption of the new institutional regime ("legislation") and with regard to future international adoptions based on it ("application of law"), as well as the efficient implementation of the law currently in force, as long as it applies.

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[87] The expert group had already drafted an outline of possible reorganisation models during the first stage of its mandate. The aim was to generate initial findings on issues of institutional reorganisation – however, this initial assessment was to be used to draw conclusions for the development of scenarios; see Interim Report, Chapter 2, 3.1.

[88] See final report, Chapter Three, 2.2.

2.1.2 On optimising institutional organisation in general[89]

With regard to (international) adoptions, a distinction can be made between different stages of the procedure, in which various agencies are involved or responsible. The focus on the adoption procedure in the narrower sense, namely the procedure leading to the adoption decision, is therefore far too narrow, especially for international adoption. In its interim report, the expert group had therefore already pointed out that adoption should be viewed on a broader timeline. In a broader sense, understood as a lifelong issue, the adoption process includes not only the procedure for the adoption decision but also the (stages of) support, counselling and care after the adoption – not only, but also with regard to the search for origins. In light of irregularities, this opens up a wide range of challenges and tasks. Future focus must be placed on developing post-adoption support. All considerations regarding organisational issues in relation to institutional optimisation must therefore take several time frames into account. These include questions such as "What phase are we in, recognising that the issue of adoption must be considered over a long period of time?" and "Are we talking about adoptions that have already taken place or future adoptions?"

2.1.2.1 Main shortcomings and guiding principles

According to the expert group the *main shortcoming* of the current organisational regime in general is that *too many different actors* are involved. The resulting "fragmented" responsibilities are problematic in several respects: The involvement of many different actors makes it difficult to establish and maintain expertise and to clearly assign and assume responsibility. In the past, at least, the highly fragmented responsibilities of organisational units have led to responsibilities being shifted back and forth between the agencies involved. All of this has a negative impact on the implementation of high standards in the institution of international adoption. The low number of international adoptions accentuates these shortcomings. Currently, only 30 to 40 international adoptions are carried out. If the reform scenario is implemented, this number could fall further. This would be accompanied by a further loss of competence.

In view of the main shortcoming of "fragmented" responsibilities, the expert group considers it imperative to bundle at least certain tasks. The clear positioning of a "lead" institution would further contribute to the establishment and maintenance of expertise and the building of trust. The extent to which tasks should be pooled, i.e. whether this should involve "only" a shift of certain tasks or complete centralisation, will have to be explored.

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[89] See the requirements based on retrospective reference, i.e. with regard to the origin search node, Final Report, Chapter Three, 2.2; Interim Report, Chapter Three, 1.1.

[90] See the separate section on this in the final report, Chapter 3, 2.2.

[91] For an independent consideration of the organisation of origin searches, see Final Report, Chapter Three, 2.2.

With regard to organisational adjustments, the expert group recommends that the following points be taken into account:

1. A distinction must be made between necessary immediate measures – particularly with regard to institutional optimisation of origin searches – and medium- and long-term adjustments to the legal framework, particularly for possible future adoptions.(92)
2. The aspects outlined above must be taken into account in the design, development and implementation of all short- and medium-term measures (high level of diverse expertise, careful preparation and an independent and ethical approach).
3. The decision in favour of one of the (re)organisation options should be based on the *logical question* of how efficient the solution is in achieving the defined goals and eliminating the identified deficits.
4. Institutional optimisation relating to various procedures and procedural stages or objectives must take the following aspects into account as a matter of priority:
   a) Bundling;
   b) Where necessary, strengthening the role of the federal government;
   c) Ensure procedural quality and professional competence;
   d) Provision of the necessary financial resources;[93]
   e) Especially with regard to searching for origins: irregularity as an "additional factor";[94]Consideration of possible barriers for those affected in turning to state authorities to enforce their rights; Ensuring sufficient independence; state boundaries and limits;
   f) In particular: the importance of post-adoption support in the broader sense.

There is no question that the state actors involved in adoptions must be provided with adequate professional, time and financial resources. This is essential to enable them to fulfil their demanding tasks in the context of international adoption, especially with regard to irregularities.[95]

[92] For the imposition of moratoriums, which should also be regarded as a contribution to optimising institutional organisation, see Final Report, Chapter Three, 1.2.6.2; for searches for origins, see Final Report, Chapter Three, 2.2.

[93] On the importance of financial aspects in ensuring high standards in international adoptions with regard to intermediary agencies, see Final Report, Chapter Three, 2.1.3; with regard to ensuring the right to know one's origins, see Final Report, Chapter Three, 2.2; with regard to the prevention of unlawful financial gain, see Final Report, Chapter Three, 2.4.

[94]One member of the expert group expressed the view that the processes of tracing origins should only be structured in terms of an initial differentiation between regular and irregular adoptions if it is already clear in advance or if there are at least strong indications of procedural errors (e.g. substantiated by scientific work). This would require a specific, independent support service. The responsibility towards adopted persons in cases of irregular adoptions is different from that in regular adoption procedures.

[95] See also Final Report, Chapter 1, 2 and Final Report, Chapter 3, 2.5.2.

2122 Four organisational models

In order to optimise the institutional organisation, the expert group debated four organisational models:

1. Assumption of all tasks by the federal government;
2. Transfer of certain tasks to the federal government;
3. Creation of regional centres of excellence;
4. Creation of regional centres of excellence light.

An evaluation of the models requires assessment criteria. These are determined in line with the overarching protection mandate: a legal framework for international adoption must be created that offers maximum protection for the welfare and rights of the children to be adopted and the members of their families of origin. Six principles are relevant for the redesign of the institutional framework:

1. The most institutionally appropriate solution;
2. Reduction of the number of actors;
3. Guarantee of quality;
4. Pooling of expertise;
5. Clear responsibilities;
6. Uniform allocation and congruent organisational placement of the responsible authorities (applies in particular to the cantonal organisation).[96]

Even if the design of a new institutional framework for the adoption process in the broader sense is to be based on the six criteria mentioned above for the purpose of protecting the welfare and rights of the child, constitutional and political factors will inevitably influence the institutional reorganisation. The structures established in Switzerland, in particular the federalist structure and the constitutional allocation of powers, remain influential. The implementation of a new organisational framework requires broad support and acceptance. The cantons must be integrated appropriately. The aim should be to establish constructive dialogue and efficient cooperation between the federal government and the cantons in order to achieve the objectives of optimising the institutional organisation as effectively and quickly as possible.

Against this background, and after thorough evaluation of the advantages and disadvantages, the expert group considers model 1 (sole responsibility of the federal government) and models 3 and 4 (centres of expertise) to be less effective. Their implementation would likely be controversial, lengthy and laborious. This would run counter to the objective of making adjustments quickly for the welfare and protection of the rights of adopted children.

In line with the guiding principles formulated and taking into account political feasibility, efficiency and proportionality, the expert group therefore considers *model 2* – i.e. the transfer of certain tasks to the federal government – *to be preferable*. This organisational adjustment meets the defined criteria. At the same time, it would achieve low-threshold improvements without requiring a revolutionary overhaul of the organisational regime. Accordingly, the expert group recommends

[96] Currently the adoption authorities in the cantons are located in different departments. In contrast, the expert group recommends a standardised, consistent intra-cantonal allocation. This will bring further clarity and efficiency.

Strengthening the role and powers of the federal government by transferring some tasks from the cantons to the federal government.

Even though Model 2 proposes that important tasks be transferred to the federal government, the cantons will continue to play a very significant role. Regardless of any shift in powers between the federal government and the cantons in the context of international adoptions, the expert group recommends *that* the cantons *pool their resources and expertise.* In particular, there should be only one adoption authority per canton. In addition, the cantons should strive for *close and constructive cooperation* within the scope of their respective responsibilities.

2123 In particular: On the division of responsibilities between the federal government and the cantons in general

De lege ferenda, the expert group proposes that the following tasks be transferred from the cantons to the federal government with regard to adoption procedures in the broader sense:

1. Summary examination of the suitability application;
2. Suitability assessment and certification in accordance with Art. 5 f. AdoV;
3. Preparation and dispatch of the parent dossier in accordance with Art. 5 BG-HAÜ;
4. Analysis of the child proposal;
5. Approval in accordance with Art. 7 AdoV and Art. 17 HAÜ;
6. Certification in accordance with Art. 23 HAÜ.

The following powers shall remain with the cantons:

1. Information events;
2. Conducting social assessments and social reports;
3. Preparation of prospective adoptive parents;
4. Submission of the child proposal to the prospective adoptive parents;
5. Post-adoption report, counselling and support;
6. For the cantons' responsibilities in relation to searches for origins pursuant to Art. 268d of the Swiss Civil Code, see 2.2 below.

In addition, the expert group recommends examining the possibility of extending the jurisdiction of the federal central authority to include "extraordinary procedures". It should be able to process all types of special applications (e.g. international adoptions within the family, changes of residence and recognition of decisions made abroad, etc.), regardless of the countries involved.

2124 Establishment of a "single point of entry"

The expert group presents a novelty with its proposal to establish a *"single point of entry"* or *"guichet unique"*, i.e. a single, central contact point at federal level. The expert group considers this measure to be an additional safeguard in the context of international adoption and the initiation of corresponding procedures. In this case, the federal government – which maintains the list of "accredited" cooperating states in implementation of the reduction element – would act as a general information centre for initial information searches and as the main point of contact for initial enquiries.

[97] As already proposed by the Federal Council in the context of the revision of adoption law; see E-Art. 268 para. 1 ZGB.

It would also be conceivable for this federal agency to initiate all adoption procedures after a preliminary examination. According to the expert group, this *"single point of entry"* or *"guichet unique"* at the federal level would increase the transparency of the procedures and thus enable better overall control. Depending on the distribution of competences, a single point of entry may also be worth considering at the cantonal level.

213 In particular: on the status of accredited agencies

According to its mandate, the expert group is to submit proposals for optimising the institutional organisation, including with regard to the "position of accredited intermediary agencies".[98]

2131 Background information

The interim report referred to the ambivalent role of private adoption agencies, without specifically referring to the present situation.[(99)] It should be noted here that this mainly applies to their role in the past.[100] The procedures and tasks of private adoption agencies are no longer comparable to those in the past. Today, accredited agencies in Switzerland play a limited but nevertheless significant role: they are primarily relevant for supporting and accompanying prospective adoptive parents before the adoption and adoptive parents after the adoption (they are also financed by the latter). Agencies provide guidance to these individuals in the pre-adoption phase (comparable to birth preparation). For example, the adoption agencies help with the preparation of the parent dossier (comparable to a solicitor who is consulted on one's own behalf). In addition, the adoption agencies provide services in the form of preparatory courses. ([101)]The adoption agencies also provide support after the adoption has taken place.

Accredited adoption agencies are often run by people who have personal experience with adoption, whether they themselves were adopted, have adopted children, or are familiar with the country of origin in which they specialise. On the one hand, this can be advantageous, but on the other hand, when mediators adopt children themselves, it can also create a grey area.

The intermediary agencies can be considered *useful* today. They are involved in approximately two-thirds to four-fifths of all international adoptions[102] and provide added value, especially in complicated cases, as they specialise in certain countries. The people working for the adoption agencies usually have connections to the respective country of origin and knowledge of the language, customs, etc.

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[98] *De lege lata*, Art. 12 ff. AdoV is relevant. In order to be or become active, adoption agencies require authorisation ("accreditation") from the FOJ, cf. Art. 13 para. 1 AdoV.

[99] See interim report, Chapter 2, 2.13.

[100] See in this context the judgment of the Criminal Court of the Canton of Lucerne of 24 April 2020, already mentioned in the interim report.

[101] The expert group also emphasises the need for such preparation for people wishing to adopt. The cantons usually send people interested in adoption to preparatory courses offered by "Pflege- und Adoptivkinder Schweiz" (PACH) (Foster and Adoptive Children Switzerland), rarely to adoption agencies.

[102] In 2022, adoption agencies were involved in 24 out of 32 international adoptions, six of which were intra-family adoptions; in 2023, 19 out of 30 international adoptions were accompanied by an adoption agency.

Over the past few years, many intermediary agencies have ceased operations. Currently there are only five accredited intermediary agencies remaining. With the implementation of the reform scenario, the remaining intermediary agencies will experience a further significant loss of importance: cooperation with countries that do not meet the criteria outlined in 1.2.1 will be discontinued. If the trend continues as before, it can be assumed that all accredited adoption agencies will have disappeared in the foreseeable future.

In the wake of the irregularities uncovered in recent years in the practice of international adoptions, not only in Switzerland but also in other countries, it is instructive to look at developments there with regard to the role of intermediary agencies: in the Netherlands, the initial plan was to have only one intermediary agency in future. However, this plan became obsolete with the parliament's decision to abandon the practice of international adoption.[104] France, on the other hand, plans to establish a state agency in addition to the private agencies.[105]

2132 Considerations on the future role of accredited intermediary bodies

The expert group considers the following with regard to the current and future role of accredited adoption agencies in Switzerland:

1. The services currently provided by adoption agencies must continue to be provided in the future. Preparing prospective adoptive parents is essential for the success of the adoption and is a central part of the adoption/adoption process.
2. Accordingly, post-adoption care and support must be considered indispensable.
3. In principle, there is no objection to the continued existence of adoption agencies in the future. However, these tasks could also be taken over by other institutions. Such a takeover by other agencies appears worth considering in light of the history of the adoption agencies, their "struggle for survival and funding", the proportionality of effort and costs in the wake of the steady decline in international adoptions, and the goal of reducing the number of actors involved. The "natural" or "active" abolition of adoption agencies are plausible approaches.

Regardless of whether one decides for or against retaining placement agencies, or which organisational units take over the services, the following applies from a functional perspective: In any case, *broad-based guidance and support* must *be guaranteed throughout the adoption process* – from the initial desire to adopt, through the adoption procedure, to the years following the adoption as a one-off legal act.

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[103] The list of accredited adoption agencies with addresses can be found at <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption.html>.

[104] See <https://nos.nl/artikel/2517029-tweede-kamer-wil-stop-op-buitenlandse-adopties>.

[105] Cf. <https://www.agence-adoption.fr/page-test-guide-de-ladoption/les-liens-utiles/les-organismes-autorises-pour-ladop-tion/>.

As emphasised, the need for appropriate support and counselling services applies not only prospectively in relation to future adoptions. It applies *a fortiori* also and especially to persons who were adopted in the past and – with particular care – to victims of irregular adoption procedures.[106] Consequently, the expert group emphasises in this context the need to recognise adoption as a lifelong process and (with this broad temporal lens) also the years following the one-off formal legal act as part of child protection.[107] This concept was recently emphasised in Germany with the recent entry into force of the Adoption Assistance Act, according to which "all parties involved in an adoption should receive better advice before, during and after the adoption".[108]

2133 Two organisational models

If the decision in Switzerland is to dispense with the so-called placement agencies, it must be clarified which agency will take over the tasks previously performed by the placement agencies, in particular the preparation and support of persons wishing to adopt.

Possible *options* include the federal government, the cantons or a state-funded agency. *At first glance*, the expert group considers the cantons to be best suited to take responsibility for the services previously provided by the mediation agencies. The task of providing support to children, biological parents and their descendants is linked to the cantons in Art. 268d, in particular para. 4 of the Swiss Civil Code (ZGB) for the purpose of tracing origins. An extended support responsibility could be designed based on this model. Such an adjustment would fit harmoniously into the current legal framework, while at the same time implementing the required consolidation and ensuring local proximity in the context of the important counselling and support tasks in the run-up to adoption, as well as in the context of searching for origins and general post-adoption care.

The expert group discussed *regional bundling* in this regard. This would ensure proximity to the persons involved in the adoption process in this country and at the same time achieve streamlining with its advantages. Conversely, such regional consolidation could have the disadvantage of overlooking the specific characteristics of the respective countries of origin. This could be overcome by integrating the relevant specialist knowledge of the staff.

If the decision is made to retain the placement agencies, the expert group proposes first choosing a new name for this actor, e.g. "agency" or "operator". This is because, while placement agencies used to actually carry out placements in the context of adoptions, this task is no longer their responsibility (the wording of the ordinance and the designation in Art. 12 AdoV are therefore unfortunate). The function of placement agencies has changed. The designation as an "accredited placement agency"

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[106] See final report, Chapter 3, 2.2; note the Federal Supreme Court ruling of 5 May 2023 (2C_393/2022), in which the victim status within the meaning of the AFZFG of a child placed in care was affirmed even after adoption (though not in an international context), vgl. <https://www.bger.ch/files/live/sites/bger/fi-les/pdf/de/2c_0393_2022_2023_06_01_T_d_08_45_51.pdf>; cf. the reflections of BOÉCHAT 2024 and RMA 2022 on the concept of victimhood also in the context of adoption.

[107] Without undue interference in private and family life. Rather, understood as offering and providing support when needed by the adoptee or family members.

[108] See <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/adoptionshilfe-gesetz-bundesrat-bundestag-163414>.

No longer applicable. In view of the importance of the services currently provided by the placement agencies, it is advisable to draw up a portfolio of tasks. This defines the services for which the organisational unit is responsible.

The quality of the performance of these demanding tasks depends to a large extent on *adequate resources* and thus also on *appropriate funding*. If the current regime is maintained, state subsidies should be provided. Risks relating to financial aspects and false incentives should be mitigated by ensuring that funding complies with the rules.[109]

2.1.4 Other authorities

De lege lata, other authorities in Switzerland are involved in the overall process of international adoptions. No changes are proposed at this stage with regard to these authorities:

1. Issuing visas and residence permits (cantonal migration authorities and State Secretariat for Migration SEM; Swiss consulates);
2. Recognition of adoptions granted abroad (cantonal civil status supervisory authorities);
3. Guardianship or trusteeship (Child and Adult Protection Authority (KESB)).

[109] For more details, see the final report, Chapter 3, 2.4.2 and 2.4.3.

2.1.5 Recommendations for institutional reorganisation in general

The expert group has formulated the following specific recommendations for institutional reorganisation in general (see section 2.2 "Hub" for considerations on optimisation in connection with guaranteeing the right to know one's own ancestry and search for one's origins).

Recommendations

In accordance with the guidelines issued by the Federal Council, institutional reorganisation must be consistently geared towards the welfare of adopted children and the protection of the rights of all those involved in the adoption process. Specifically, it should be based on the following six guiding principles:

1. The most appropriate institutional solution;
2. Reduction in the number of actors;
3. Guarantee of quality;
4. Pooling of expertise;
5. Clear responsibilities;
6. Uniform location within cantonal structures.

It is recommended that tasks and responsibilities be pooled. The federal government and the cantons are striving for efficient and constructive cooperation in order to quickly create an optimal institutional legal framework. Certain tasks should be transferred from the cantons to the federal government. Within each canton, it is advisable to pool expertise (e.g. by establishing a single adoption authority). Competences should also be pooled between the cantons.

The installation of a single point of entry (*"single point of entry"* or *"guichet unique"*) is now recommended.

Accredited placement agencies currently provide added value, but are not indispensable as such. What is indispensable are the services they provide. These must continue to be guaranteed in the future. Appropriate resources must be made available for this purpose. In addition, the catalogue of tasks previously performed by placement agencies must be clearly defined. If these tasks are to continue to be performed by placement agencies, they should be given a name that reflects their function. Financial safeguards are essential, and bundling is worth considering. If placement agencies are no longer to play a role in the international adoption system in future, it must be examined whether and to what extent the cantons can take over the relevant tasks.

22 Knotenpunkt – The right to know one's ancestry in the face of irregularities

The right to know one's own ancestry is a human right; this right is recognised internationally and nationally. According to doctrine and case law, the search for one's origins refers to knowledge of the personal data of biological parents and other information. Today, it is closely linked to the reappraisal of irregular adoption practices. This is because quite a few adoptees have discovered in the course of their search for their origins that the persons named in the documents are not their biological parents at all. This finding, but also the mere knowledge of the possibility of it, is very painful for those affected. *Guaranteeing the right to know one's own ancestry must therefore be a particular concern for the Swiss authorities. Pragmatic and rapid implementation solutions* are called for here.

22.1 The linchpin of Swiss policy on international adoption

When it comes to searching for one's origins, many strands from different directions come together and are intricately interwoven. In this respect, it proves to be *the linchpin* of various challenges in international adoption. The analysis presented here takes into account the following passage from the mandate given to the expert group:
"Depending on the conclusions of the KKJPD and FOJ working group on searching for origins, legislative changes could also be considered in this area." The report of the "Searching for Origins" working group was completed on 27 October 2023. Taking this chronology into account, the following are the considerations that the expert group has developed from an overall view in accordance with its mandate.

The following outlines the consequences of the irregularities that are currently known – primarily for those who were adopted in the past, but also for any children who may be adopted in the future. In order to clarify what steps will be necessary under this heading and why, it is important to first recall the recent activities in the context of irregular adoptions.

The starting point is the report adopted by the Federal Council on 11 December 2020 in response to postulate 17.4181:

"The report is based on a study commissioned by the Zurich University of Applied Sciences (ZHAW), which was published on 27 February 2020. This study reveals numerous, in some cases serious, irregularities in the placement of adoptive children from Sri Lanka between 1973 and 1997. The Federal Council has acknowledged the failings of the Swiss federal and cantonal authorities in this regard and expressed its regret to the adoptees and their families."([112])

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[110] See in particular Art. 7 f. UNCRC, Art. 8 ECHR, Art. 30 HAÜ, Art. 10 para. 2 and Art. 119 para. 2 lit. g BV, Art. 268c ZGB and Art. 28 ZGB, Art. 27 FMed; BGE 134 III 241; BGE 128 I 68; see in particular BESSON 2005, REUSSER/SCHWEIZER 2000, COTTIER 2002 and COTTIER FS Geiser and KÖRBER/STEINEGGER 2020; see also the various articles on this subject by PFAFFINGER; on the right to know one's siblings, see KÖRBER 2023; see also the other articles in the bibliography.

[111] See in particular BGE 134 III 241; BGE 128 I 68; for more in-depth information on the right to know one's own ancestry, see the various articles listed in the bibliography.

[112] See <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/illegale-adoptionen.html>.

The report initiated *three measures or areas of work*, which were subsequently dealt with in various committees. Firstly, a research assignment was issued, including the task of producing a report on international adoptions in ten other countries in addition to Sri Lanka (the so-called "10-country report"[113] – it describes the dimensions of irregular adoptions during the period under review); secondly, the establishment of the "Search for Origins" working group was planned; and thirdly, the establishment of the "International Adoption" expert group was planned.

The working group on searching for origins was commissioned by the Executive Committee of the Conference of Cantonal Justice and Police Authorities (KKJPD) and had an interdisciplinary composition. Its members included representatives of the authorities, adopted persons and representatives of private organisations and search services. The work was carried out under the joint leadership of the General Secretariat of the CCAPJ and the FOJ. The aim was to develop options and scenarios to better support adopted persons in their search for their origins. The recommendations adopted by the working group at the end of its mandate were submitted to the expert group on 17 November 2023.[114]

In the opinion of the expert group, the report of the "Search for Origins" working group contains many of the elements essential for a mature concept, from the definition of the term "Search for origins" to concrete suggestions for improving the search for origins. However, there is also potential for misunderstanding. For example, there is talk of a "search for the truth"[115], which is supposed to represent the search for origins or identity in cases of irregular adoption. This could give the impression that victims of irregular adoptions are only interested in finding out whether their files reflect the truth. However, this information is only the first step. If the information is untrue, the actual search only begins here. Talk of a "search for the truth" should therefore not lead to the false impression that the right to know one's own ancestry is only about whether the documented information is true or false. Those affected are confronted with completely different challenges here.

On the "10-country report":[116] Following the "Sri Lanka report" of 27 February 2020, the Federal Council commissioned a follow-up investigation into Bangladesh, Brazil, Chile, Guatemala, India, Colombia, South Korea, Lebanon, Peru and Romania. The focus of the work was on examining the files stored in the Federal Archives. The aim was to facilitate follow-up research by the scientific community.[117] The resulting
The ZHAW's "10-country report" concludes that "irregular or even illegal practices were not limited to Sri Lanka, but that all the countries investigated were affected to varying degrees and that the Swiss authorities were aware of this and knew about it."[118] The expert group was given access to this report on 17 November 2023. The Federal Council took note of it on 8 December 2023. It expressed its regret to the adopted persons and their families for the failings of the Swiss authorities in international adoption procedures.

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[113] See ZHAW report 2023.

[114] The recommendations of the working group "Search for Origin" are available the following link : <https://www.kkjpd.ch/newsreader/internationale-adoptionen.html>.

[115] See report by the "Search for Origins" working group, 8.

[116] ZHAW 2023 report. The official title of the report is "Evidence of illegal adoptions of children from ten countries of origin in Switzerland, 1970s to 1990s. Inventory of documents in the Swiss Federal Archives".

[117] See <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/illegale-adoptionen.html>.

[118] According to the FOJ at <https://www.bj.admin.ch/bj/de/home/gesellschaft/adoption/illegale-adoptionen.html> with reference to the ZHAW 2023 report.

Also at its meeting on 8 December 2023, the Federal Council took note of the interim report submitted to the FOJ by the expert group on 28 March 2023. In this report, the expert group had developed two scenarios for future Swiss policy on international adoption, as requested. The expert group emphatically stressed that Swiss policy on international adoption must not be limited solely to the forward-looking development of possible scenarios for the continuation of international adoption, but must give priority to addressing the welfare and rights of those adopted in the past. A central element of this retrospective review is the issue of "searching for origins" or, in other words, the de facto guarantee of the right to know one's own ancestry.

In summary, it should be noted that the right to know one's own ancestry is considered to play *a central role* in relation to the irregularities identified by all three bodies in their areas of work and findings. This finding alone underscores the fact that the challenges identified here must be given special weight in the context of Swiss policy on international adoption, both at the federal and cantonal levels and jointly.

222 The institutional organisation of origin searches *de lege lata* under scrutiny

How is the search for origins organised *de lege lata* and how does it work in practice and in today's reality, particularly in light of irregularities?

The revision of adoption law made several adjustments in 2018. At this point, we are less interested in substantive legal rights to information[120] than in procedural and organisational aspects.

Art. 268d of the Swiss Civil Code (ZGB) contains organisational requirements relating to the information and contact regime under adoption law, cf. Art. 268b and Art. 268c ZGB, in particular regarding jurisdiction, as well as further requirements for the procedure and support in this context, cf. Art. 30
in conjunction with Art. 16 HAÜ. The competent authorities pursuant to Art. 268a–d must act with competence, prudence and consideration for the sensitivities of the persons involved in the context of this highly sensitive personal matter.[121]

According to Art. 268d para. 1 of the Swiss Civil Code, the *cantonal authority* responsible for adoption proceedings is responsible for requests for information; this authority is also responsible for mediating and obtaining the necessary consent for establishing contact. Paragraphs 2 and 3 specify an information process to be followed by the competent authorities following a positive assessment of the request for information. Paragraph 2 in *fine* explicitly allows *for* the establishment *of a specialised search service.* According to paragraph 4, the cantons must establish an agency that also provides information to the biological parents, other descendants and the

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[119] See Art. 7 f. UNCRC; Art. 30 HAÜ; Art. 268c f. ZGB; also the requests from international organisations, cf. Interim Report, Chapter Two, 1.3.
[120] However, on the question of whether the further expansion of semi-open and open adoptions is appropriate in future, also in order to better ensure full legality in adoption procedures and to guarantee the right to know one's own ancestry, see PFAFFINGER 2007; see also Interim Report, Chapter Two, 2.4 and 2.12.
[121] BSK ZGB I-BREITSCHMID, Art. 268d, N 6; similarly, the other commentaries.
[122] See paras. 1 and 2; on jurisdiction at the place where the previous adoption procedure was conducted, COTTIER FS Geiser, 164; CHK-BIDERBOST, Art. 268d N 2.

Child available for consultation and mediation.[123] This takes into account the fact that "adoption clearance" is challenging for the child and the members of the family of origin.

The 2018 revision was not carried out against the backdrop of and with full knowledge of the extent of irregular adoptions, the methods used in this context and their impact on the right to know one's own origins. In the case of national adoptions and international adoptions that took place legally and where the identity of the biological parents is correctly recorded in the files, the search for origins as it is currently enshrined in the Swiss system can work (support and counselling/care/support and counselling/care/accompaniment and the risk associated with the fear of uncovering any irregularities is ignored). Nevertheless, the system reaches its limits in the case of international adoptions, even if these have been carried out legally, precisely because of the legal framework in the country of origin and the possible lack of actual support. The situation is different again if (presumed) elements of irregularity are present or feared in the process and the documents do not accurately reflect reality. Here, there are strict limits to guaranteeing the right to know one's own ancestry. Supporting, advising and caring for adoptees who are searching and do not know what to expect requires specific skills and empathy. Furthermore, the right to know one's own ancestry can only be guaranteed through other/additional instruments, measures and means.

Currently, in the example of Sri Lanka, the Swiss authorities are following the official route, i.e. a request is made and forwarded via the central federal authority in Switzerland to the central authority in Sri Lanka. In contrast, private organisations in particular have the option of taking a more informal route, which is by no means illegal. This may provide access to information in the files of foreign authorities or children's institutions (sometimes the documents of children's homes contain different or correct information about the biological parents) that is often not accessible through official channels. The success of all efforts to obtain additional information depends on the cooperation of the authorities and institutions in question. This raises the follow-up question of how to proceed if there is no willingness to cooperate or no legal framework in place. ([124]) In such cases, the possibilities for further investigation are extremely limited for the Swiss authorities; private organisations offer advantages in comparison and are already being called upon by the state on the basis of Art. 268d para. 2 of the Swiss Civil Code.

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[123]Even before the revision of adoption law in 2018, Article 268c(3) of the Swiss Civil Code recognised that adopted persons have a point of contact when requesting information about the identity of their biological parents. A member of the expert group commented: "The aim of the advisory support was – and still is – to provide support to the adopted person. On the one hand, they should be shown how to obtain the necessary information from all the agencies involved, and on the other hand, this support serves to provide them with psychosocial assistance. The adopted person should be supported if they find themselves in a difficult personal situation. […] Art. 268c para. 3 of the Swiss Civil Code (ZGB) and now Art. 268d para. 4 ZGB therefore express the view that accessing archived guardianship and adoption files and meeting with biological parents or their direct descendants or with the child is likely to be a sensitive matter that requires good preparation and psychosocial support. It seemed necessary for an agency to support the applicant – and today also the persons affected by the application. [...] The meaning and purpose of Art. 268d para. 4 of the Swiss Civil Code must be clarified in this respect and interpreted in the context of the creation of the cantonal information offices. In the interests of those affected, a single information office per canton was created, which, in my opinion, has a comprehensive and conclusive function.

[124] Therefore, the willingness to cooperate and the guarantee of the right to know one's own parentage are given relevance within the reduction element, cf. Final Report, Chapter Three, 1.2.1.

At first *glance*, the provisions currently set out in the Civil Code do not appear to be unsuitable, at least in their basic form, especially since the use of search services and the provision of advice and support are explicitly provided for. A revision of the law may be considered in the medium to long term. However, it will take years for such a revision to come into force. Such a legislative amendment will therefore primarily affect children adopted in recent times and, where applicable, those to be adopted in the future. For those adopted in the past, and in particular those affected by irregularities, a different approach must be taken. The focus here is on the *rapid realisation of their right to know their own ancestry.* The core challenge with regard to this retrospective reference lies in its implementation. The cantons and authorities are confronted with new and very demanding challenges as a result of the revelations about the nature and extent of the irregularities. They are not yet prepared for the challenges this presents, which is understandable to a certain extent. They lack the necessary conceptual, technical and financial resources. There is an urgent need for action here. Rather than revising the Civil Code, it seems more important today, as a first step, to immediately develop specific concepts, strategies and competences to guarantee the right to know one's own ancestry and to make these available to the victims of irregular adoptions. Based on the responsibility of the cantons *de lege lata*, a cooperative approach to responsibility seems appropriate. Initial steps in this direction have already been taken, and the expert group would welcome further action in this regard. *In any case*, the *cantons should pool their administrative responsibilities* and develop and implement scenarios for organising searches for origins.

In view of the irregularities that have come to light, not only the organisation of the authorities created by the 2018 revision, but also the entire set of regulations in Art. 268b ff. of the Civil Code ff. (including a discussion on the even more consistent introduction of semi-open and open adoptions and the further overcoming of secret adoption, whereby this could also be seen as an approach to ensuring the legality of adoption procedures and safeguarding the right to know one's own ancestry).

The current organisational structure is being put to the test by the difficulties involved in tracing origins in the context of irregular adoption practices, both in relation to adoptions carried out in the past (retrospectively) and in relation to tracing origins in any adoptions that may be carried out in the future (prospectively). The conclusions to be drawn from this finding will first be examined on the basis of an analysis of the efforts of two actors involved in this issue – the Back to the Roots association and the "Search for Origins" working group.

[125] However, please also note the changes in this regard in the context of the reduction element in the final report, Chapter Three, 1.

223 Experiences and findings from the Back to the Roots pilot project[126]

It is reported here that independence is a key factor for those affected who turn to the association; the involvement of a neutral (i.e. non-governmental) actor helps to build trust on the part of those affected. In contrast, trust in the cantonal authorities is described as weak or non-existent, especially after the incidents described in the "Sri Lanka Report" and the "10-Country Report" became known. For those affected, it is the state authorities with which they associate irregular adoptions and which they perceive as (jointly) responsible for the injustices that have been done (knowing full well that at the time it was neither the same authorities nor the same people). Those affected describe how they face significant internal barriers and obstacles when approaching state authorities. However, it is not only difficult for those affected, but also for the cantons responsible, to trace origins, particularly in cases where the information in the documents is incorrect or the relevant documents are not available. The accuracy of the details and information recorded in the documents can only be verified through in-depth follow-up research, often on site (e.g. names and addresses of fictitious birth mothers).

After examining the experiences of the Back to the Roots association, the expert group notes that *there is clearly unjustifiable unequal treatment of adoptees from different countries:* While adoptees from Sri Lanka can turn to Back to the Roots, which receives financial contributions from the authorities as part of its mandate and can therefore offer free support, those affected who come from other countries have to cover the costs associated with searching for their origins themselves. In order to counter this unequal treatment, the expert group believes *that an immediate measure should be taken to provide support for all (searching) adoptees* who are (presumably) affected by irregular adoption. This support could be modelled on the Back to the Roots pilot project or consist of an expansion or further development of this project.

In addition, the experiences of the Back to the Roots pilot project have shown that *more than psychosocial support is needed*. The spectrum of different situations with correspondingly diverse tasks and challenges is broad.([127]) All these forms of support for people who may have been or are confronted with irregular adoption practices in their search for their origins require a high degree of diverse skills, careful preparation and an independent and ethical approach. The expert group considers the current services available to support people in searching for their origins and coping with the stress caused by irregular adoptions to be *inadequate* in several respects. There is an urgent need for action here, bearing in mind the above: because when proceedings to search for origins are initiated, it is unclear whether the adoption proceedings of the person in question

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126 See <https://backtotheroots.net/>; for information on the financing of the pilot project, see <https://www.seco.admin.ch/seco/de/home/seco/nsb-news.msg-id-88825.html>.

127 This includes stabilising the adopted persons when confronted with a possible irregular adoptionhistory, preparing them for the coping and search process, analysing documents, supporting adoptees in determining that the papers are forged, dealing with adoptive families and the wider social environment, providing support during reunification, and assisting with processing, including referral to trauma therapists or other therapists.

Whether or not irregularities are involved, there *can* be *no initial division of procedures and responsibilities*. Rather, in cases where the search for origin leads to the detection of irregularities, additional tools must be provided to carry out the search for origin and follow-up in the context of the irregularities uncovered; this also includes any additional measures taken in the course of dealing with irregular practices.([128])

22.4 Considerations and recommendations of the "Tracing" working group

These are as follows:

1. Organise one or more (national or regional) meetings of experts dealing with issues of tracing origins as quickly as possible;
2. Raising awareness of issues arising from the impact of irregular practices on tracing origins;
3. Developing a common culture among cantonal authorities with regard to understanding and accepting adoptees searching for their origins;
4. Promoting the exchange and development of best practices;
5. Conveying a political message that ensures that issues relating to searching for origins are treated seriously and with interest by the various actors involved;
6. Experts should have access to a database containing information on the characteristics of the countries of origin (risks of irregular practices, available resources, etc.);[(129)]
7. Review and adjustment of competences and tasks in the area of information (Art. 268d para. 1 ZGB) and counselling (Art. 268d para. 4 ZGB) in accordance with Art. 268d ZGB, as well as the tasks of the search services. The persons and organisations concerned, as well as the cantons, must be involved in this work;
8. Review and improvement of the coordination of adoption issues at the political and technical level;
9. Deployment of specially trained persons to accompany and support adoptees in the process of searching for their origins;
10. Establishment of a secure DNA database at international level in accordance with data protection regulations, including the creation of the necessary legal basis. If every person who gives up a child for adoption were required to provide a DNA sample at the same time, it would be possible to determine with certainty whether the persons named in the documents are in fact the biological parents of the adopted person. This would offer enormous advantages for future adoptions, especially for persons conceived through assisted reproduction measures (see also

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[128] See final report, Chapter Three, 2.5.

[129] In this context, it is worth mentioning the SSI/CIR programme, which for many years has been offering a service to analyse the legal and practical situation of international adoption procedures in the countries of origin (see "Dealing with illegal adoptions: A Professional Handbook", <https://www.iss-ssi.org/images/Publications_ISS/FRA/Illegal_Adoption_ISS_Professional_Handbook_FRA.pdf>). This service is equipped to take an additional step in its mission, namely to supplement its "country sheets" with information on the history of international adoption, its development and the possible occurrence of bad practices, the nature of bad practices and how they have been addressed, experiences with tracing origins and existing resources, available studies and reports, etc.

Recommendation 27 of the Expert Group on the Revision of the Law on the Clarification of Parentage, cf. Parenté et filiation (admin.ch))[130] ;

11. The process of tracing one's origins must be free of charge for all parties involved.
12. Implementing these recommendations requires centralising resources or outsourcing them to private actors (based on the model of the Back to the Roots project). The proposal for regional centres (one for each language region) or a national centre should be examined. The individual cantons have neither the resources nor the volume of applications nor the experience in dealing with searches for origins to guarantee a functional approach in light of the irregularities. A "regrouping" of tasks should take place here, especially since the files affected by irregular practices raise questions that go beyond the search for origins and may require additional services and support (see above).

The expert group welcomes the proposals put forward by the "Search for Origin" working group in its report dated November 2023, which largely coincide with the considerations of the expert group within the scope of its overall mandate.

2.2.5 Contextual considerations of the expert group

2.2.5.1 Retrospective and prospective reference

Adoption is a lifelong issue: It always concerns both the past and the future. In the case of searching for one's origins, this is evident in the fact that the search concerns a past event which, from the perspective of the adopted persons concerned, does not remain in the past. This applies in particular to adoptees who are confronted with an irregular adoption. Although the irregular act may have been carried out in the past, its consequences cannot be *simply* dismissed – neither by the individuals concerned nor by the institutions responsible. In addition, even before adoptees begin or have begun searching for their biological parents, the fear of possible irregularities is already a great burden. Unless Switzerland decides to withdraw from international adoption, instruments must be implemented to guarantee the right of future adoptees to know their own ancestry (e.g. through mandatory genetic testing and corresponding legal reforms).

With regard to irregular adoptions in the past, efficient solutions must be developed quickly to effectively realise the unfulfilled right of those adopted years or decades ago to know their origins. Victims must receive protection and, as far as possible, justice.

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[130] The expert group notes that, in addition to data protection and ethical issues, the question of financing is always a factor and that it is unclear whether the political will to implement this proposal exists. There is also the well-known objection that such an institution would not help in most cases of searching for origins, as the most important piece of the puzzle – namely the DNA of the members of the family of origin – is missing. However, this only applies to retrospective use.

[131] See interim report, Chapter 2, 2.4, 2.11, 2.12, 2.13.

With regard to future adoptions, concepts must be developed that fulfil the *state's duty to protect the right to know one's own ancestry*. In this respect, it is crucial to efficiently ensure the accuracy of documents as an element and instrument of adoption procedures that are conducted with integrity (e.g. by introducing mandatory genetic testing at the birth of the child and further overcoming secret adoption, thereby protecting the child's connection to its origins). [132] Such instruments can not only contribute to the realisation of the right to know one's own ancestry, but also ensure the legality of future adoption procedures.

22.5.2 In particular: the retrospective reference with its three core questions

This raises many questions: How can adoptees be adequately supported during the period of uncertainty, i.e. before the truth or falsehood regarding their biological parents can be established? How can adoptees who are confronted with incorrect documents and their consequences in the course of their search for their origins be supported in a targeted and prudent manner? What concepts, methods and instruments need to be provided? How can the resources (technical) and, in particular, the financing be secured? How can irregularities or, where applicable, injustices be adequately addressed in the form of concrete packages of measures in connection with the right to know one's own ancestry?

These problems can be grouped into three overarching questions:

1. To what extent is the state or the authorities (*de lege lata:* cantonal jurisdiction) responsible for guaranteeing the right to know one's own parentage vis-à-vis irregularities? Where should the search for biological parents end in the case of an irregular adoption?
2. How can appropriate support and care be guaranteed for adoptees, not only during and after the actual search for their origins, but also before that, i.e. during a sensitive and stressful phase in which it is unclear what the adoptee can expect?
3. How can the necessary resources (professional, personal, financial) and thus also funds be made available? In cases where information is incorrect or missing, the search and, of course, the support required are much more complex, time-consuming and expensive. In light of the irregularities that have come to light and the suffering caused, it is questionable whether it is morally justifiable to limit the costs.

The expert group notes the following in this regard:

1. The state has a *duty* to protect the right to know one's own ancestry. Particularly in cases of irregular practices, where the identity of the biological parents has been falsely or unlawfully concealed, *all reasonably promising (legally justifiable) instruments* must *be used* in the search for ancestry. The search should only end when it is no longer realistically possible to continue. The principle of proportionality will serve its purpose in this exploration.

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[132] The various other recommendations formulated in this final report serve to ensure the full legality of international adoption.

2. The counselling, guidance and support services available to adoptees who have already begun searching for their origins or are considering doing so – given the extent of the irregularities that have now come to light – should be expanded and developed.
3. The necessary resources – including expertise – must be made available, and concepts for guaranteeing the right to know one's own ancestry and support services must be defined and implemented in a binding manner. In this regard, the current level of funding and financial support for those affected is insufficient. As a reminder: "The cost implications of search requests were also rejected; a solution for the costs incurred in searching for children who were given up for adoption by women in administrative care should be worked out in the round table discussions for victims of compulsory welfare measures."([133])
4. The costs of irregular adoptions are not solely financial in nature. Particularly with regard to the emotional and psychological dimension, appropriate concepts for counselling, support and assistance must be developed for victims of irregular adoption practices. From a legal perspective, it is already accepted *de lege lata* that
   As a rule, the state must bear the costs of using the above-mentioned agencies.The effort and costs involved in tracing origins, where correct documents can be used, are of course on a completely different scale than in cases where false or fictitious information is available. The expert group supports the view of the "Origin Search" working group that such procedures must be free of charge for those affected when carried out by cantonal authorities. However, given the prevalence of irregular adoption practices and falsified or forged documents, it is not enough for the procedures to be free of charge when carried out by cantonal authorities.
5. The launch and extension of the Back to the Roots pilot project and the services provided by the organisation are welcomed. The existing and further developed skills, experience and knowledge should be utilised in the future. The expert group considers the current unequal treatment of people from different countries of origin in their search for their origins to be unacceptable.

[133] Revision message, 899; a proposal to provide financial support for search services in connection with irregular adoptions was therefore deleted after consultation and not taken up again by Parliament (the search services were mentioned again, but nothing was said about financing the search, cf. 14.094 | Civil Code. Adoption. Amendment | Business
| The Swiss Parliament.

[134] See BSK ZGB I-BREITSCHMID, Art. 268b–268d, N 12; in this regard, see also the contributions by KÖRBER 2023 and KÖRBER/STEINEGGER 2020 as well as other authors listed in the bibliography.

2253 Guiding principles for the development of concepts and strategies

With reference to the report of the working group on tracing origins and the recommendations contained therein, the expert group has formulated a cluster of guiding principles and plans below. These are intended to serve as a basis for developing concrete concepts to guarantee the right to know one's own origins in light of the irregularities that have come to light, and more generally for shaping Swiss policy on international adoption:

1. *New starting point:* The current regime (in particular Art. 268c ff. of the Swiss Civil Code) and its implementation by the cantons is geared towards legally conducted adoption procedures and correct documentation. In the case of international and, in particular, irregular adoptions, the current system reaches its limits: In cases where the assertion of the right to know one's own ancestry leads to the finding that the person concerned was the victim of an irregular adoption, the questions already mentioned above arise: How far does the right to find one's own parents extend if the documents do not accurately reflect reality? How can any injustice that may have been done be dealt with appropriately? These questions must be answered in a binding manner.
2. *Fastest possible support through immediate measures:* Time is running out for people who were adopted at the time the adoption scandals came to light and are now considering searching for their origins, as well as for people who cannot access accurate information in the registers and documents or who encounter obstacles in doing so. The same applies to the parents of these individuals. With regard to all these individuals (and not limited to individual countries of origin), it is therefore necessary to ensure that functional solutions are implemented as quickly as possible. The expert group advocates immediate measures. This should be done through short-term and, if necessary, provisional concepts.
3. *Consideration of the "detector function":* From a chronological and logical point of view, the irregularity of a specific adoption procedure is regularly determined by asserting the right to know one's own ancestry. In this respect, it is often a "prerequisite" for the detection of irregular adoptions.([135)] This fact should be taken into account when designing the rules of procedure for authorities and proceedings within the framework of coordinating the issue of searching for origins.
4. *Provision of additional resources:* According to Art. 268c ff. of the Swiss Civil Code, the cantons are *currently* obliged to provide the necessary resources. In the opinion of the expert group, this is one of the main problems with the current system, as this regulation means that the cantons are currently overwhelmed, at least in part and certainly in the context of irregular adoption practices, which is entirely understandable. The reasons for this are a lack of resources and the fact that the current regime is reaching its limits when confronted with systematic violations of the requirements for proper adoption procedures with the associated correct documentation. Specifically, there is a lack of concepts both in relation to the search with its instruments in the context of irregular adoptions and for psychosocial support and namely the competent and viable

[135] See the description of the search for origins as a "detection tool" for irregular practices in the interim report, Chapter 2, 2.11.

Support. These must be developed and implemented as quickly as possible. Low thresholds and competence must be ensured so that adoptees can confidently pursue their concerns. In this context, the expert group recommends that the cantons ensure that a private partner organisation is available to provide complementary support.

5. *Guaranteeing the right to know one's own ancestry as a means of addressing any injustices that may have occurred:* In the context of irregular adoptions, guaranteeing the right to know one's own ancestry is initially seen in isolation as a human right and thus also as an individual right. All efforts to guarantee this right must also be seen as part of the essential process of addressing any injustices that may have occurred.[136]States that take responsibility for irregular adoptions and, against this background, implement decisive measures to guarantee the right to know one's own ancestry, especially for people who have been victims of irregular adoptions, contribute to *the collective reappraisal of injustice*. The core elements of a Swiss policy on international adoption that should be prioritised are therefore, firstly, coming to terms with the past and, secondly, going hand in hand with this, effectively guaranteeing the rights of people who were adopted in the past and now live in Switzerland, who assert their right to know their own origins but are confronted with irregularities in their adoption. Even though the legal situation with regard to competences and responsibilities is different today than it was back then, the federal government and the cantons should come to a common understanding of shared responsibility.
6. *Medium- and long-term organisation of the search for origins for recently adopted children and, where applicable, children to be adopted in the future:* How this can be organised in the best possible way for both those already adopted (retrospective reference) and those to be adopted in the future (prospective reference) should be the subject of a follow-up project in which an in-depth analysis of a legal reform is to be carried out.
7. *Revision of the legal framework:* In the opinion of the expert group, it is clear that a revision of the current legal framework requires in-depth examination. In order to determine which options for adjustment are worth pursuing, it is necessary to a) analyse the shortcomings of the current regulations in light of recently uncovered realities, b) the objectives and guiding principles of new models must be formulated, and c) new models must be evaluated in terms of their functionality with regard to the realities. At this point, d) organisational and procedural issues are linked to substantive law, in particular the issue of secret and (semi-)open adoptions. The introduction of semi-open and open adoptions is considered an instrument for humanising adoption. Furthermore they secure the right to know one's own ancestry. In addition, they could, under certain circumstances, perform a protective function for the full legality of adoption procedures.

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[136] See final report, Chapter Three, 2.5.

[137] For further details, see the contributions by PFAFFINGER and COTTIER.

8. *Supportive use of technology:* DNA testing and the creation of databases should be considered as tools for enforcing human rights, particularly in compliance with data protection regulations. In addition to the opportunities offered by these technologies, their risks must also be evaluated and protective measures implemented. An effective tool for emphasising legality in future adoptions and addressing the critical issue – the phase before and around the birth of the child – is to require a genetic test. In cases where a mother or parents are identified in the documents (with consent), it could be required in future that their identity or the parent-child relationship be verified and proven by means of a DNA test. If, following the introduction of a regime restricting adoptions to certain countries, only children with unknown parents are eligible for adoption, this should raise alarm bells and be investigated further as a cause for suspicion.
9. *Consistent change of perspective:* The right to know one's own ancestry in light of irregularities underpins the demand for a consistent change of perspective and paradigm for international adoption.[138]

22.5.4 In particular: considerations for optimising institutional organisation

The expert group first addressed the question of whether *the same authority should be responsible for both regular and irregular adoptions, or whether different authorities should be responsible depending on the circumstances.* In the expert group's opinion, the latter is not compatible with the current realities of international adoption. The realisation that an adoption was irregular or that the documents are incorrect often only comes to light once a search for origins has already begun. In this respect, the request for information or the assertion of the right to know one's own ancestry and the search for origins that this triggers can be a tool for detecting irregularities. In addition, due to the principle of territoriality, it is not possible for the cantons to search for origins on behalf of the adoptee.
As a rule, this involves conducting the necessary background checks abroad. For these tasks, the cantons currently call on other organisations such as the International Committee of the Red Cross, the Back to the Roots association or the NGO The International Social Service, cf. Art. 268d para. 4 of the Swiss Civil Code. A *division* with different allocations of competence or administrative organisations based on a "direct" distinction between regular and irregular adoptions is therefore not only counterproductive but also practically impossible.

The expert group therefore rejects *the idea of a strictly and initially dual system of authorities and procedures*. Instead, it advocates a "staggered" and differentiated approach in line with the specific needs of the various case constellations. However, this does not happen initially, but at the moment when the formation of case constellations is feasible on the basis of established facts. Advice, guidance and support in the context of searching for one's origins must be prepared from the outset for the possibility of irregularities being uncovered and, in this respect, must have sufficient expertise and resources to provide those affected with adequate support. As recent studies show,

[138] Hence also Final Report, Chapter Three, 1.

adoptees find themselves in a *stressful state of informational limbo* at the time of submitting a request for information, which is associated with considerable anxiety. This circumstance must be taken into account more effectively.

The expert group also took note of the three scenarios for future organisation proposed by the "Search for Origins" working group. The following applies in this regard:[139]

1. *Regional service and specialist centres (in the national languages where applicable), state-funded, independently organised* – these could be used permanently or temporarily in place of cantonal authorities or could provide additional support to the cantons by offering complementary services.[140] The expert group considers this proposal to be promising. For this reason, but also because the similarities that exist in some cases between the constellations of irregular adoptions and compulsory welfare measures cannot be overlooked, the expert group recommends that this direction be carefully considered. The creation of independent structures with pooling of resources seems best suited to meeting the challenges associated with searching for origins. This would take into account the need of adoptees to be guaranteed independence. The quality of the delegation solution depends on the quality of the body appointed by delegation. The organisation must be able to competently provide the requested services. This means that it should be staffed by highly competent individuals from different disciplines, and the members of this team must also be personally suited to the tasks.
2. *Transfer of tasks and associated powers to the federal government:* According to the expert group, transferring responsibilities for tracing origins from the cantons to the federal government, *as* is currently the *case*, is likely to meet with resistance in terms of political feasibility. However, this should not be the decisive criterion.
3. *Mandating private agencies:* According to the expert group, the advantages of mandating private agencies include their independence and the associated creation of a climate of trust between the adopted persons and the persons/institutions responsible for assisting them in their search for their origins. The applicable law already provides for the possibility of using private search services. This option is used in practice, for example in the canton of Geneva. There, Espace A acts as a "single point of contact": Espace A makes an initial selection of incoming requests and forwards those that require further investigation to the "service cantonal d'information" (SCI), which searches for the relevant documents, anonymises them where necessary and corresponds with the foreign authorities. All psychosocial support is provided by Espace A in a neutral manner. The system is described as one that takes the needs of adoptees into account in an appropriate manner.([141])

[139] Report by the "Search for Origins" working group, 19.

[140] The Netherlands has recently introduced yet another type of organisation, where a specialist centre for tracing origins provides psychosocial support. In addition, this specialist centre provides a minimum level of legal advice, including in relation to criminal law aspects, even if the issue of the statute of limitations may arise in some cases.

[141] The canton of Vaud has concluded an agreement with BARO in the context of origin searches, see <https://lebaro.ch/>.

It should be added that:

1. The option of retaining the current regime – cantonal jurisdiction – see Art. 268d ZGB, should not be ruled out across the board.[142] *De lege lata*, the cantons are responsible for tracing origins, regardless of whether irregularities come to light in the course of proceedings or not. *De lege lata*, they are free to engage the services of tracing agencies, cf. Art. 268b para. 2 ZGB. As long as no further coordinated adjustments – whether provisional or permanent in nature – are made to this regime, the expert group *emphatically* points out *the responsibility of the cantons in the area of searching for origins* and recommends that they designate an authority to take the lead. If the current regime (responsibility lies with the cantons) is to be retained, it is recommended that the cantons *pool* their *administrative responsibilities.* The cantons should develop and implement scenarios for organising searches for origins. It is essential that the necessary resources – including, but not limited to, financial resources – are made available. If necessary, immediate measures should be developed to speed up the process and further enhance professionalism.
2. Consideration could be given to further developing or adopting well-known concepts from the field of victim support, e.g. victim counselling centres or the "ombudsman offices" familiar from child and adult protection. Inspiration could also be drawn from strategies for dealing with past injustices caused by compulsory social measures and placements in care.([144]) In this context, the idea of setting up a fund could also be considered. Criteria for the attribution of victim status and the amount of the contribution for supporting the search for origins (e.g. CHF 25,000.00) would have to be established. Within the framework of the amount awarded for the search for origins, the adopted person is free to decide whether or not to engage a search service.

[142] The current focus is on the efficient implementation and guarantee of the right to know one's own ancestry in the face of structural irregularities and, in this context, on how to deal with these irregularities; see also the final report, Chapter 3, 2.5.

[143] It would be conceivable to give applicants and (if victim status is recognised) recipients the freedom to choose who they want to call on for support (e.g. including private individuals). Another solution would be for a committee to decide which organisation is allocated funds and tasks. It would also be conceivable to set up a new specialist centre to provide support; on the concept of victimhood, see also the recent articles by BOÉCHAT.

[144] In the context of national adoptions note the Federal Supreme Court ruling of 5 May 2023 (2C_393/2022) on the payment of a solidarity contribution to victims within the meaning of the Federal Act on the Reappraisal of Compulsory Social Measures and Placements before 1981 (AFZFG).

22.6 Guidelines from the expert group based on a contextual analysis

The expert group welcomes the initiatives of the "Search for Origins" working group. The work of both groups proceeded largely in parallel, which is why the expert group is contributing the following guidelines regarding the challenges of the right to know one's own ancestry vis-à-vis the irregularities uncovered from their bidirectional relationship:

Guidelines

Great importance must be attached to guaranteeing the right to know one's own ancestry (not only on paper) and to implementing measures to this end, including legislative amendments where necessary.

Guaranteeing the right to know one's own ancestry takes on a whole new light against the backdrop of structural problems and systematic irregularities. Against this background, *new concepts* for guaranteeing the right to know one's own ancestry must be developed and implemented without delay. Where necessary*, rapid, provisional packages of measures* must also be put in place. In addition, further short-term, medium-term and long-term efforts are required.

The challenges associated with guaranteeing the right to know one's own ancestry and to search for one's origins have both retrospective and prospective implications. Swiss policy on international adoption must take both aspects into account, with priority given to dealing with the past. Immediate measures must be taken to realise the right to know one's own ancestry in practice. A key element in coming to terms with the past is the provision of appropriate tools and resources to carry out the searches for origins that are currently underway and to accompany and support people who were adopted in the past, especially those affected by irregular practices. They must be guaranteed adequate counselling, guidance and support that is sensitive, professional and independent. The services offered must be expanded and professionalised, taking into account the implications of confronting the trauma of irregular adoption practices.

Regardless of the division of responsibilities *de lege lata*, a common understanding of responsibility must be reached. Efforts to guarantee the right to know one's own ancestry, and the instruments and measures used to this end, must continue until the search has been reasonably exhausted, i.e. until no further reasonable steps can be taken to discover one's own ancestry or determine the identity of one's biological parents. Guaranteeing an appropriate search in this sense in the context of irregular adoption practices requires the provision of appropriate resources and expertise. In particular, the necessary financial resources must be made available.

An initial division of procedures and responsibilities (regular vs. irregular adoptions) is not recommended. This is impossible in practice, as irregularities usually only come to light in the course of the relevant procedures. In cases where the search for origins

In order to detect irregularities, additional tools must be provided that enable those affected to search for their origins even in the context of irregularities.

The core task is therefore to identify the need for (legal) adjustments and measures to guarantee the right of those who were adopted in the past to know their own origins. Even though, *de lege lata*, the cantons are responsible for searches for origins, coordinated activities should be undertaken in a spirit of shared responsibility between the cantons and the federal government. The following are particularly appropriate:

1. The fastest possible and appropriate support for *all* adopted persons who are or were (presumably) affected by irregular adoptions, in psychological, social and financial terms (where necessary through immediate measures);
2. Development of a viable and efficient concept for the medium- and long-term organisation of searches for origins as part of a follow-up project;
3. Revision of the legal framework;
4. Provision of additional resources, including but not limited to financial resources.

With a view to ensuring support, *equal treatment* of adoptees from different countries of origin must be guaranteed (cf. Back to the Roots, where services are limited to adoptees from Sri Lanka).

The proposal to set up service and specialist centres (see report of the "Search for origins" working group) should be examined in greater detail.

In addition, *concepts* must be implemented that *guarantee children* who may be *adopted in the future* their right to know their own ancestry. The proposed reduction is one of the instruments that can be used for this purpose.

The development of concepts for the use of *new technologies* must also be addressed. In this context, particular consideration should be given to the establishment of databases and the introduction of a requirement to carry out genetic testing to verify and document the parentage relationship between the child and the biological mother, as well as further efforts to overcome secret adoption.

23 Aspects of an IPRG revision

In the second stage of the mandate, the expert group was tasked with submitting "specific proposals for [...] a revision of the chapter of the Federal Act on Private International Law relating to adoption".

23.1 Background

The Federal Act on Private International Law (IPRG) applies, among other things, when a legally relevant case or situation has an international element. In such constellations, the IPRG answers three questions: Who is responsible, which law is applicable, and which foreign decision can or must be recognised? When considering the recognition of a foreign decision, the public policy reservation marks a barrier. For example, consent to adoption is a prerequisite that cannot be waived (cf. the very narrow exceptions under Swiss law that allow consent to be waived, Art. 265c ZGB with the relevant commentary literature). The recognition of an adoption decision could therefore be refused on the grounds that the biological parents did not legally consent to the adoption.

23.2 Considerations

The following applies to the relevant provisions of the IPRG with the expert group's proposed amendments:

1. *Art. 75 IPRG* – This provision regulates the jurisdiction of Swiss courts if the adopter(s) is/are resident in Switzerland. The question of whether a revision is necessary arises in particular with regard to extending the jurisdiction rule to the circumstances or situation of the adopted person's place of residence. Illustrative example: a child born in Switzerland who was to be adopted by his grandmother in Canada. Under Canadian law, the adoption had to be pronounced in Switzerland. However, Switzerland was unable to make this decision because the adopter did not have a place of residence in this country. The legal situation thus led to an impasse. Even though the cases in which such a new rule on jurisdiction would apply would be very rare, the expert group recommends that the jurisdiction of the Swiss authorities be extended to the place of residence of the adopted person by amending Art. 75 IPRG accordingly.
2. *Art. 76 IPRG* – The home court jurisdiction is guaranteed. The expert group recognises that this provision is still necessary today. This applies in particular to Swiss citizens who are resident in a country that does not recognise adoption. The expert group sees no need to reform this provision.
3. *Ad Art. 77 IPRG* – Determination of the applicable law. The expert group also sees no need for reform of this provision.

4. *Re Art. 78 IPRG* – Here, the conditions for recognition are set out on the basis of two connecting factors:[145]
   a) An adoption pronounced at the place of residence of the adoptive parents: The expert group considers this to be uncritical.
   b) An adoption pronounced in the adoptive parents' home country: according to discussions in the expert group, this situation has led to numerous problems, as persons residing in Switzerland have adopted children in their home country (either in good faith or deliberately circumventing Swiss procedures). When the adoptive parents applied for recognition of these adoptions, the Swiss authorities were often confronted with a fait accompli. Consideration should be given to whether the connecting factor of the home country should be retained for adult adoptions.

The expert group discussed *two proposed amendments* for connecting factor b): The first option would delete the second connecting factor. The second option would add a provision stating that adoptions granted in circumvention of Swiss law would not be recognised. This would establish a similar rule to that which applies to the recognition of marriages concluded abroad, cf. Art. 45 para. 2 IPRG. The proposal to add an explanation to this article as to what constitutes public policy was rejected, as the term must remain dynamic and be interpreted by the courts. The expert group recommends deleting the connecting factor of the nation state without replacement. It recognises that such a revision cannot offer an absolute guarantee that no further adoptions will be granted abroad without the involvement of the Swiss authorities. Nevertheless, it considers the deletion to be a strong signal and believes that the educational potential of the new wording should not be neglected.

The topic *of recognition of recognition* was then discussed. Here is an illustrative example: A Swiss couple residing abroad adopts a child from a third country (not a party to the Hague Convention). If the country in which the couple resides recognises the adoption granted in the third country, the Swiss authorities are not able to recognise this recognition under current law, as only an adoption decision can be the subject of recognition and in this case none of the connecting factors under Art. 78 IPRG are met (hypothetically, the country in which the adoption was granted is neither the country of residence nor the country of origin of the adopting couple, see e.g. BGE 134 III 467). The question arises as to whether this possibility should be included in the IPRG in order to avoid absurd situations in which it is not possible to recognise an adoption even though the procedure was carried out lawfully abroad, perhaps even many years earlier. From the perspective of the child's welfare and in order to protect the rights of the child, a mechanism should be provided for that makes it possible to recognise this relationship. This would be in line with the European Convention on Human Rights (ECHR). There are no apparent negative consequences of introducing such recognition, especially since Swiss public policy can set limits in individual cases. Moreover, the mechanism of recognising recognition is not new, as it already exists in the area of inheritance law, cf. Art. 96 IPRG.

[145] For further details, see BSK IPRG-SCHICKEL-KÜNG/HAUSER, Art. 78 IPRG.

23.3 Recommendations on aspects of the IPRG

The expert group has formulated the following specific recommendations with a view to revising the chapter of the Federal Act on Private International Law relating to adoption:

Recommendations

With regard to Art. 75 IPRG, the expert group recommends extending the jurisdiction of the Swiss authorities to the place of residence of the adopted person.

The expert group sees no need for reform with regard to Art. 76 IPRG and Art. 77 IPRG.

With regard to Art. 78 IPRG, the expert group recommends deleting the connecting factor of the national state without replacement; consideration should be given to retaining the connecting factor of the home state in cases of adult adoption.

In line with the guiding principle of the best interests of the child and the protection of the rights of all parties involved in adoption proceedings, a mechanism should be introduced for the recognition of adoptions granted in the country of residence of the adoptive parents.

2.4 Financial aspects

The expert group was tasked with formulating "specific proposals within the framework of reviewing the financial aspects of adoption and incorporating the instruments and recommendations developed at international level". For the financial aspects, see section 3.4 of the interim report.

2.4.1 Various problem areas

Financial aspects were dealt with in several places, namely wherever they make a relevant contribution to ensuring the integrity of adoption processes, cf. in this regard in connection with the adoption agencies 2.1.3 or in connection with guaranteeing the right to know one's own origins and the provision of appropriate counselling services 2.2. This section deals with specific financial aspects related to the keywords child trafficking and corruption.([146])

Under the UNCRC, Switzerland must ensure that "no improper financial gain is made by any party involved in an international adoption", cf. Art. 21 lit. d UNCRC. This provision must be read in conjunction with Art. 32 para. 2 HAÜ and Art. 3 para. 1 of the Additional Protocol to the UNCRC on child trafficking: *Only the coverage of costs and expenses is permitted.* A key instrument for preventing undue financial gain is the provision of adequate resources to all actors involved in international adoption.

Not only with regard to the role of intermediary agencies (see 2.1.3 above), but also with regard to the role of money and monetary benefits in adoption, it should be noted that the situation in the past is not identical to that of today. The framework conditions are different today, and the proposed measures should be understood in this context.

Nevertheless, various international and Hague documents show that there are still a number of problems surrounding the financial aspects of international adoption. In her report on illegal adoptions, the UN Special Rapporteur on the sale of children, child prostitution and child pornography comes to the following conclusion: "One of the main factors contributing to illegal adoptions is the amount of financial gain that can be made by placing children for international adoption. As long as adoption fees and related costs are not reasonable and transparent, and as long as contributions and donations exist, the incentive for illegal adoptions will remain high." Key challenges include, for example, payments made by adoptive parents in various grey areas, ranging from excessive expenses, fees and the like to contributions (e.g. for maintenance costs or cooperation projects) and donations to institutions.

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[146] In this regard, see in particular the contributions by SMOLIN, cf. bibliography; early on, see KAISER 1979.

The basis for this can be found in the following documents:

1. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, 2016, A/HRC/34/55, Recommendations 1e, 1f, 1g, 1h (https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/24/PDF/G1644024.pdf?OpenElement);
2. Federal Council, Report Postulate Ruiz, 2020, Chapter 4.3.6 (https://www.bj.admin.ch/dam/bj/de/data/gesellschaft/gesetzgebung/illegale-adoptionen/ber-br.pdf.download.pdf/ber-br-d.pdf);
3. HCCH, Note on the Financial Aspects of Intercountry Adoption, 2014 (https://www.hcch.net/upload/wop/note33fa2015_en.pdf);
4. HCCH, Summary List of Good Practices on the Financial Aspects of Intercountry Adoption, 2014 (https://www.hcch.net/upload/wop/list33fa2015_en.pdf);
5. HCCH, Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Fact sheet No. 3 "Improper Financial and other Gain", 2023 (https://assets.hcch.net/docs/cb923c9e-98c9-4101-a158-a364db53b610.pdf);
6. HCCH, Model Survey for Adoptive Parents on the Financial Aspects of Intercountry Adoptions, 2016 (https://assets.hcch.net/docs/eb29d462-e2e0-4ab9-98bc-dba92f28caa5.pdf).

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The current legal situation in Switzerland is incomplete. For Switzerland, this means that legislation or, where applicable, executive federal directives must be amended or supplemented in specific areas with regard to financial aspects (BG-HAÜ and AdoV). The focus here is on preventing financial incentives (excessive payments for costs and expenses), prohibiting donations and donation-like payments related to the procedure, separating the mediation activities from other activities of the mediation agencies and their affiliated sister organisations, and ensuring transparency on the part of the actors involved. This requires regulation on the part of both the intermediary agencies and the adoptive parents. Where appropriate, agreements with the cooperating states may also be considered in order to achieve these objectives. It is also necessary to draw up and maintain guidelines and cost tables for implementation in practice.

The guiding principle must be that payments to authorities, adoption agencies, private experts (e.g. solicitors) or other actors involved are only made on the basis of reasonable, clearly stated costs or expenses. Cost transparency must prevail throughout the entire process.

The expert group is considering the following in this regard:

1. Inclusion of legal definitions and distinctions, for example with regard to the terms "costs", "expenses", "contributions", "donations/gifts" and similar. The definition and handling of so-called "contributions" is complex. The term is not used uniformly by all countries. In some cases, these are mandatory contributions (e.g. maintenance costs charged to adoption candidates or prospective adoptive parents for a child during the proceedings or from
   "Matching" until departure); however, it is also sometimes used for voluntary contributions made by adoption candidates or adoptive parents for the child, the institution or a fund. It is important to emphasise that these contributions are outside the scope of what Switzerland should accept as permissible costs and expenses for the procedure.
2. Regulation with regard to adoption candidates/adoptive parents/future adoptive parents:
   a) Prohibition of payments that are not part of the direct costs and expenses of the procedure, e.g.
      - Payments intended to expedite the adoption process;
      - Payments to influence the adoption process in other ways;
      - Prohibition of any payments to the biological/legal parents, before and after the conclusion of the procedure;
      - Prohibition of cash payments of any kind (see penal provisions in Art. 23/24 BG-HAÜ);
   b) Prohibition of gifts and donations as well as the financing of cooperation projects and similar activities, insofar as they are directly or indirectly related to the adoption procedure, for the duration of the entire adoption process and several years after its completion;
   c) Systematic information and support for prospective adoptive parents, including with regard to financial aspects;
   d) Transparency/disclosure requirements with regard to all payments in connection with the adoption process (e.g. signed transparency declaration as part of the dossier as a prerequisite for the certificate of suitability; Art. 5 BG-HAÜ; Art. 5 para. 2 lit. d AdoV)
3. Regulation with regard to adoption agencies,[147] if these are to be retained, see 2.1.3 for details on adoption agencies; see also Art. 12 ff. AdoV:
   a) Authorisation requirements:
      - Agency offices shall perform only the tasks assigned to them;
      - Inadmissibility of "cooperation projects" and donations to institutions;
      - Prohibition of "sister associations" associated with the mediation agencies (lack of legal separation, personnel union, financial connections or other factors that compromise independence);
   b) Further specification of transparency requirements, where necessary;
   c) Agreement with cooperation countries, where necessary;

[147] See in this context the judgment of the Criminal Court of the Canton of Lucerne of 24 April 2020, already mentioned in the interim report.

4. Control tasks of the central authority of the Confederation vis-à-vis the intermediary bodies as at present, supplement to Art. 2 para. 2 BG-HAÜ; Art. 2 AdoV;
5. Supervisory tasks vis-à-vis parents: depending on the model, according to the current distribution of tasks: cantonal central authorities.

From the perspective of prospective adoptive parents, a number of prohibitions can therefore be assumed. From the perspective of the adoption agencies, increased cooperation with the countries of origin is also required (e.g. submission of the fees charged by the Swiss adoption agency to the central authorities of the countries of origin as part of the accreditation process). The issues of appeal and monitoring (monitoring, feedback) also relate to this area. The Hague Conference on Private International Law (HCCH) has developed an instrument that could be used in this context (template for a survey for adoptive parents under "Financial aspects").([148])

With regard to the financing of placement agencies, the following should be noted:[149] The financial situation of placement agencies in Switzerland is precarious. They often receive donations, which may be a legitimate means of financing under certain circumstances, provided that the money is not transferred abroad. There are currently no government guidelines on how to calculate the fees charged by intermediary agencies; for example, there is no requirement to keep a timesheet. It is reported that the culture among intermediaries is different; they think in terms of flat rates. The Federal Central Authority is attempting to clarify the situation with a table showing the costs in relation to the hourly rate, which is to be completed by the intermediaries, but this is proving difficult. Even if the rates appear high at first glance, it can be assumed that the intermediaries actually earn too little in comparison to the time spent on each case. The added value provided by the agencies is that they know the country of origin and can explain the procedure in detail; they accompany the adoption candidates and can answer their questions during the waiting period; they help compile the dossiers; they have contacts in the country of origin (authorities or children's facilities after matching); they prepare the prospective adoptive parents for the meeting with the child; they have representatives on site whom they meet regularly; they have specialist knowledge of the procedure in the country of origin and are probably better placed to identify an anomaly in a dossier than the central authority (cantonal or federal).[150]The expert group recognises the importance of the tasks performed by the intermediary bodies. It reiterates its assessment here: if the system is to be maintained with certain tasks being performed by the intermediaries, then their funding must be secured by the state (e.g. through subsidies) and they must be enabled to work with the necessary professionalism. If the decision is made to dispense with the mediation bodies, it must be ensured that the state takes over the corresponding tasks (and ensures that its services are equipped with the necessary resources), with the option of establishing a state mediator.

[148] The template is available at <https://assets.hcch.net/docs/5fcb11df-3579-4ef4-a029-72303eccecfa.docx>.
([149]) See Final Report, Chapter Three, 2.1.3.
[150] See the final report, Chapter Three, 2.1.3, on the tasks of the mediation bodies.

24.3 Recommendations on financial aspects

The expert group formulates the following specific recommendations as part of its review of financial issues in adoptions, incorporating the instruments and recommendations developed at international level:

Recommendations

In the context of international adoption, several financial aspects must be taken into account in order to protect the welfare and rights of adoptees and to effectively prevent irregularities. The following aspects in particular must be addressed as part of *reform efforts*:

1. Financing of the services provided by adoption agencies;
2. Prevention of unlawful financial gain;
3. Provision of appropriate instruments and resources to guarantee the right to know one's own ancestry and to develop and expand support and assistance after adoption.

The current legal situation in Switzerland with regard to the financial aspects under the BG-HAÜ and AdoV should be amended or supplemented.

The focus is on preventing financial incentives, prohibiting donations and donation-like payments connected to the procedure, separating the mediation activities from other activities of the mediation agencies and their affiliated sister organisations, and imposing transparency obligations on the parties involved. This requires regulation on the part of both the mediation agencies and the adoptive parents. Where appropriate, agreements with the cooperating states may also be considered in order to achieve these objectives. It is necessary to draw up and maintain guidelines and cost tables. The guiding principle must be that payments to authorities, placement agencies, private experts (e.g. lawyers) or other actors involved are only made on the basis of reasonable, clearly stated costs or expenses. Cost transparency must prevail throughout the entire process. The following measures are particularly recommended (see the preceding text for details):

1. Inclusion of legal definitions and distinctions, for example regarding terms such as "costs", "expenses", "contributions", "donations/grants" and similar;
2. Regulation with regard to adoption candidates/adoptive parents/future adoptive parents;
3. Regulation with regard to adoption agencies, insofar as these are to be retained;
4. Control tasks of the central federal authority vis-à-vis the adoption agencies as at present, supplementing Art. 2 para. 2 BG-HAÜ; Art. 2 AdoV;
5. Supervisory tasks vis-à-vis the parents: depending on the model, according to the current distribution of tasks: cantonal central authorities.

If certain tasks are to continue to be performed by placement agencies in future, funding must be provided by the state to ensure that they can work with the necessary professionalism. If the relevant tasks are to be taken over by other agencies, these must be provided with the necessary resources.

25 Aspects of dealing with irregular practices

The expert group was tasked with presenting "specific proposals as part of the review of issues relating to illegal practices, incorporating the instruments and recommendations developed at international level".

25.1 Preliminary remark on terminology

In order to properly discuss how to deal with unlawful practices, a few considerations regarding (legal) terminology must first be addressed. Many of the cases that have recently come to light date back several decades. The social realities, sometimes the motives of those involved, but above all the legal framework for international adoptions were, at least in part, different then than they are today. A strictly formal legal answer to the question of whether an adoption, adoption procedure or adoption practice can be classified as *unlawful* can only be given in relation to the applicable legal framework and taking into account any statute of limitations. However, adoption practices can obviously also be compromised in other ways. For this reason, debates, studies and reports on the subject of adoption often distinguish between unlawful (illegal) and unethical adoptions. The latter are bad practices that are incompatible with public order, morality or other moral values. Illegal adoptions, on the other hand, are understood to be only those practices that violate applicable law. Whenever irregularities in the context of international adoptions constitute or have constituted a violation of the fundamental principles of applicable law, they must be clearly classified as unlawful or illegal, regardless of any legal technicalities. In all other cases, i.e. whenever an irregularity cannot be *clearly* designated as unlawful in this sense, the expert group recommends using the generic term "irregular".[153] This term makes it possible to cover all actions and practices that compromise or have compromised an international adoption procedure from an ethical or legal point of view, regardless of the time period under consideration and the country in question.

25.2 Various interfaces

This subchapter inevitably contains considerations and recommendations that have already been presented from a different perspective and under different headings. These include, in particular, the reduction element as a paradigm shift to ensure high standards in international adoptions (cf. Chapter Three, 1), the topics

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[151] See also Interim Report, 2.1.

[152] The Hague Conference's Guide to Good Practice defines the term "illegal adoption" as adoption that is "Abuse such as abduction, sale or trafficking of children" results, whereby the prevention of this abuse is one of the main objectives of the 1993 Hague Convention. In her 2016 report on illegal adoptions, the UN Special Rapporteur on the sale of children, child prostitution and child pornography defines the term "illegal adoption" as follows: "Adoptions that are the result of crimes such as abduction, sale or trafficking of a child, fraud in declaring adoptability, the falsification of official documents or coercion, as well as any illegal activities or practices such as the lack of proper consent from the biological parents, unjustified material gains for intermediaries and related corruption, are illegal adoptions and must be prohibited, criminalised and punished as such."

[153] See Final Report, Chapter Two, 4.3.1.1.

Institutional reorganisation (see Chapter Three, 2.1), searching for origins and guaranteeing the right to know one's own ancestry (see Chapter Three, 2.2), revision of the IPRG (see Chapter Three, 2.3) and financial flows (see Chapter Three, 2.4). Some of the recommendations formulated in these sections aim to ensure that irregular adoptions are dealt with appropriately: prospectively, to prevent them more efficiently, and retrospectively, to ensure that all persons who have been victims of irregular adoptions continue to receive justice throughout their lives, as far as possible. Consistency and determination, maximum transparency and full legality are required when dealing with irregular practices. Consequently, the expert group recommends the *implementation* of *all measures* necessary to effectively combat irregular adoptions and to ensure that victims of irregular adoptions receive counselling, support and assistance. Accordingly, all considerations in this final report, including the specific proposals for the development and implementation of the reform scenario, contribute to the task formulated under this title. ([154])

Below, under the heading "Dealing with irregular practices", the four topics of "General framework", "Instruments and recommendations", "Accredited organisations" and "Search for origin" are each dealt with in relation to dealing with past and future practices. In the course of the upcoming efforts, the *criminal law aspects and the so-called penalisation* must *be subjected to in-depth analysis.* In addition, any conclusions must be drawn against the background of the UN Convention on the Enforced Disappearance of Persons in the context of international adoption. The Convention only came into force in Switzerland in 2016, and its retroactive consequences are questionable.

2521 The general framework of international adoption

Past practices: For a long time, no one talked about the irregularities that happened with international adoptions in Switzerland. The "prevailing belief at the time that adopted kids were better off in Switzerland than in their home countries" meant that questions about this weren't asked.[155] Since the 1980s, however, NGOs have been documenting the occurrence of undesirable developments in the procedures, and in 1990 the "Report on the Adoption of Children from Abroad" – a preparatory document for the Hague Convention on Intercountry Adoption – stated the following: "The documents submitted to the Secretary-General [...] leave no doubt that international child trafficking is taking place, particularly between the countries of Asia, Latin America and Eastern Europe on the one hand and the countries of North America and Western Europe on the other. This confirms and expands on the conclusions of a 1987 report by the Parliamentary Assembly of the Council of Europe."

Measures for improvement: The Hague Conference's "Working Group on Preventing and Combating Illegal Practices in International Adoptions and How to Address Them"[156] has produced a series of documents on irregular practices

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[154] In addition to the documents and decrees listed, please refer specifically to the following analyses for this area of activity: BAGLIETTO/CANTWELL/DAMBACH 2016; BALK/FRERKS/DE GRAAF 2022; various contributions by BOÉCHAT; LOIBLE/SMOLIN 2024; LOIBLE 2021; BUNN 2019.

[155] However, see the findings of the expert group, according to which the end does not justify the means, interim report, first chapter, 3.

[156] See <https://www.hcch.net/fr/publications-and-studies/details4/?pid=6309>.

published, which distinguish between different forms of irregular practices in the context of international adoptions. Of particular note here is "Summary Sheet No. 3: Preventing and Remedying Illegal Practices".[157]Other important sources include the report by the UN Special Rapporteur on the sale of children, child prostitution and child pornography, as well as the "Joint Statement on Illegal Intercountry Adoptions"([158] ,which was adopted and issued by the UN human rights bodies on 28/29 September 2022 and is based on this report.This document goes beyond the Special Rapporteur's report in some respects and contains several recommendations specifically dedicated to supporting adoptees who are confronted with irregular adoptions when searching for their origins. These recommendations are also derived from the International Convention for the Protection of All Persons from Enforced Disappearance, which has received little attention in the context of international adoption to date.([160]

At this point, the considerations of the Joint Statement on Illegal Intercountry Adoptions of 28/29 September 2022 should be summarised:

1. Description of illegal adoptions as a widespread phenomenon with various modalities;
2. Recognition of the devastating effects on all those affected and the importance of protecting the child within its original family unit;
3. Call for a human rights-based and gender-sensitive approach;
4. Recognition of the violation of various human rights through illegal adoptions (strong nexus to the right to privacy, identity, family);
5. Penalisation, crimes and offences: Possible violation of criminal law;
6. Obligation to prevent illegal adoptions, which includes:
    a) The welfare and rights of the child as paramount considerations;
    b) The principle of subsidiarity must be observed;
    c) Prevention of improper financial advantages;
    d) Involvement of state authorities and compliance with regulations;
    e) Maxim: "Find a family for a child" – not the other way around;
    f) No false incentives;
    g) National laws and practices should prevent illegal international adoptions by creating appropriate framework conditions;
    h) Data collection and statistics;
7. Obligation to criminalise and investigate illegal adoptions:
    a) Right to the truth;
    b) DNA database;
    c) Procedures for annulment of adoption;
    d) Right to appropriate addressing;
    e) Truth mechanisms.

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[157] See <https://assets.hcch.net/docs/77e76043-585f-4434-9102-f869b534dd24.pdf>.

[158] See <https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf>.

[159] With regard to the relevant documents from international bodies, see the interim report, Chapter Two, 1.2 and 1.3; see also <https://www.promotion-droit-enfant.ch/2021/05/16/adoptions-irregulieres-le-comite-sur-les-dispa-ritions-forcees-prend-position>.

[160] Please note <https://www.eda.admin.ch/eda/de/home/aussenpolitik/voelkerrecht/internationale-uebereinkommenzumschutzdermenschenrechte/uebereinkommen-zum-schutz-aller-personen-vor-verschwindenlassen.html>.

The expert group recommends that these documents and expectations, which were or are being addressed to Switzerland in response to the irregularities identified by the international community, be examined in detail. Specific consideration should therefore be given to the criminalisation of illegal adoptions, including in particular the issue of the statute of limitations.

2522 International guidelines

Previous practices: The 1989 Convention on the Rights of the Child came into force in Switzerland in 1997. It recognises international adoption as a measure to protect children and obliges ratifying states to gear adoption procedures towards the welfare and protection of children's rights. In 1993, the
The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention) was ratified and entered into force in Switzerland in 2003. Both texts prompted the ratifying states to change their practices in the area of intercountry adoption. The focus of the implementation of the HAG in the receiving and originating countries was on the procedural issues prescribed by the HAG. However, insufficient consideration was given to the need for systematic analysis and control of international adoption. Particular risks of irregular practices, e.g. due to inadequate birth registration, insufficient training of professionals, corruption, etc., are likely to exist before or outside the "Hague procedure" (cf. the required paradigm shift with a positive cooperation decision, Chapter 3, 1).

Measures for improvement: Although the international legal framework has not changed in the last 20 years or so (UNCRC and Hague Convention), non-binding legal instruments have been further developed to better address the risks associated with international adoption. At the Hague Conference, various documents were drawn up, particularly on financial aspects and illegal practices, which largely guided the [expert] group.

The Council of the European Union is working towards a new legal framework that aims to criminalise acts related to forced marriage, surrogacy and illegal adoptions. These recent developments at EU level with regard to the criminalisation of "illegal adoptions" should be monitored.

Against this background, the *criminalisation or penalisation* and further investigation of illegal adoptions is also appropriate for Switzerland. Consequently, criminal law aspects in the broadest sense and, specifically, the statute of limitations must be subject to in-depth examination.

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[161] See <https://www.hcch.net/fr/instruments/conventions/specialised-sections/intercountry-adoption/>.
[162] See <https://www.consilium.europa.eu/fr/press/press-releases/2024/01/23/fight-against-human-trafficking-council-and-eu-ropean-parliament-strike-deal-to-strengthen-rules/>; <https://www.europarl.europa.eu/pdfs/news/expert/2024/4/press_release/20240419IPR20580/20240419IPR20580_fr.pdf>.

2523 Accredited organisations or intermediary bodies

Previous practices: For a long time, the landscape of organisations active and recognised in the field of international adoption was diverse: some operated like profit-making companies (e.g. in the USA), thanks to powerful networks in the host country (lobbying for adoption) and in the countries of origin (intermediaries, financial support for orphanages). Others were involved in the humanitarian work of international NGOs (e.g. in France and Italy) and included international adoption in their activities in southern countries. Finally, some consisted of adoptive families who offered their support to new candidates, mostly in a limited number of countries of origin, but often with insufficient financial and human resources. For a long time, recourse to such structures was considered best practice.

Measures for improvement: Fundamentally, the focus should be on what the organisations do and what positions they take.[163] On this basis, a decision should then be made as to which organisations should be involved, whether private structures are needed – whose professionalism and financing must be ensured – whether a state structure should be created, or whether adoption procedures should only be handled by central authorities ("functional approach").

In principle, it is up to the legislator to decide what role accredited organisations (private placement agencies and search services) should play in the future. In this regard, it was noted that appropriate considerations should be made, followed by decisions that clearly define the competences of the respective organisations in the adoption process.[164] Recognising that existing trust and a good knowledge of the country of origin are key elements for the implementation of transparent adoptions, consideration should be given to continuing to grant accredited organisations a place as partners of the state authorities and to securing their funding. The Central Federal Authority plays an important role in adoption procedures as a link between Switzerland and the countries of origin. It is best placed to exercise careful control over the entire system. ([165])However,in order to be able to perform the associated tasks fully and effectively, it must be equipped with the necessary resources. In particular, it must have highly specialised staff who are able to "read" the relevant procedures and files, recognise warning signs and interact with the countries of origin. It is recommended that an annual budget be introduced that is exclusively dedicated to visits to the cooperating states or partner countries.

[163] For more on this approach to mediation centres in Switzerland, see the final report, Chapter 3, 2.1.3.
[164] For the concept of specifications, see also above, Final Report, Chapter Three, 2.1.3.
[165] For the proposal to strengthen the federal central authority, see Final Report, Chapter Three, 2.1.2.3 and 2.1.2.4.

2524 Search for origins[166]

Previous practices: At the international level, tracing remained underdeveloped until the 2010s. However, it is expressly provided for in Article 30 of the Hague Convention:

"(1) The competent authorities of a Contracting State shall ensure that the information they have on the origin of the child, in particular on the identity of the mother and father, as well as data on the medical history of the child and his or her family, is kept.

(2) They shall ensure that the child or his or her representative, with appropriate counselling, has access to this information, to the extent permitted by the law of their State.

Measures for improvement: In this regard, reference should be made to Chapter 3, Section 2.2, "Hub for searching for origins," which contains the proposals and guiding principles formulated therein. It should also be remembered that the reduction element also includes a tool for safeguarding the right to know one's own origins:[167] As one of the two key elements of the reform scenario, the number of possible cooperating states should be limited to those countries of origin that have obtained a positive cooperation decision after careful examination of the new criteria to be implemented. Guaranteeing the right to know one's own ancestry in the country of origin is integrated into the recommended list of criteria. In addition, the procedures necessary for proper adoptions should be established in close cooperation with those countries of origin with which there are trusting relationships. This requires a) an analysis of the current state of cooperation with the various countries of origin that are open to international adoptions, b) knowledge of the competent authorities and actors as well as the applicable legal system on site, and c) the implementation of detailed processes that form the framework for the entire procedure.[168] In addition to cooperation with countries of origin, cooperation with other receiving countries should also be expanded: not only in Switzerland, but also in other receiving countries such as Belgium/Flanders, Denmark, France, the Netherlands, Sweden and Norway, changes similar to those in Switzerland are currently being discussed or have already been implemented. Efforts should be pooled, for example through genuine cooperation between the central authorities of the receiving countries. Strict control of financial flows is also recommended[169] In consultation with the partner or cooperating countries, all costs of the adoption procedure should be explained clearly and transparently, recorded in writing and kept to a minimum. Prospective adoptive parents must be informed of the rules regarding permissible and impermissible financial payments before travelling to the countries of origin.

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166 See final report, introduction, chapter one and chapter three, 2.2.
167 See final report, Chapter Three, 1.2.1.3.
168 See also final report, Chapter 3, 1, in particular the requirement for a five-year analysis in final report, Chapter 3, 1.2.3.
169 See final report, Chapter 3, 2.4.

253 Preliminary conclusions

The expert group notes that almost all of the measures and reform points developed in the final report can be described as components of a response to irregular practices, whether direct or indirect, retrospective or prospective. On the one hand, they are intended to formulate adequate responses for victims of past irregularities and, on the other hand, to prevent further irregularities from occurring in the future.

The investigation of irregular adoptions carried out in the past with Swiss involvement must be established as *a top priority* within future Swiss policy on international adoption. In this regard, it is specifically recommended that the issue of criminalisation and penalisation be further addressed in line with developments at the international level. This would include decisively naming injustice – *if* such has occurred – as injustice. At the time of writing this report, the Federal Council has expressed its regret to all persons who were or are affected by the irregularities uncovered in the past. ([171])In addition, it has signalled its commitment by financing the Back to the Roots pilot project and setting up various committees to address irregular practices in international adoption. However, neither the federal government nor the cantonal authorities or other parties involved have yet issued an apology for their involvement in irregular practices. Whether such an apology is necessary and to what extent the argument for not apologising is valid is a matter of debate among the expert group. To date, the authorities have taken the position that, unlike in the case of compulsory social measures and the comprehensive investigation of this state injustice, no public policy was pursued by Switzerland in the context of international adoptions. With regard to this complex debate, the expert group would like to refer to the comments and recommendations of the "Search for Origins" working group. In light of these circumstances, it deliberately refrains from taking an explicit position. ([172])However, the members consider it important to ask whether Switzerland, knowing full well that it was other people who held positions of responsibility in the relevant institutions in the 1970s, should nevertheless assume a much greater degree of responsibility than it has done to date. In this sense, the expert group believes that Switzerland should commit itself to supporting those affected by irregular practices in the past – whether "only" unethical or strictly illegal – as much as possible in the actual realisation of their rights. In the opinion of individual members of the expert group, this would include explicit recognition of the injustice that occurred and an appropriate apology.([173]) Institutional review, appropriate action in the form of various packages of measures, and financial support for those affected would also be appropriate. However, the expert group considers the *guarantee of the right to know one's own ancestry* to be a core element of dealing with irregular practices.

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[170] Final report, Chapter Three, as well as in the interim report, Chapter One, 1.1, Chapter Two, 2.13, and Chapter Three, 1.1.
[171] See press release of 8 December 2023, <https://www.bj.admin.ch/bj/de/home/aktuell/mm.msg-id-99228.html>.
[172] The expert group has, however, referred in general terms to the political dimension of international adoption, including its irregularities, in the interim report; see also EFRAT/LEBLANG/PANDYA 2015 and VAN STEHEN 2019.
[173] This would also take into account the international call for Switzerland to "name and address" illegal adoptions as such; see the interim report, Chapter 2, 1.3.

In this context, the expert group recommends examining whether instruments originally developed for other constellations of unlawful practices of a collective and systematic nature could also be suitable in the context of addressing irregularities in connection with international adoptions. If the answer is yes, these instruments should be used and actively developed further. It should be emphasised that media coverage of the issue of "irregular adoptions" in recent years has led to a significant increase in demand from those affected. The structures currently in place are not capable of meeting these requirements professionally. Action is needed here.

Finally, the expert group would like to encourage further work on the concept of *shared responsibility*. This would involve setting up additional working groups in which the cantons should be more closely involved. The results of this work would lead to further debate and consultation. However, mutual attribution and rejection of responsibilities between different communities or institutionally involved bodies should be avoided. Only by joining forces will it be possible to implement the necessary measures and reforms that have emerged from the recognition of the true extent of irregularities in international adoption procedures in the last decades of the 20th century.

25.4 Recommendations for dealing with irregular practices

The expert group has formulated the following specific recommendations in the context of reviewing issues related to irregular practices:

Recommendations

The review of irregular adoptions carried out in the past with the involvement of Switzerland should be established as the top priority of future Swiss policy on international adoption.

The expert group therefore recommends that the Swiss authorities commit themselves to providing the best possible support to those affected in the actual realisation of their rights.

Almost all of the measures and reform points developed in this final report serve this purpose. A *contextual approach* is required. In this regard, reference is made to the considerations and recommendations in the respective subchapters and sections. Taken together, they serve as leverage for achieving the set goals.

When dealing with irregular practices*, consistency, determination, maximum transparency and full legality* are specifically required. Consequently, the expert group recommends the implementation of all measures necessary to effectively combat irregular adoptions and to ensure that victims of irregular adoptions receive counselling, support and assistance.

Specifically, in cases of injustice, this would include explicit recognition of the injustice. Institutional review, appropriate action in the form of various packages of measures, and financial support for those affected would also be appropriate. In this context, the expert group recommends that the documents on irregular practices mentioned above be examined in detail, as well as the expectations that have been and are being expressed internationally (including to Switzerland) in response to the irregularities identified. The obligation to criminalise and further investigate illegal adoptions should be examined in depth, which means that criminal law and, in this respect, the statute of limitations should also be reviewed.

It is also recommended that further working groups be set up to develop and establish a position of shared responsibility.

It would also be worthwhile to examine whether certain instruments originally developed for other constellations of unlawful practices could be suitable in the context of international adoptions. If the answer is yes, these instruments should be used and actively developed further.

It must also be examined whether private structures (placement agencies) are needed – whose professionalism and financing may need to be ensured – whether a state structure should be created instead, or whether adoption procedures should only be handled by central authorities ("functional approach"). In any case, the institution in question should be equipped with the necessary resources. In particular, it must have highly specialised staff who are able to

read the relevant procedures and files, recognise warning signs and interact with the countries of origin.

It is recommended that an annual budget be introduced that is dedicated exclusively to visits to partner countries.

Elements of a future Swiss policy on international adoption – Recommendations of the expert group

This final report is the result of two years of intensive discussion on the future of international adoption in Switzerland. After it became known that there had been massive irregularities in international adoptions in the past, the Federal Council commissioned the expert group to submit recommendations for a future Swiss policy on international adoption and to draw up concrete proposals for reforms. *The guiding principle was that what had happened in the past must never be repeated.* To make this clear: the aim here is to ensure, not only formally but also in practice, that there will never again be cases of international adoption in Switzerland in which the rights of those involved in the process are violated and which are detrimental rather than beneficial to the welfare of the adoptees. Given the systemic risks inherent in international adoption, this is a very ambitious goal. As there are fundamental doubts as to whether this goal can be achieved through reforms not only on paper but also in reality, the expert group emphasises that a serious option could be to abandon the practice of international adoption altogether (exit scenario).

In fulfilling its mandate, however, the expert group has focused in this final report on developing a reform scenario and elaborating on the changes and measures that would be necessary to achieve the stated goal through reforms. In summary, it can be said that this would require a *fundamental paradigm shift* and that all actors involved in the adoption process, both at home and abroad, would have to fulfil their *shared responsibility* without exception. What this means in concrete terms with regard to the various dimensions of the institution of international adoption can be read in detail in the relevant chapters. At the end of the final report, the expert group presents an overview of all the recommendations it has formulated which, in its opinion, should be taken into account for the successful planning, development and implementation of reforms. It would like to reiterate that the interim and final reports are not two separate projects, but two parts of an overall project and, as such, must be read together.

1. e contextual and strategic recommendations

Adoption is a child protection measure and must serve primarily the welfare and rights of the adoptee and the adoptive parents. It is a lifelong commitment and not a one-off legal act. In accordance with the guidelines formulated by the Federal Council, Switzerland is committed to promoting the welfare of all children who have already been adopted, all adopted persons who are now of legal age and all children who may be adopted in the future, to safeguarding the rights of all those involved in the process of international adoption – understood as a lifelong issue – and to consistently preventing any recurrence of irregularities.

To achieve this goal, the expert group has formulated the following cluster of overarching contextual and strategic recommendations, which should be considered a "mental map" to guide all other considerations and recommendations:

The interim and final reports are not to be treated as separate documents, but as *a single entity*. All recommendations from both reports *must* therefore be read *in conjunction with each other*.

The recommended measures must be implemented in their entirety in order to bring about a consistent paradigm shift. The individual recommendations are not isolated, but interact with each other. Only when implemented in their entirety will they have the leverage effect needed to consistently realise international adoption as a child protection measure.

The continuation of international adoptions in Switzerland within the framework of the reform scenario is *only* possible *under strict conditions*. The complete withdrawal from the practice of international adoptions remains a *serious option*.

Any future Swiss policy on international adoption must take into account the *bidirectional nature of the action required*. It must be recognised that the *highest priority* must be given to dealing with adoptions carried out in the past, especially irregular adoptions (retrospective reference). Depending on which of the two scenarios is ultimately chosen, adoptions to be carried out in the future (prospective reference) must also be taken into account.

Consistency is required when dealing with all cases of international adoption, whether prospective or retrospective. The need for action that has been identified must be taken seriously. The findings that have been developed and the conclusions drawn from them must be implemented with determination ("walk the talk"). The paradigm shift that is required as a minimum in the case of a continuation of international adoption, but also the continued support of persons who have already been adopted in the event of withdrawal, requires the provision of the necessary human and financial resources.

Responsibility in the context of international adoption does not end at territorial, domestic or international borders. *Joint and shared responsibility* must be recognised. This applies between states and to all actors involved within the federalist structure of Switzerland. International adoption must be viewed in its networked structure. In order to cope with the tasks at hand, Switzerland should intensify its cooperation with both countries of origin and other receiving countries. The cantons and other actors (especially adoption agencies) should be appropriately involved in the work ahead.

In order to implement the recommendations effectively, a *committee* should be appointed or created to coordinate the actions of the cantons, the federal government and other stakeholders. The necessary skills, in particular technical expertise, and the involvement of those affected must be ensured. It is advisable to appoint a body with leadership responsibility that acts as *primus inter pares* and thus guides the development process ("pilot function").

A *communication effort* on the part of the authorities towards society is appropriate. This relates to the explanation of any reforms to be carried out at the Institute of International Adoption in Switzerland and the support services that need to be expanded in any case to guarantee the right to know one's own ancestry.

In order to establish a consistent policy, coordination with the challenges and revision projects arising in *related fields* is required.

2. Recommendations for reducing the number of cooperating countries ( )

A paradigm shift is needed to achieve the high standards for international adoptions set out in the Federal Council's guidelines. The first element of this shift is a consistent reduction in the number of cooperating countries. In this regard, the expert group makes the following recommendations:

With regard to international adoption, and in particular the international adoption of children from other countries, a *paradigm shift* must be implemented immediately, unless the exit scenario is chosen. This means, in particular, ending the free choice of countries of origin. A new multi-stage evaluation process will be introduced to ensure compliance with international adoption standards. Cooperation will only be possible with countries that meet all of the following criteria:

1. Formal list of criteria
   - Ratification of the Hague Convention *plus*
   - Ratification of the UN CRC *plus*
   - Ratification of the Second Optional Protocol to the UN CRC
2. Relational criteria catalogue
   - Sufficient intensity and regularity of cooperation in the context of international adoption *plus*
   - Declaration of need by the country of origin
3. List of material criteria
   - General description of the situation and risks *plus*
   - Factual implementation of legal guarantees, in particular in accordance with the Hague Convention *plus*
   - In particular, guaranteeing the right to know one's own ancestry

In addition to the appropriate legal anchoring of this list of criteria, responsibilities and procedures for implementation must be established. This requires not only a process for the initial evaluation of countries of origin. The evaluation also includes an analysis of adoption practices over the last five years (five-year review). For the purpose of quality assurance over time, periodic re-evaluation and, in cases of suspicion, ad hoc review must also be provided for.

The evaluation process must not be interpreted as a one-sided process. It is expressly *not* intended to pass judgement on the quality of the countries of origin from above. As a receiving country, Switzerland is not a neutral third party, but a partner on an equal footing. Taking a stance of shared responsibility is not "nice to have" but a duty. It is an essential component of any future Swiss policy on international adoption. Against this background, the evaluation procedure should be understood as an instrument for

ensure the cooperation-based, correct handling of international adoptions as a child protection measure for the welfare of the adopted children and with respect for the rights of all parties involved.

The *introduction of moratoriums* is one of the necessary consequences of the guidelines developed by the expert group for dealing with the systemic risks inherent in the institution of international adoption. However, moratoriums should not lead to resistance to the political or legal implementation of the reform scenario or to delays. With regard to the transition or adjustment phase, the necessity of precautionary measures should be assessed. The expert group recommends that ongoing adoption procedures in which a matching decision has already been made should be continued until the adoption decision is made. Moratoriums should be imposed on all procedures in which no certificate of suitability has yet been issued (no new certificates of suitability). In addition, moratoriums should also be imposed on those countries that do not meet the formal criterion, namely for procedures in which a certificate of suitability has already been issued but no child has yet been proposed. The expert group was unable to reach a consensus on the other constellations of pending procedures in relation to the process of implementing the reduction element.

Whether and to what extent the paradigm shift should also apply to intra-family adoption remains to be examined. It seems appropriate to establish a set of material criteria, compliance with which must be examined in each individual case.

3. Recommendations for institutional reorganisation in general

In accordance with the guidelines issued by the Federal Council, institutional reorganisation must be consistently geared towards the welfare of adopted children and the protection of the rights of all those involved in the adoption process. Specifically, it should be based on the following six guiding principles:

1. The most appropriate institutional solution;
2. Reduction in the number of actors;
3. Guarantee of quality;
4. Pooling of expertise;
5. Clear responsibilities;
6. Uniform location within cantonal structures.

It is recommended that tasks and responsibilities be pooled. The federal government and the cantons are striving for efficient and constructive cooperation in order to quickly create an optimal institutional legal framework. Certain tasks should be transferred from the cantons to the federal government. Within each canton, it is advisable to pool expertise (e.g. by establishing a single adoption authority). Competences should also be pooled between the cantons.

The installation of a single point of entry (*"single point of entry"* or *"guichet unique"*) is now recommended.

Accredited placement agencies currently provide added value, but are not indispensable as such. What is indispensable are the services they provide. These must continue to be guaranteed in the future. Appropriate resources must be made available for this purpose. In addition, the catalogue of tasks previously performed by placement agencies must be clearly defined. If these tasks are to continue to be performed by intermediary agencies, they should be given a name that reflects their function. Financial safeguards are essential, and bundling them together is worth considering. If intermediary agencies are no longer to play a role in the international adoption system in future, it must be examined whether and to what extent the cantons can take over the relevant tasks.

4. Instead of recommendations – guidelines on the subject of searching for one's origins

In parallel with the expert group on international adoption, the CCJD and FOJ working group on origin searches worked on recommendations for the appropriate implementation of the right to know one's own origins in light of the irregularities that had been uncovered. The expert group welcomes the findings and suggestions of the working group. For this reason, it refrains from formulating its own recommendations on these issues and limits itself to a few guidelines on the subject:

Great importance must be attached to guaranteeing the right to know one's own ancestry (not only on paper) and to implementing measures to this end, including legislative amendments where necessary.

The guarantee of the right to know one's own ancestry appears in a completely different light against the backdrop of structural problems and systematic irregularities. Against this backdrop, *new concepts* for guaranteeing the right to know one's own ancestry must be developed and implemented without delay. Where necessary*, rapid, provisional packages of measures* must also be put in place. In addition, further short-term, medium-term and long-term efforts are required.

The challenges associated with guaranteeing the right to know one's own ancestry and to search for one's origins have both retrospective and prospective implications. Swiss policy on international adoption must take both aspects into account, with priority given to dealing with the past. Immediate measures must be taken to realise the right to know one's own ancestry in practice. A key element in coming to terms with the past is the provision of appropriate tools and resources to carry out the searches for origins that are currently underway and to accompany and support people who were adopted in the past, especially those affected by irregular practices. They must be guaranteed adequate counselling, guidance and support that is sensitive, professional and independent. The services offered must be expanded and professionalised, taking into account the implications of confronting (the trauma of) irregular adoption practices.

Regardless of the division of powers *de lege lata*, a common understanding of responsibility must be found. Efforts to guarantee the right to know one's own ancestry, and the instruments and measures used to this end, must continue until the search has been reasonably exhausted, i.e. until no further reasonable steps can be taken to discover one's own ancestry

or to determine the identity of one's biological parents. Guaranteeing an appropriate search in this sense in the context of irregular adoption practices requires the provision of appropriate resources and competences. In particular, the necessary financial resources must be made available.

An initial division of procedures and responsibilities (regular vs. irregular adoptions) is not recommended. This is impossible in practice, as irregularities usually only come to light in the course of the relevant procedures. In cases where the search for origins leads to the detection of irregularities, additional tools must be provided to enable those affected to search for their origins even in the context of irregularities.

The core task is therefore to identify the need for (legal) adjustments and measures to guarantee the right of those adopted in the past to know their own origins. Even though, *de lege lata*, the cantons are responsible for the search for origins, coordinated activities should be undertaken in a spirit of shared responsibility between the cantons and the federal government. The following are particularly appropriate:

1. The fastest possible and appropriate support for *all* adopted persons who are or were (presumably) affected by irregular adoptions, in psychological, social and financial terms (where necessary through immediate measures);
2. Development of a viable and efficient concept for the medium- and long-term organisation of searches for origins as part of a follow-up project;
3. Revision of the legal framework;
4. Provision of additional resources, including but not limited to financial resources.

With a view to ensuring support, *equal treatment* of adoptees from different countries of origin must be guaranteed (cf. Back to the Roots, where services are limited to adoptees from Sri Lanka).

The proposal to establish service and specialist centres (see report by the working group "Search for origins") should be examined in greater detail.

In addition, *concepts* should be implemented that *guarantee children who* may *be adopted in the future* their right to know their own origins. The proposed reduction is one of the instruments that can be used for this purpose.

The development of concepts for the use of *new technologies* must also be addressed. In this context, particular consideration should be given to the establishment of databases and the introduction of a requirement to carry out genetic testing to verify and document the biological relationship between the child and the biological mother, as well as further efforts to overcome secret adoption.

5. Recommendations on aspects of the IPRG ( )

With a view to revising the chapter on adoption in the Federal Act on Private International Law (IPRG), the expert group makes the following recommendations:

With regard to Art. 75 IPRG, the expert group recommends extending the jurisdiction of the Swiss authorities to the place of residence of the adopted person.

The expert group sees no need for reform with regard to Art. 76 IPRG and Art. 77 IPRG.

With regard to Art. 78 IPRG, the expert group recommends deleting the connecting factor of the national state without replacement; consideration should be given to retaining the connecting factor of the home state in cases of adult adoption.

In line with the guiding principle of the best interests of the child and the protection of the rights of all parties involved in adoption proceedings, a mechanism should be introduced for the recognition of adoptions pronounced in the country of residence of the adoptive parents.

6. Recommendations on financial aspects

In the context of international adoption, several financial aspects need to be taken into account in order to protect the welfare and rights of adoptees and to effectively prevent irregularities. The following aspects in particular need to be addressed in the context of *reform efforts*:

1. Financing of the services provided by adoption agencies;
2. Prevention of undue financial gain;
3. Provision of appropriate instruments and resources to guarantee the right to know one's own ancestry and to develop and expand support and assistance after adoption.

The current legal situation in Switzerland with regard to the financial aspects under the Federal Act on the Recognition and Enforcement of Foreign Judgments in Civil Matters (BG-HAÜ) and the Adoption Ordinance (AdoV) should be amended or supplemented.

The focus is on preventing financial incentives, prohibiting donations and donation-like payments connected to the procedure, separating the mediation activities from other activities of the mediation agencies and their affiliated sister organisations, and imposing transparency obligations on the parties involved. This requires regulation on the part of both the intermediary agencies and the adoptive parents. Where appropriate, agreements with the cooperating countries may also be considered in order to achieve these objectives. It is necessary to draw up and maintain guidelines and cost tables. The guiding principle must be that payments to authorities, placement agencies, private experts (e.g. lawyers) or other actors involved are only made on the basis of reasonable, clearly identified costs or expenses. Cost transparency must prevail throughout the entire process. The following measures are particularly recommended:

1. Inclusion of legal definitions and distinctions, for example regarding terms such as "costs", "expenses", "contributions", "donations/grants" and similar;
2. Regulation with regard to adoption candidates/adoptive parents/future adoptive parents;

3. Regulation with regard to adoption agencies, insofar as these are to be retained;
4. Control tasks of the central federal authority vis-à-vis the adoption agencies as at present, supplementing Art. 2 para. 2 BG-HAÜ; Art. 2 AdoV;
5. Supervisory tasks vis-à-vis the parents: depending on the model, according to the current distribution of tasks: cantonal central authorities.

If certain tasks are to continue to be performed by placement agencies in the future, funding must be provided by the state to ensure that they can operate with the necessary professionalism. If the relevant tasks are to be taken over by other agencies, these must be provided with the necessary resources.

7. Recommendations for dealing with irregular practices

In connection with the question of how to deal responsibly with irregular practices, the expert group has formulated the following recommendations:

The review of past irregular adoptions involving Switzerland must be made a top priority of future Swiss policy on international adoption.

The expert group therefore recommends that the Swiss authorities commit themselves to providing the best possible support to those affected in the actual realisation of their rights.

Almost all of the measures and reform points developed in this final report serve this purpose. A *contextual approach* is required. In this regard, reference is made to the considerations and recommendations in the respective subchapters and sections. Taken together, they serve as leverage for achieving the set goals.

When dealing with irregular practices*, consistency, determination, maximum transparency and full legality* are specifically required. Consequently, the expert group recommends the implementation of all measures necessary to effectively combat irregular adoptions and to ensure that victims of irregular adoptions receive advice, support and assistance.

Specifically, in cases of injustice, this would include explicit recognition of the injustice. Institutional review, appropriate action in the form of various packages of measures, and financial support for those affected would also be appropriate. In this context, the expert group recommends that the documents on irregular practices mentioned above be examined in detail, as well as the expectations that have been and are being expressed internationally (including towards Switzerland) in response to the irregularities identified. The obligation to criminalise and further investigate illegal adoptions should be examined in depth, which means that criminal law and, in this respect, the statute of limitations should be reviewed.

It is also recommended that further working groups be set up to develop and establish a position of shared responsibility.

It would also be worthwhile to examine whether certain instruments originally developed for other contexts of unlawful practices could be suitable in the context of international adoptions. If so, these instruments should be used and actively developed further.

It must also be examined whether private structures (intermediary agencies) are needed – whose professionalism and financing may need to be ensured – whether a state structure should be created instead, or whether adoption procedures should only be handled by central authorities ("functional approach"). In any case, the institution in question should be equipped with the necessary resources. In particular, it must have highly specialised staff who are able to "read" the relevant procedures and files, recognise warning signs and interact with the countries of origin.

It is recommended that an annual budget be introduced that is dedicated exclusively to visits to partner countries.

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Zurich, 27 June 2024

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Bibliography

A

ABRAHAM ANDREA/STEINER CYNTHIA/STALDER JOEL/JUNKER KATHRIN, Research and sources on welfare and coercion in adoption and foster care, Scientific report within the framework of NFP76, BFH Social Work, 2020

B

BAGLIETTO CHRISTINA/CANTWELL NIGEL/DAMBACH MIA, Faire Face aux adoptions illégales : un manuel professionnel, International Social Service, 2016

BALK YANNICK/FRERKS GEORG/DE GRAAF BEATRICE, Investigating Historical Abuses, An Applied History Perspective on Intercountry Adoption in the Netherlands, 1950s–Present, Journal of Applied History 2022, 1 ff.

BERTHET DANIELLE/FALK FRANCESCA in collaboration with ABRAHAM ANDREA, GERMANN URS, MINDER LILIANE and RUTISHAUSER LENA, Adoptions of children from Sri Lanka in the canton of St. Gallen 1973–2002, 2022

BESSON SAMANTHA, The right to know one's own ancestry – ways and effects of the concretisation of a fundamental right, RDS/ZSR 1/2005, 58 ff. (also published: Jusletter 14 March 2005)

BIDERBOST YVO, Commentary on Art. 264 ff. ZGB, in: ARNET RUTH/BREITSCHMID PETER/JUNGO ALEXANDRA (eds.), Handkommentar zum Schweizer Privatrecht, Personen- und Familienrecht, Art. 1–456 ZGB, Partnerschaftsgesetz, 4th ed., 2023 (cited as CHK-BIDERBOST)

BOÉCHAT HERVÉ, International adoption: an evolution between ethics and markets, Service Social International, 2006

Ibid., Historical considerations: The excesses of international adoption, in: BAGLIETTO CHRISTINA/CANTWELL NIGEL/DAMBACH MIA, Dealing with illegal adoptions: a professional handbook, International Social Service 2016, 14 ff.

Ibid., From the child to be saved to the adopted victim. Evolution of international adoption, its understanding and its challenges, ZKE-RMA 2/2024, 115 ff.

Ibid., The meaning and usefulness of cooperation in international adoption, JDJ 2006 No. 258, 11 ff.

Ibid., Réflexions sur la notion de victime : d'une approche légale à une reconnaissance politique ?, RMA 2022, 300 ff.

BOÉCHAT HERVÉ/FUENTES FLAVIE, Investigating the grey zones of intercountry adoption, 2012

BOÉCHAT HERVÉ/VITÉ SILVAIN, Article 21. Adoption, in: Alen Alan et al (Eds.) A Commentary on the United Nations Convention on the Rights of the Child, 2008

BRÄNZEL PAUL/GERMAN YOUTH INSTITUTE, Openness in adoptions. Presentation of international research findings and implications for German adoption practices, 2019

BREITINGER ERIC, Familiar Strangeness. Adopted People Tell Their Stories, 2011

BREITSCHMID PETER, Commentary on Art. 264 ff. ZGB, in: GEISER THOMAS/FOUNTOULAKIS CHRISTIANA (eds.), Basler Kommentar, Civil Code I, Art. 1–456 ZGB, 7th ed., 2022 (cited as BSK ZGB I-BREIT-SCHMID)

BUNN JORDAN, Regulating corruption in international adoption, Vanderbilt Journal of Transnational Law 2019, Vol. 52, 685 ff.

BÜCHLER ANDREA/RYSER NADINE, The right to know one's own ancestry, FamPra.ch 1/2009, 1 ff.

C

CANTWELL NIGEL, The Best Interests of the Child in Intercountry Adoption, Unicef Office of Research, 2014

Ibid., The sale of children and illegal adoption, Terre des Hommes Netherlands, 2017

CANTWELL, NIGEL ET AL., Towards the implementation of the Guidelines on Alternative Care for Children, Centre for Excellence for Looked After Children in Scotland, 2012 (available at https://www.alternativecareguidelines.org/Portals/46/Mo-ving-forward/En-marche-vers-la-mise-des-lignes-directrices-relatives-a-la-protection-V2.pdf)

CESCHI ILARIA, Adoption of foreign children in Switzerland: Reception, placement and foster care, in: VON DER CRONE HANS CASPAR ET AL. (eds.), Zurich Studies in Private Law 131, 1996

COTTIER MICHELLE, Exchange of information in the adoption triangle, in: COTTIER ET AL. (eds.), Information & Law, 2002, 31 ff.

DIES., New balance between information and confidentiality interests in the adoption triangle – On the revision of the provisions of the Swiss Civil Code on adoption secrecy, in: FANKHAUSER ROLAND/REUSSER RUTH/SCHWANDER IVO (eds.), Focus on Family Law: Festschrift for Thomas Geiser on his 65th birthday, 2017, 151 ff. (cited as COTTIER, FS Geiser).

D

DENÉCHÈRE YVES, Towards a history of international adoption in France, Revue d'histoire 2009/2, No. 102, 117 ff.

DENÉCHÈRE YVES/MACEDO FÁBIO, Historical Study on Illegal Practices in International Adoption in France, 2023

DORSCH GABRIELE, The United Nations Convention on the Rights of the Child, 1994 E

EFRAT ASIF/LEBLANG DAVID/PANDYA SONAL S., Babies across Borders: The Political Economy of International Child Adoption, International Studies Quarterly 2015, No. 59, 615 ff.

F

FANKHAUSER ROLAND/BUSER MELISSA, Commentary on Art. 264 ff. ZGB, in: KREN KOSTKIEWICZ JO-LANTA/AMSTUTZ MARC/FANKHAUSER ROLAND (eds.), OFK Commentary ZGB, 4th ed., 2021

H

HEINEMANN ISABEL/SCHMITZ-KÖSTER DOROTHEE, Stories of stolen children during World War II, in: KREISAU-INITIATIVE E. V. (ed.), Uprooted. (Hi-)stories of stolen children during World War II, 2022

HÖGBACKA RIITTA, Intercountry adoption and the social production of abandonment, International Social Work 2019, Vol. 62/1, 271 ff.

J

JOUSTRA TJIBBE/DE GRAAF BEATRICE/HOUTZAGERS BERT-JAN, Summary, Consideration, Analysis, Conclusions, Recommendations and Summary. Committee investigating intercountry adoption, 2021

K

KAISER EDMOND, La marche aux enfants, 1979

KÖRBER SANDRO, Thoughts on the right to know one's biological siblings in adoption law, FamPra.ch 2/2023, 380 ff.

KÖRBER SANDRO/STEINEGGER HEIDI, Knowing who you descend from is more than a fundamental right, FamPra.ch 1/2020, 59 ff.

L

LAMMERANT ISABELLE, Adoption and human rights in comparative law, 2001

LAMMERANT ISABELLE/HOFSTETTER MARLÈNE, Adoption: at what price? For ethical responsibility of host countries in international adoption, 2007

LEUKART ANDREAS, The practical consequences of the right to know one's own ancestry – Which cases require a rethink of Swiss family law?, AJP 2009, 584 ff.

LOIBLE ELVIRA C., The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice, Childhood 2021, Vol. 28/4, 477 ff.

LOIBLE ELVIRA C./SMOLIN DAVID M. (ed.), Facing the Past: Policies and Good Practices for Responses to Illegal Intercountry Adoptions, Eleven International Publishing, 2024

M

MIGNOT JEAN-FRANÇOIS, International adoption around the world: reasons for the decline, Population & Societies 2015/2, No. 519, 1 ff.

MOUNTS BRANDY/BRADLEY LORETTA, Issues Involving International Adoption, The Family Journal: Counselling and Therapy for Couples and Families 2020, Vol. 28/1, 33 ff.

P

PFAFFINGER MONIKA, Secret and open forms of adoption, effects of information and contact on the balance in the adoption triangle, 2007

DIES., Commentary on Art. 264 ff. ZGB, in: BÜCHLER ANDREA/JAKOB DOMINIQUE (eds.), Kurzkommentar ZGB, Swiss Civil Code, 2nd edition, 2018

DIES., Polyvalent Child Welfare – Methodological Reflections on the Welfare of the (Adopted) Child, ZSR 4/2011, 417 ff.

Ibid., The Past Future of Adoption: The Impact of Biotechnologies on an Old Institution, Ancilla Iuris (anci.ch) 2016, 49 ff.

DIES., On secret and (semi-)open adoptions, FamPra.ch 1/2008, 1 ff.

PICHÉ ANNE MARIE, New Social Practices. The Ethical Transformation of International Adoption, New Social Practices 2012, Vol. 25/1, 260 ff.

R

REUSSER RUTH/SCHWEIZER RAINER, The right to know one's own ancestry from the perspective of international and national law, ZBJV 136/2000, 605 ff.

S

SCHICKEL-KÜNG JOËLLE/HAUSER SONJA, Commentary on Art. 78 IPRG, in: GROLIMUND PASCAL/LOACKER LEANDER D./SCHNYDER ANTON K. (eds.), Basler Kommentar, Internationales Privatrecht, 4th ed. 2021 (cited as BSK IPRG-SCHICKEL-KÜNG/HAUSER)

SELMAN PETER, Statistics for host states, 2022

SMOLIN DAVID M., Child Laundering: How the intercountry adoption system legitimises and incentivises the practices of buying, trafficking, kidnapping, and stealing children, The Wayne Law Review 2006, 113 ff.

Ibid., Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption, 2010

Ibid., Intercountry Adoption as Child Trafficking, Valparaiso University Law Preview 2004, Vol. 39, 281 ff.

Ibid., The Case for Moratoria on Intercountry Adoption, 2021

Ibid., The Legal Mandate for Ending the Modern Era of Intercountry Adoption, 2022

Ibid., The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals, Seton Hall Law Review 2005, Vol. 35/2, 403 ff.

Ibid., Twenty years of the Hague Convention: a Statistical Review, 2015 T

TRIBOWSKI CHRISTIAN, Children for Trade? Transnational adoptions and a Colombian scandal, 2013

V

VAN ASCH VERONIQUE, Panel of experts on intercountry adoption, Final report, 2021

VAN IJZENDOORN MARINUS H./BAKERMANS-KRANENBURG MARIAN J., Intercountry Adoption is a Child Protection Measure. Some Comments on “Investigating Historical Abuses” by Balk, Frerks and De Graaf (2022), Journal of Applied History 2022, 1 ff.

VAN LOON J.A.H., Report on the adoption of children from abroad, 1990

VAN STEHEN GONDA, Adoption, Memory, and Cold War Greece. Kid pro quo?, 2019

W

WITTNER KELLY M., Curbing Child-Trafficking in Intercountry Adoptions: Will International Treaties and Adoption Moratoriums Accomplish the Job in Cambodia?, Washington International Law Journal 2003, Vol. 12/2, 595 ff.

List of materials

FEDERAL MATERIALS

Report of the Federal Council of 11 December 2020: Illegal adoptions of children from Sri Lanka: historical review, search for origins, perspectives. Report of the Federal Council in fulfilment of Postulate 17.4181 Ruiz Rebecca of 14 December 2017 (cited in Federal Council Report 2020)

Report of the Federal Council of 18 June 2021: Hague Maintenance Convention – possibilities for implementation in Switzerland, in fulfilment of Postulate 19.3105 Vogler "Protecting families and relieving the burden on communities. Examining the ratification of the Hague Maintenance Convention".

Report commissioned by the Social Welfare Office of the Department of the Interior of the Canton of St. Gallen, The Mediator. Child adoptions from Sri Lanka by Alice Honegger and the supervision of the authorities (1979 to 1997), November 2018 (Author: BITTER SABINE)

ZHAW report, Adoptions of children from Sri Lanka in Switzerland 1973–1997. On the practices of private agencies and the authorities. Historical analysis concerning Postulate Ruiz 17.4181 on behalf of the Federal Office of Justice. Summary of the report, January 2020 (Authors: BITTER SABINE/BANGERTER ANNIKA/RAMSAUER NADJA) (cited report ZHAW 2020)

ZHAW report, Evidence of illegal adoptions of children from ten countries of origin in Switzerland, 1970s to 1990s: Inventory of documents in the Swiss Federal Archives on behalf of the Federal Office of Justice, November 2023 (Authors: RAMSAUER NADJA/BÜHLER RAHEL/GIRSCHIK KATJA) (cited as ZHAW report 2023)

Message on the amendment of the Swiss Civil Code (adoption) of 28 November 2014, 2014-1874, 14.094, Bbl 2015 877 (cited message revision)

Recommendations of the Working Group on Searching for Origins to Support Adopted Persons, Conference of Cantonal Justice and Police Directors, October 2023 (cited report Working Group "Searching for Origins")

Interim report of the expert group on international adoption to the Federal Office of Justice, March 2023 (author: PFAFFINGER MONIKA) (cited as interim report)

FOREIGN MATERIALS

Defence for Children, ECPAT Netherlands, International Child Development Initiatives and CoMensha "The Suspension of Intercountry Adoption by the Netherlands", Submission to UN Day of General Discussion, June 2021

Final Report from the Panel of Experts on Intercountry Adoption, 14 August 2021, Belgium

The Report from the Committee on the Investigation of Intercountry Adoption, February 2021, Netherlands

Final Report, Interministerial Mission on Illegal Practices in International Adoption in France, October 2023, Paris/France

INTERNATIONAL MATERIALS

1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 25 Years of Protecting Children in Intercountry Adoption, 1993–2018, 2018

General Assembly United Nations, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 2018, A/HRC/37/60

General Assembly United Nations, Report on the Special Rapporteur on the sale of children, child prostitution and child pornography, General Assembly, 2016, A/HRC/34/55

Hague Conference on Private International Law, Accreditation and Adoption Accredited Bodies, Guide to Good Practice, Guide No. 2, 2012

Hague Conference on Private International Law, Conclusions & Recommendations (C&R) adopted by the Fifth Meeting of the Special Commission on the Practical Operation of the 1993 Adoption Convention, SC 1993 Adoption, 2022

Hague Conference on Private International Law, Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Fact sheet No. 3 "Improper Financial and other Gain", Draft July 2022

Hague Conference on Private International Law, Preventing and Addressing Illicit Practices in Intercountry Adoption, Fact Sheet No. 3 for the 2015 Special Commission meeting, HCCH 2015

Hague Conference on Private International Law, The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide to Good Practice, Guide No. 1, 2008 (cited as HCCH 2008, Guide No. 1)

Terre des Hommes, Adopting the rights of the child. A study on intercountry adoption and its influence on child protection in Nepal, 2008

UNICEF (International Child Development Centre, United Nations Children's Fund, innocenti digest, Florence – Italy), Intercountry Adoption, 1998

UNICEF (Swiss Committee for UNICEF), Child Trafficking and Switzerland, 2007

United Nations Human Rights Treaty Bodies/United Nations Human Rights Special Procedures, Joint statement on illegal intercountry adoptions, 2022