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Can Intercountry Adoption Survive the Human Rights Turn?

The Legitimisation of Intercountry Adoption within the Human Rights
Framework: A Comparative Discourse Analysis of
Sweden and the Netherlands

Author: Priya Schweiger

Supervisor: Dr. Alejandro Fuentes, Senior Researcher, Raoul Wallenberg Institute (RWI)

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Abstract

This thesis examines the changing legal and public discourse surrounding intercountry adoption in Sweden and the Netherlands. Thereby it compares how these two receiving states, operating under the same international legal framework, including the 1993 Hague Convention, the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC), construct the legitimacy of intercountry adoption. It focuses primarily on the role of the best interests of the child principle, alongside competing understandings of child protection, family, identity and justice. Through a comparative Critical Discourse Analysis (CDA), the thesis investigates how intercountry adoption has historically and politically been legitimised as a humanitarian child-protection measure within international human rights discourse, and how contemporary human rights concerns increasingly challenge that legitimacy. The findings show that both national inquiries question whether intercountry adoption can, at a systematic level, satisfy the best interests of the child due to recurring structural irregularities, insufficient legal certainty and unequal power relations between sending and receiving states. Although both countries conclude that the historical intercountry adoption system facilitated serious human rights violations, they differ in their assessment of its future. The Netherlands considers these structural deficiencies as incompatible with the best interests of the child and is phasing out intercountry adoption. Sweden, by contrast, continues to regard intercountry adoption as a legitimate child-protection measure in exceptional circumstances, if responsibility is transferred from private intermediaries to the state. The thesis thus contributes to a more nuanced understanding of the interpretation of the best interests of the child in intercountry adoption under international current human rights perspectives.

Keywords: Intercountry Adoption, Hague Adoption Convention, Best interests of the Child, ECHR Right to Family Life, Sweden, Netherlands, Adoption Ethics

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This thesis is dedicated to everyone whose lives have been touched by Intercountry adoption. May we believe that a better future can only be built through a better understanding of each other's experience.

Table of Abbreviations

AC	Adoptionscentrum
BIA	Bureau Interlandelijke Adoptie
CDA	critical Comparative Discourse Analysis
CRC	(United Nations) Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HCIA	Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)
ICA	Intercountry Adoption
NGO	Non-Governmental Organisation
SOU	Swedish Government Official Reports (Statens offentliga utredningar)
UN	United Nations
MFoF	Swedish Family Law and Parental Support Authority (Myndigheten för familjerätt och föräldraskapsstöd)

1 Introduction

One of the stories that has remained with me since childhood, is the story of the “Foundling Fox”. It tells of a young fox who loses his mother and is found by another fox, who raises him as one of her own. The story reaches its happy ending when another fox remarks that they can no longer distinguish him from the other cubs. As a child, I loved this story so much. The story talks about the pursuit of true belonging and acceptance. Years later, I ask myself, what does true belonging mean? Is it reached when you have adapted well enough? What if, despite every effort to belong, there will always remain parts that make you different, that distinguish you from the other cubs? What if becoming a full part of a family can never fully erase the losses you have experienced and where you come from?

These questions form parts of a new emerging debate surrounding intercountry adoption and have shed light on issues such as identity, culture, and questioning what may constitute the best interests of the child within the system of intercountry adoptions. Testimonies from adoptees and official inquiries in different European countries have challenged the long-standing humanitarian narrative of adoption, by exposing how much intercountry adoption became susceptible to large-scale irregularities such as child trafficking. In 2024, the Netherlands became the first European receiving country to decide to phase out intercountry adoption altogether, while Sweden published the findings of its Adoption Commission in June 2025 and may, status quo, pursue a reform-oriented and state-based approach for future intercountry adoptions. These developments form the starting point of this thesis. The question arises what has led these two countries, which are culturally and legally similar and which were both investigating past intercountry adoption practises, to take different directions? Against this background, this thesis examines how states operating under a shared international human rights framework, the Hague Convention on Cooperation in Respect of Intercountry Adoption and the European Convention on Human Rights, frame and (de)legitimise intercountry adoption as a child-protection measure. Through a comparative discourse analysis of Sweden and the Netherlands, it explores how interpretations of the best interests of the child have shaped legal reasoning, public debate, and ultimately the contemporary status of intercountry adoption as a child protection measure under international human rights principles.

Definitions

The study adopts the terminology “intercountry adoption” as defined by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (hereinafter also Hague Convention).¹ Intercountry adoption is understood as the permanent legal transfer of a child from the child’s state of origin to a receiving state, where a new legal parent-child relationship is established unlike other forms, such as foster children.²

Another terminology that needs to be clarified is the use of “sending states” and “receiving states” which follows the definition used in the Hague Conference on Private International Law in the Hague Convention Art. 2 and 17. Sending states or “states of origin”, generally refer to countries from which children are adopted, while receiving states are those in which prospective adoptive parents reside.³

1.1 Research Question and Conceptual Framework

This thesis examines the competing public and institutional discourse on intercountry adoption within Sweden and the Netherlands. The central aim is to assess the understanding of the reasons that inform and legitimise ICA as a child protection measurement in respect of the ‘best interests of the child’ -framework, which is *paramount* to each adoption procedure according to Article 21 of the Convention on the Rights of the Child. Historically, states of origin have predominantly consisted of lower-income countries in the Global South and, to a lesser extent, eastern European states such as Romania. On the other hand, receiving states have largely been wealthier western countries. Although this distinction reflects the predominant pattern and is widely adopted in the literature, some countries, such as China, have at different times functioned as both states of origin and receiving states.⁴ Under this premise, the thesis understands that intercountry adoption is a phenomenon that cannot be analysed solely through a legal discourse, but situates itself in the broader historical, political, and social structure, which is characterised by unequal distribution of power resources, knowledge, and colonial histories.⁵

¹ Convention on Protection of Children and Co-operation in Respect of Intercountry adoption 1993 (1870 UNTS 167).

² *ibid.*

³ *ibid.*

⁴ David M Smolin, ‘Intercountry adoption and Poverty: A Human Rights Analysis’ (2007) 36 Capital University Law Review 413.

⁵ Joan Heifetz Hollinger, *Adoption Law and Practice* (1988)

The theoretical framework builds upon the theory of social constructivism and postcolonial critique. Social constructivism assumes that social phenomena are historically and culturally produced rather than naturally given.⁶ Such concepts entail perceptions of family, child protection, legality, and morality, which are constructed through political institutions, legal frameworks, and the public discourse. Building on Makau Mutua's postcolonial critique, the thesis recognises that human rights are not universal and are often interpreted in a political or cultural vacuum, shaped by dominant western conceptions of law and individualism.⁷

1.2 Methodology

This thesis adopts a critical socio-legal research approach using the methodology of a comparative Critical Discourse Analysis (CDA). CDA especially examines how language transports knowledge and power and how these interactions construct social realities.⁸ It is especially suitable in a human rights discourse where divergent understandings of rights are constructed.⁹ The study applies a diachronic research design, comparing the current developments in Sweden and the Netherlands regarding intercountry adoption and further identifies the divergence in historical and societal developments.

1.2.1 Selection of country-specific Analysis

This country selection provides a particularly relevant comparison as both operate within broadly similar institutional and legal frameworks as major receiving states in international adoption, which are situated in the northern part of Europe. Both are bound by the United Nations Convention on the Rights of the Child (UNCRC), the 1993 Hague Convention, and the regional Human Rights frameworks of the Council of Europe and the European Court of Human Rights. Despite these shared legal commitments, similar welfare traditions and almost identical political pathways in the context of intercountry adoption, both countries responded differently regarding their assessment of the future legitimisation of intercountry adoption. This divergence is the basis for applying a comparative discourse analysis, which is examined through the official documents of the inquiries into intercountry adoptions in the respective countries, parliamentary debates, and national media responses on the topic. These are sites where meaning and public understandings are also constructed. The comparative analysis

⁶ Peter L Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Penguin Group 1966); Michel Foucault, *Archaeology of Knowledge* (Routledge 2002).

⁷ Makau Mutua, *Human Rights* (University of Pennsylvania Press 2002).

⁸ Norman Fairclough, *Critical Discourse Analysis : The Critical Study of Language*. (Longman 1995).

⁹ Eva Erman, *Human Rights and Democracy : Discourse Theory and Global Rights Institutions*. (Ashgate, cop 2005).

therefore seeks to answer the proposed research question of how different interpretations of the best interests of the child may have contributed to divergent national responses to intercountry adoption today.

1.2.2 Interviews

To complement the discourse on the report and media coverage, two semi-structured expert interviews were conducted. The interviewees were two experts with lived experience in the field of intercountry adoption, and the interviews were conducted in an open format. The first interview was conducted with Lynelle Long, founder of Intercountry Adoptee Voices (ICAV), among the biggest adoptee network worldwide. The second interview was held with Tobias Hübnette, a Swedish researcher whose work has extensively examined transnational adoption, race, and identity in the Swedish context. These two interviews were used to clarify ongoing developments and provide expert perspectives, not as part of the analysis itself but complementary and informative. Both actors are not only present in current discourse in intercountry adoption but played a significant role in the emergence of the debate through their long-term involvement.

1.2.3 Declaration on the use of AI

The empirical material analysed in this thesis includes sources published in English, Swedish and Dutch. All non-English materials and sources have been translated into English for analytical purposes, using digital machine translation tools such as *Google Translate* and *DeepL.ai*. To transcribe the conducted interviews, the artificial intelligence tool *Otter.ai* was employed. I acknowledge the use of artificial intelligence tools for language editing and proofreading (*Grammarly*, *ChatGPT*) and retain full responsibility for the content and its findings in accordance with the EMA guidelines.

1.2.4 Researcher's Positionality

Following feminist epistemology and decolonial research, this thesis acknowledges that knowledge production is always situated, rather than entirely objective.¹⁰ Instead of assuming a position of neutrality, the research makes explicit the perspective from which the analysis is conducted. This does not intend to privilege personal experience over empirical evidence, but rather to make transparent the assumptions that inevitably shape this research.¹¹ In this regard,

¹⁰ (Haraway, 1988; Hooks, 1989; Kilomba, 2008).

Hooks, B. (1992) *Eating the Other: Desire and Resistance*, Boston, South End Press.

¹¹ Anna ChuChu Schindele, 'Adopting a Position—Analysing, Theorising and Decolonising Transnational and Transracial Adoptions in Sweden' (2022) 52 *The British Journal of Social Work* 4853.

as an intercountry adoptee, my lived experiences and my social realities surrounding intercountry adoption, contribute to a deeper understanding of the realm of questions explored throughout the analysis. This thesis explicitly situates the researcher's perspective while maintaining a scholarly distance through the critical engagement with multiple sources and different viewpoints.

1.3 Limitations

This research is conducted within the scope and limitations of a master's thesis. It does not seek to provide a doctrinal interpretation of the international legal framework governing intercountry adoption but examines how these legal principles are interpreted and mobilised within a political and public discourse. The comparative analysis is limited to the cases of Sweden and the Netherlands, which represent two contemporary, yet divergent European approaches to intercountry adoption, without claiming to reflect the full diversity of debates across Europe. Furthermore, the discourse analysis is based on a selected body of official documents, and newspaper articles and is therefore not exhaustive. Finally, while the thesis considers the perspectives of key stakeholders, it does not aim to provide a comprehensive account of their experiences, which would require empirical methods beyond the scope of this study.

2 From a Humanitarian Practice to a Human Rights Cause

The legal role and promise of a full adoption still portray adoption as a construction of an “as-if-family”, which resembles as closely as possible a traditional understanding of an ideal nuclear family.¹² In one of the earliest sociological analyses of modern adoption, Mary Kathleen Benétargues, argues that a function of adoption is also to compensate for the decline of extended kinship networks that are associated with modernisation in Western societies.¹³ The concept of the child thus varies across cultures: children may be understood as individuals requiring special protection which are distinct from other members of society, or as social beings whose care and upbringing are shared within the wider community.¹⁴ The way in which adoption is used in different societies may reveal its value and its ideological position towards family formation. Adoption can also reflect different concepts of filiation and the degree of flexibility that comes with establishing family links.¹⁵ It may therefore not be directly related to the desire for a child in connection with a parental project, as is the case in the contemporary Western understanding of adoption. For example, in African and South Pacific societies, adoption practices also serve to secure inheritance, as well as to express the strength of existing bonds of friendships of communal care.¹⁶ In many societies child circulation is a practise based on the understanding that a child belongs not only to the biological parents, but also to the community that collectively contributes to the child's care.¹⁷ Temporary care by relatives or community members is therefore not necessarily regarded as abandonment or a relinquishment of parental responsibility.¹⁸

Today, it is universally understood that adoption, and especially intercountry adoption, solely serves the needs of the child.¹⁹ To resolve a potential conflict of interest, the international framework sets out the principle that underlies and is paramount in every adoption: The best interests of the child principle (plural). This principle shall be protected and assisted by state

¹² René AC Hoksbergen and JJF Laak, ‘Changes in Motivation for Adoption, Value Orientations and Behavior in Three Generations of Adoptive Parents’ (1998) 2 Adoption Quarterly.

¹³ Mary Kathleen Benét, *The Politics of Adoption* (Free Press 1976) 15.

¹⁴ Doris Chateauneuf, Anne-Marie Piché and Carmen Lavallée, ‘Focus on Adoption: Changes, Evolution and Areas of Tension’ [2024] *Enfances, Familles, Générations*, 1.

¹⁵ Doris Chateauneuf, Anne-Marie Piché and Carmen Lavallée, ‘Focus on Adoption: Changes, Evolution and Areas of Tension’ [2024] *Enfances, Familles, Générations*, 1.

¹⁶ *ibid.*

¹⁷ Chandan Bose, ‘How Does Law Prescribe Circulation of Children? Understanding Different Kinds of Movement Within the Adoption Law in India’ (2022) 43 *Journal of Family Issues*.

¹⁸ *ibid* 1723–1724.

¹⁹ Peter Conn, *Adoption: A Brief Social and Cultural History* (Palgrave Pivot 2013) 92.

authorities throughout the process of adoption. How this is understood will be explained in Chapter 3.

2.1 Politics of Compassion: The History of Intercountry Adoption

With the end of World War II, society understood that there was a need for a new imagination of solidarity. The emergence of human rights after these devastating time was an immediate response.²⁰ The genesis of today's international adoption system can be traced back to the first humanitarian efforts led by American families who adopted European orphans, through the Displaced Persons Act in 1948.²¹ The agenda of human rights was especially advanced through the conception of children's rights as human rights. This became the main motivation for establishing intercountry adoption.²² International adoption was developed as a child welfare measure against the abuse of children in the form of child labour or child trafficking.²³ After the 1970s the combined effects of feminist movements and reproductive rights, which led to fewer unwanted pregnancies, constituted a decrease in available adoptable children in the domestic countries.²⁴ In addition, there was a rise in fertility issues. These included physiological issues, as well as the delay in founding families and the use of assisted reproduction.²⁵ Amid the Club of Rome report "Limits to Growth (1972)", some also choose to refrain from procreation and instead choose adoption.²⁶ Thus, in the early 1970s, many adoptive parents' wishes were to change the world for the better.²⁷

2.1.1 The first Global 'Welfare' Institution

An increase in international adoption was also tied to China, which opened its doors to intercountry adoption in 1992, due to its one-child policy. Enacted in 1979, the one-child policy also promoted a preference for boys.²⁸ Furthermore, in India, unwed motherhood was still stigmatised, which led to many young women relinquishing their children.²⁹ Intercountry

²⁰ Peter Selman, 'Intercountry adoption in Europe 1998-2007: Patterns, Trends and Issues' *Social Policy Review 21: Analysis and Debate in Social Policy*, 2009 (2009).

²¹ Bojan Perovic, 'From Stalemate to Solutions: Rethinking Intercountry adoption through Vulnerability Theory and Technological Innovation' (2025) 94 Mississippi Law Journal 923, 927.

²² Sonja Van Wichelen, 'Moving Children through Private International Law: Institutions and the Enactment of Ethics' (2019) 53 Law Soc Rev 671, 699

²³ *ibid.*

²⁴ Elvira Loibl, *Facing the Past: Policies and Good Practices for Responses to Illegal Intercountry adoptions* (1st ed, Boom Uitgevers Den Haag 2024) 260.

²⁵ Chateaufeuf, Piché and Lavallée (n 14) 2.

²⁶ Loibl (n 24) 239.

²⁷ *ibid* 242.

²⁸ Jordan Bunn, 'Regulating Corruption in Intercountry adoption' (2019) 52 Vanderbilt Journal of Transnational Law 685, 689.

²⁹ Arun Dole, 'Inside Story of an Adoption Scandal' (2008) 39 Cumberland Law Review 131, 27.

adoption steadily increased with children moving mostly from the Global South (Africa, Asia, Latin America) and poorer regions within Europe (Romania, Bulgaria, Greece, Poland) to wealthier countries in the Global North.³⁰ Another wave of increase in the number of intercountry adoptions was in the 1980s, due to the AIDS crisis in African countries.³¹ In this regard, UNICEF campaigns promoted narratives depicting the myriads of orphans supposedly waiting to be adopted, as they were left in institutions or on the streets.³² At the time however, UNICEF defined orphans as children under 18 years of age, who had lost at least one parent to the cause of death, meaning that the numbers of available children were exaggerated.³³ The evolution of intercountry adoption as a humanitarian and developmental aid practise also evolved as a result of various media articles, such as “*What will become of Africa’s Aid orphans*”.³⁴ What constituted the first wave of intercountry adoption is a politics of compassion. Images of suffering were made available through various media outlets, such as in the Vietnam War. Operation Babylift was, and is until now, the biggest mass overseas evacuation of children as part of a humanitarian rescue mission.³⁵ Financed and coordinated by the US, around 2500 - 3000 Vietnamese children were brought, mostly to the US, but also to Canada, Australia and Europe in the final days of the Vietnam War.³⁶ The operation was marked by a tragedy when the first evacuation flight crashed and killed around 180 passengers, including the children.³⁷ Although presented as a humanitarian rescue mission, ‘Operation Babylift’ was controversial from its beginning. Critics argued that it served as a public relations mission to improve the United States’ image after the Vietnam War.³⁸ Yale psychologist Edward Zigler warned that the operation was “*ripping [the children] right out of their culture, their community*”.³⁹ The aspect of culture was rarely addressed from these global perspectives in the early discourse in intercountry adoption.⁴⁰ Another point in history where a military

³⁰ Peter Selman, ‘Intercountry adoption in Europe 1998-2007: Patterns, Trends and Issues’ *Social Policy Review 21: Analysis and Debate in Social Policy*, 2009 (2009).

³¹ Bunn (n 28) 689.

³² Loibl (n 24) 259.

³³ Johanna Oreskovic and Trish Maskewt, ‘Red Thread’ or Slender Reed: Deconstructing Prof. Bartholet’s Mythology of International Adoption’ (2008) 14 Buffalo Human Rights Law Review 71, 78.

³⁴ Greene Melissa Fay, ‘What Will Become of Africa’s Aids Orphans?’ (22 December 2002) <<https://www.nytimes.com/2002/12/22/magazine/what-will-become-of-africa-s-aids-orphans.html>> accessed 1 May 2026.

³⁵ Kathleen Ja Sook Bergquist, ‘Operation Babylift or Babyabduction: Implications of the Hague Convention of the Humanitarian Evacuation and Rescue of Children’ (2009) 52 International Social Work 621.

³⁶ *ibid* 622.

³⁷ *ibid*.

³⁸ *ibid*.

³⁹ *ibid* 623.

⁴⁰ Perovic (n 21) 943.

intervention led to large number of adoption abroad, was the Korean War.⁴¹ The international community intentionally bypassed in these instance official legal procedures that surrounded intercountry adoption at that time, given the life-threatening circumstances in the country of origin.⁴² As a result, many Korean adoptees were illegally adopted and trafficked through the means of international adoption.⁴³ As seen in this cases, intercountry adoption was and continues to be part of foreign policy and subject to diplomatic relationships. Western states, as hegemonial powers, have also widely supported and enabled the institution of intercountry adoption through the narrative of ‘rescue’ and thereby enacted forms of political interventions.

2.1.2 When Protection became Profit

Many care institutions were set up in countries such as Cambodia or Nepal, with the principal motif of helping individual children from poor regions.⁴⁴ However, research has shown that besides the good intentions, many of these ideas fell for profit in one way or another.⁴⁵ Families were sometimes paid to send their children to the thus-far, empty institutions. Later, with an increasing number of children, these institutions had to be sponsored by foreign investments to be kept alive.⁴⁶ Consequently, institutions substantially changed local structures and often created dependencies that did not exist before.⁴⁷ In the late 1980s, “orphan tourism” and voluntourism started to become popular, leading to devastating effects on the entire project of intercountry adoption, as the last resort and thus a legitimate child welfare measurement.⁴⁸ In the 2000s celebrities such as Angelina Jolie and Madonna transported the message into the world, that there is an of abundance of available children who ‘simply’ need to be picked up and thereby rescued from dire circumstances and fewer opportunities.⁴⁹ Intercountry adoption, through these depictions of poverty, devastation and increasing dependency, has been repeatedly represented as “the only hope” for abandoned children from the Global South.⁵⁰ The way in which intercountry adoption is framed has changed since, as it increasingly became an

⁴¹ Elvira Loibl, *Facing the Past: Policies and Good Practices for Responses to Illegal Intercountry adoptions* (1st ed, Boom Uitgevers Den Haag 2024) 240.

⁴² Loibl (n 28) 240.

⁴³ *ibid* 58.

⁴⁴ Karen Smith Rotabi, Jini L Roby and Kelley McCreery Bunkers, ‘Altruistic Exploitation: Orphan Tourism and Global Social Work’ (2017) 47 *British Journal of Social Work* 648, 651.

⁴⁵ *ibid*.

⁴⁶ *ibid* 551.

⁴⁷ Karen Smith Rotabi, Jini L Roby and Kelley McCreery Bunkers, ‘Altruistic Exploitation: Orphan Tourism and Global Social Work’ (2017) 47 *British Journal of Social Work* 648, 650–654.

⁴⁸ Rotabi, Roby and McCreery Bunkers (n 44).

⁴⁹ Sarah Hae-In Idzik, ‘Saving Asian Orphans: Colonialism, Conditional Belonging, and Logics of Charity in Transnational Adoption Rhetoric’ (2025) 111 *Quarterly Journal of Speech* 535, 547.

⁵⁰ Loibl (n 24) 261.

accepted part of family planning in Western countries.⁵¹ With the acceptance of this form of alternative family formation, the narrative also shifted in the Western world from the ethos that every child has a right to have a family, to a similarly important claim of every couple's right to have a child.⁵² The 2000's period reflected a generation of prospective parents that were willing to fight for their right to found a family, as there were supposedly an abundance of children in need, according to various campaigns.⁵³ This consequently led to the assumption that, these actors have underestimated the extent, through which they directly contributed to the conditions that facilitated abuse within the system of intercountry adoption. The abuse of the system is a result of the 'demand' which was created through those financial means that were involved in order to adopt a child.⁵⁴ Historical examples of such abuses include also the so-called "paper orphans", whereby a supply of children was deliberately made available for intercountry adoption in predominantly economically developing countries.⁵⁵

The year 2004 historically marked an overall peak of intercountry adoptions, with over forty-five thousand children that were adopted transnationally on a global scale.⁵⁶ The 'marketisation' became an inherent phenomenon that began to rule the power balance between the countries of origin and receiving countries.⁵⁷ Afterwards, the number steadily declined.⁵⁸ In 2010 there was another increase in international adoption due the earthquake in Haiti, a humanitarian catastrophe which resulted in many orphans.⁵⁹ Despite existing legal safeguards prohibiting intercountry adoptions during humanitarian crises, several countries constructed an urgent moral responsibility to rescue children by facilitating their immediate adoption abroad.⁶⁰ Critics at that time, recalled the event of the 2004 tsunami in Sri Lanka, when many children were wrongly adopted abroad, assuming they were orphans, even though they sometimes had living parents or relatives.⁶¹ In response to the lessons learned from that disaster, the United Nations Inter-Agency Working Group developed the *Guiding Principles on Unaccompanied*

⁵¹ Perovic (n 21) 930.

⁵² Loibl (n 24) 239.

⁵³ Selman, 'Intercountry adoption in Europe 1998-2007: Patterns, Trends and Issues' (n 17) 14.

⁵⁴ Hoksbergen and Laak (n 12).

⁵⁵ JHA Van Loon, 'Report on Intercountry adoption' *Proceedings of the Seventeenth Session (10–29 May 1993), Tome II: Adoption – Co-operation*, Tome II (Hague Conference on Private International Law 1993) 175.

⁵⁶ Peter Selman, 'The Rise and Fall of Intercountry adoption in the 21st Century' (2009) 52 *International Social Work* 575, 576.

⁵⁷ Nigel Cantwell, 'The Sale of Children and Illegal Adoption Institution' (Terre des Hommes Netherlands 2017).

⁵⁸ Peter Selman, 'Global Statistics for Intercountry adoption: Receiving states and States of Origin 2004–2022' (Hague Conference on Private International Law 2022).

⁵⁹ Peter Selman, 'Global Statistics for Intercountry adoption: Receiving states and States of origin 2004–2022' (Hague Conference on Private International Law 2022).

⁶⁰ Loibl (n 24) 234.

⁶¹ Neil Boothby and others, 'Children and the 2004 Indian Ocean Tsunami: Evaluation of UNICEF's Response in Sri Lanka (2005–2008)' (United Nations Children's Fund (UNICEF) 2009) Evaluation Report.

and Separated Children in 2004 to improve safeguards for children in humanitarian emergencies, including to prohibition of immediate adoptions of unaccompanied children.⁶² However, in the early 2000's adoptions abroad were said to be a "win-win"-situation for all parties involved.⁶³ This is presumably granted through love and gratitude from all people that hold the so-called "adoption triad" together: the birth families or communities, who selflessly give up their children to enable them a better life, the adoptive parents that are driven by the desire to found a family or provide humanitarian assistance, and the adoptive child who finds a permanent loving home.⁶⁴ Notably, the narration of rescuing, which dominated the discourse, can only extend in one direction through this understanding, and true mutual exchange is merely impossible. The conception of the 'win-win-situation' may have thus failed to acknowledge that conflicts are also an inherent part of the triad.⁶⁵

2.1.2.1 The Adoption Triad

The "adoption triad" or also "adoption triangle" is used as a concept in various adoption literature to describe the major stakeholders involved in the adoption project.⁶⁶ The term emphasises the interconnectedness and complex relationship among these three parties: birth mother, adoptee and adoptive parents, which shall align within the best interests of the adoptee (the child).⁶⁷ This framework represents the dynamics of this relationship and portrays adoption not only as a legal transaction, but as a complex social process of negotiations in the adoption project.⁶⁸ The representation of adoption as an act of unconditional love, where every part of the project profits equally, which is portrayed in many adoption agency folders and general narratives, is contested through the triangle, because it depends on the central figure of the 'humanitarian saviour' and the 'passive waif'.⁶⁹ As mentioned above, the structural inequalities

⁶² Inter-Agency Working Group on Unaccompanied and Separated Children, 'Inter-Agency Guiding Principles on Unaccompanied and Separated Children' (United Nations High Commissioner for Refugees (UNHCR) 2004) 37 <<https://www.unhcr.org/media/inter-agency-guiding-principles-unaccompanied-and-separated-children>> accessed 3 July 2026.

⁶³ See K. Smith Rotabi, N.F. Bromfield, *From Intercountry Adoption to Global Surrogacy. A Human Rights History and New Fertility Frontiers* (Routledge, 2016), 3 and the sources quoted.

⁶⁴ Loibl (n 24) 259.

⁶⁵ Maria Masłowiec and Michał Kowalski, 'Adoption and the European Convention on Human Rights Law - Mapping Problems and Challenges' [2024] *Forum Prawnicze* 17.

⁶⁶ Margaret Purvine, 'The Adoption Triangle: Sealed or Opened Records: How They Affect Adoptees, Birth Parents, and Adoptive Parents' (1978) 24 *Social Work* 174.

⁶⁷ Yngvesson, B. (2010b) 'Transnational adoption and the trans nationalization of motherhood: Rethinking abandonment, adoption and return', in C. Wendy and M. Jane Maree (eds), *The Globalization of Motherhood*, London, Routledge.

⁶⁸ Purvine (n 66).

⁶⁹ Loibl (n 24) 264.

between these parties, challenge the notion of a ‘win-win situation’ as the benefit for one party may come at the expense of the others involved.

When we speak about the adoption triad, what is widely missing in the real picture is the birth mother/parents.⁷⁰ Due to their silence in the discussion, as they ‘selflessly’ gave up their children, birth parents occupy a position within the adoption triad with limited political agency. Although, mothers are continuously portrayed as voluntarily relinquishing their children, prominent scholars in this field argue, that such claims must be considering the structural realities surrounding poverty, inequality, power imbalance and most importantly, the question of choice.⁷¹

While the adoption triad reflects a more complex reality, it still misses the other major stakeholders which are involved in the intercountry adoption process: the orphanage, the administrative or state bodies. These hold important narratives as we have acknowledged that intercountry adoption is part of a wider global politics. The receiving and sending countries can have vastly different motifs and interests in the process that are not reflected in the adoption triad. Thereby, the adoption triad seems in my opinion, too simplistic for reconstructing what eventually influences the assessment of the best interests of the child, that legitimises the system of intercountry adoption. In this thesis various parties and adoption stakeholder, play a crucial role in reconstructing the bigger picture and narratives that evolve around intercountry adoption today. Against the background of the historical development that led to the marketisation of intercountry adoption, as discussed in this chapter, the question ultimately arises as to the extent the institution of intercountry adoption is truly ‘selfless’ and which national interests or motivations inform it.

2.1.3 Constructing a Humanitarian Identity

France and Sweden, for example, are known as European countries to have used international adoption in the self-branding of tolerance and open-mindedness throughout the decades.⁷² The national investment of providing ‘humanness’ through adoption is one explanation why adopted children have been vastly distinguished from other categories of immigrants in the national discourse, like asylum seekers and migrants or unaccompanied minors.⁷³ While

⁷⁰ Van Wichelen (n 22) 698.

⁷¹ Atamhi Cawayu and Hari Prasad Sacré, ‘Can First Parents Speak? A Spivakean Reading of First Parents’ Agency and Resistance in Transnational Adoption’ (2024) 8 *Genealogy* 8, 3.

⁷² Loibl (n 24) 262.

⁷³ Richey Wyver, *Exploring Swedish International Adoption Desire: Transracial Bodies and Nation-Building in the ‘Goodest’ Country* (Springer International Publishing 2023) 97–100.

immigrants from non-Western countries are often presented as a threat to Western values today, the benevolence with which adopted children are welcomed could be seen as paradoxical.⁷⁴ A selective politics of compassion can imagine itself as generous and hospitable to others, while maintaining strong national interests.⁷⁵ In intercountry adoption, due to its racialised component, practises of concealment and secrecy are of the past, and the cultural background is widely celebrated today.⁷⁶ In the same instance however, the adoptees' struggles with racism and alienation within the host country are often not addressed. Anthropologist Barbara Yngvesson describes this phenomenon as "colour-blind multiculturalism".⁷⁷ On the other hand the assimilation of adoptees into the culture of the receiving state, is seen as the most successful factor of any intercountry adoption and is in direct contradiction with the previous national narrative of openness and celebration of differences.⁷⁸ This can create an inherent conflict of values within the project of intercountry adoption.

As Bell Hooks coined it, cultural curiosity often takes the form of a selective consumption of cultural differences, in which a desirable aspect is celebrated, but the lived experience that comes by embodying that culture remains marginalised.⁷⁹ In this sense, the adopted child becomes not only the object of humanitarian rescue, but also a symbol through which receiving societies perform ideals of multiculturalism, tolerance, and racial inclusivity.⁸⁰

One of the main differences between immigrants living in Western society and internationally adopted children is, that adopted children are made 'white' by assimilating into the dominant culture through their placement in predominantly white adoptive families.⁸¹ This process also effectively shifts responsibility for their integration from the state to the family.

The family thereby functions as granting them the status of 'one of us' as part of the dominant culture in the receiving state.⁸² This could change, when the adoptee grows up in that same society and leaves the family, that granted them the status of a 'non-immigrant'. The self-image that expresses compassion towards the world through adoption is not inherently problematic. Often, these motivations stem from real issues revolving around limited resources to support children locally in states of origin, especially children with health issues and disabilities. The

⁷⁴ *ibid* 116.

⁷⁵ Loibl (n 24) 263.

⁷⁶ *ibid* 265.

⁷⁷ Yngvesson, 'Transnational Adoption and European Immigration Politics: Producing the National Body in Sweden' (2012) 19 *Indiana Journal of Global Legal Studies* 327.

⁷⁸ H David Kirk, *Shared Fate; a Theory of Adoption and Mental Health*. (Free Press of Glencoe 1964).

⁷⁹ b hooks, 'Eating the Other: Desire and Resistance'.

⁸⁰ Loibl (n 24) 265.

⁸¹ *ibid* 107.

⁸² Tobias Hübinette, Catrin Lundström and Peter Wikström, *Race in Sweden: Racism and Antiracism in the World's First 'Colourblind' Nation* (1st edn, Routledge 2023) 109–110.

narrative, however, of the ‘generosity’ of the humanitarian aid through international adoption, implies to have forgotten the prior unequal exchange. This framing may erase the political and historical conditions, that led to the poverty and relinquishment of those children in those communities, which are predominantly from the Global South.⁸³

2.2 The Turning Point in the History of Intercountry Adoption

After the establishment of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption in 1993, the numbers of intercountry adoptions increased tremendously until 2004, by around 42% in receiving countries.⁸⁴ After 2004 intercountry adoptions steadily decreased.⁸⁵ China is a symbolic example of this trend, where intercountry adoptions amounted to around 13400 in 2004, and only 3500 in 2015.⁸⁶ One reason is that the two-child policy in 2015 led to a decrease in children being relinquished and more children being adopted domestically.⁸⁷ This also meant that fewer children were adopted abroad. Consequently, since the 21st century, it can be observed that more intercountry adoptions are taking place between European countries.⁸⁸

With these developments, a new discourse emerged, that shifted from the saving children-narrative, that dominated the first decades, to children for children’s sake.⁸⁹ Intercountry adoption became less glorified, and adoptees themselves brought the topic to the forefront of public debates.⁹⁰ Through investigating their own adoption histories, adoptees uncovered evidence of irregularities in their own adoptions, previously thinking, that adoption abuses were incidental and restricted to individual cases.⁹¹ To realise that they themselves had been victims of systematic failures within the system, is often described as causing a ‘dissonance’ in adoptees own belief system.⁹² A growing numbers of experts in this field thus increasingly

⁸³ Loibl (n 24) 266.

⁸⁴ Peter Selman, ‘Trends in Intercountry adoption: Analysis of Data from 20 Receiving Countries, 1998–2004’ (2006) 23 *Journal of Population Research* 183, 183.

⁸⁵ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), ‘N° 278: Intercountry adoption in Transition: 2023 Statistical Trends Amid Rising’ (International Social Service (ISS) 2025) ISS/IRC Newsletter No 278 12.

⁸⁶ Peter Selman, ‘Global Statistics for Intercountry adoption: Receiving states and States of origin 2004–2022’ (Hague Conference on Private International Law 2022) 3.

⁸⁷ Loibl (n 24) 27.

⁸⁸ Chateauneuf, Piché and Lavallée (n 14) 2.

⁸⁹ Loibl (n 24) 251.

⁹⁰ Ingrid Bosseldal, ‘Traces in the History of Swedish Transnational Adoption—A Diffractive Mapping through the Voices of Adoptees and Their Parents’ (2024) 8 *Genealogy* 67 ; Shila Khuki De Vries, Sarah Janaki Peshala De Vos and Kristen E Cheney, ‘“If We Do Not Speak Out, No One Else Will”: Adoptee Activism and Its Impact on Intercountry adoption in The Netherlands’ (2025) 9 *Genealogy* 133.

⁹¹ De Vries, De Vos and Cheney (n 90) 7.

⁹² Shila Khuki De Vries, Sarah Janaki Peshala De Vos and Kristen E Cheney, ‘“If We Do Not Speak Out, No One Else Will”: Adoptee Activism and Its Impact on Intercountry adoption in The Netherlands’ (2025) 9 *Genealogy* 133, 7.

questioned intercountry adoption as a child-protective measure and argue that it may even, in some cases, undermine, rather than fulfil children's rights.⁹³ Past cases that surfaced through investigative reports, were marked by irregularities and coercive practises, despite the implementation of the Hague Convention in 1933.⁹⁴ Some scholars argue that the Hague Convention is, as it operates under current conditions, not only a countermovement to abuse in child trafficking but also a double movement.⁹⁵ By controlling the market, a market has been accepted and justified, by its governing rules through the Hauge Convention.⁹⁶

The future debate seems unclear, and the growing scrutiny of intercountry adoption, followed by more restrictive regulations, coincides with the expansion of other forms of family formation. Surrogacy, for example, developed at a similar pace as international adoption, but without the same safeguards in place.⁹⁷ New emergency situations following armed conflicts, in Ukraine, Palestine, Sudan and other regions, intensified debates about emergency evacuations and stricter safeguards against illegal adoption practises during emergencies.⁹⁸ Since 2010 until today, many inquiries regarding past intercountry adoptions have been published and appointed through governments, both in receiving countries and countries of origin.⁹⁹ The investigative focus has been the widespread issues such as corruption, criminality, child theft and human trafficking within the transnational adoption field.¹⁰⁰ Many countries have therefore suspended or stopped ICA under international pressure or domestic investigations, such as in Guatemala, Ethiopia, China, Vietnam, Romania or Bangladesh.¹⁰¹ Some receiving countries are phasing out intercountry adoption, such as the Netherlands and Switzerland.¹⁰² Chile released a report on intercountry adoption in 2018 and another one in 2025.¹⁰³ South Korea's investigation began in 2024, which led to a *Truth and Reconciliation Commission* as a result.¹⁰⁴ The most well-known investigation became the 'Joustra Committee'

⁹³ Wouter Vandenhoe, 'Triangulating Children's Rights Law: Which Future for Intercountry adoptions in Europe?' [2020] *European Yearbook on Human Rights* 2020 161.

⁹⁴ Loibl (n 24) 47.

⁹⁵ Van Wichelen (n 22) 699.

⁹⁶ *ibid.*

⁹⁷ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 85) 7.

⁹⁸ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 85).

⁹⁹ Loibl (n 24) 254.

¹⁰⁰ *ibid* 294.

¹⁰¹ *ibid* 288.

¹⁰² Tobias Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (2025) 9 *Genealogy* 77, 2.

¹⁰³ *ibid* 201, 120-124.

¹⁰⁴ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 85) 7.

in the Netherlands in 2021.¹⁰⁵ Sweden released its results from the Adoption Commission in 2025.¹⁰⁶ Both will be analysed in depth in Chapter 4.

In 2022, a UN Joint Statement against Illegal Intercountry Adoption was drafted, which reaffirms a commitment towards accountability and transparency within the international community, demanding redress for the many illegal adoptions and the suffering that the abuse of the system produced for those affected.¹⁰⁷ These developments of reckoning with the past, reevaluate the role of intercountry adoption within the broader system of child protection by placing greater emphasis on family preservation, subsidiarity, and eventually the strengthening domestic care solutions.¹⁰⁸ The national initiatives are unfolding along with a new wave to improve ethical safeguards in ICA, for example, through the *HCCH Toolkit on preventing and addressing illicit practices* in 2023.¹⁰⁹ However, all the inquiries were initiated by individual court cases or media revelations, following illicit or illegal adoptions and were brought forward predominantly through the active involvement of adoptees. The shift is indicative of states increasingly taking full responsibility for intercountry adoption rather than private agencies.¹¹⁰ The central question is whether intercountry adoption remains compatible with the best interests of the child at all and what explains the divergent responses adopted by governments?

2.3 Conclusion

Intercountry adoption was established after World War II between the Global North as predominantly receiving countries, and the Global South as countries of origin. The historical developments of intercountry adoption demonstrate that it was never a static or private child welfare measure as intended but rather developed and connected to the wider geopolitical landscape. The representations framed intercountry adoption in the early period as an unquestioned humanitarian aid response by portraying children as in need of rescue and countries of origin as largely incapable of adequately caring for and meeting the child's needs.¹¹¹ For countries of origin, foreign adoption has provided practical and instant solutions

¹⁰⁵ Commissie Onderzoek Interlandelijke Adoptie, 'Report of the Committee Investigating Intercountry adoption (Unofficial Translation)' (2021) 45.

¹⁰⁶ Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (n 102) 2.

¹⁰⁷ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 85) 7.

¹⁰⁸ *ibid* 10.

¹⁰⁹ Working Group on Preventing and Addressing Illicit Practices in Intercountry adoption, 'Toolkit for Preventing and Addressing Illicit Practices in Intercountry adoption' [2023] The Hague Conference on Private International Law (HCCH).

¹¹⁰ Tobias Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (2025) 9 *Genealogy* 77, 3.

¹¹¹ Laura Briggs, *Somebody's Children: The Politics of Transracial and Transnational Adoption* (Duke University Press 2012).

for states of origin to ‘outsource’ or alleviate burdens in state welfare.¹¹² While foreign adoption can be seen as a political decision around childcare, it can simultaneously call into question the legal responsibilities of states to prioritise their child welfare and monitor child protection. Building on these historical foundations, of how intercountry adoption emerged and was narrated by dominant discourses, the next chapter examines how the system has been facilitated and protected through international instruments such as the Hague Convention and the Child’s Right Convention from 1989, as well as regional systems within Europe. By analysing how these instruments interpret and apply the best interests of the child principle within the context of international adoption, the chapter provides a basis to explain how it is eventually understood and justified by various stakeholders in the project. These principles surrounding international adoption are then examined within the European Human Rights framework governing intercountry adoption, focusing on the larger context of the Council of Europe instead of the European Union.

3 Instruments that facilitate and protect

Intercountry Adoption in a Globalised World

Greece would be the first paradigmatic case in the aftermath of World War 2, where not only isolated instances of abduction were found but international adoption as part of a mass movement.¹¹³ By the 1980’s it was widely recognised that illegal adoptions created complex and serious human rights violations, and the absence of cross-border regulations and international agreement indicated the need for a new legal instrument.¹¹⁴ Former Secretary General from the HCCH, Hans van Loon, stated in the preparatory work for the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, that the ‘social reality’ as well as the understanding of ‘social norms and values’ underlining intercountry adoption changed significantly since its emergence.¹¹⁵ The growing demand for intercountry adoption after the 1960’s led also to the emergence of numerous organisations and networks that facilitated adoptions, in the absence of clear guidelines and effective oversight.¹¹⁶

¹¹² Vandenhoe (n 93) 722.

¹¹³ Gonda AH Van Steen, ‘The Face of Forced Consent in Postwar Adoptions from Greece: What Does It Look Like?’ (2025) 9 *Genealogy* 126, 2.

¹¹⁴ Van Loon (n 55).

¹¹⁵ JHA Van Loon, ‘Note on the Desirability of Preparing a New Convention on International Co-Operation in Respect of Intercountry adoption’ *Proceedings of the Sixteenth Session, Miscellaneous Matters, Tome I* (1988) 165.

¹¹⁶ *ibid* 541–543.

Also, private intermediaries started to organise adoption mediation due to humanitarian reasons mentioned in the previous chapter.¹¹⁷ This created a new environment, where the lack of oversight, gave also rise to abuses of the system for child protection, such as falsified documentation, financial gains or improper parental consent.¹¹⁸ The increasing numbers in receiving and sending states, meant that adoption became a significant international legal issue and that it was no longer isolated cases of cross-border placements. Consequently, the absence and fragmentation of existing legal rules, also created legal uncertainty in various forms, such as the status of the child or the procedural requirements to ensure that the project is in the best interests of the child.¹¹⁹ This meant that there was a need and an urgency for establishing a frameworks that would regulate intercountry adoptions.

3.1 Hague Convention

The Convention's drafting process started already in 1960's and was a direct follow-up of the Declaration on the Rights of the Child of 1959, which later became the legally binding Convention on the Rights of the Child in 1989.¹²⁰ The Hague Permanent Bureau acknowledged the insufficient existing rules that governed intercountry adoption at that time and the Member States of the HCCH adopted at the Seventeenth Session the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCIA)* in 1993 which entered into force in 1995.¹²¹ Today 107 states have ratified the convention.¹²² In the drafting process, representatives from over 50 states, both sending and receiving countries, had the chance to advocate for their interests.¹²³ The preparatory works discuss the objectives and purposes for the establishment of the convention. According to the report, the convention was designed to achieve the following principals: First, the establishment of a legally binding standard in intercountry adoption and thus recognition of the different legal systems.¹²⁴ Secondly, to ensure intercountry adoption serves the child's best interests and their fundamental rights and create legal standards that protected children from adoption through fraud, monetary

¹¹⁷ *ibid* 77.

¹¹⁸ David M Smolin, 'Intercountry adoption and Poverty: A Human Rights Analysis' (2007) 36 Capital University Law Review 413.

¹¹⁹ Van Loon (n 55) 117.

¹²⁰ Onyója Momoh, 'Intercountry adoption: Preventing and Addressing Illicit Practices' in Janeen M Carruthers and Bobby WM Lindsay (eds), *Research Handbook on International Family Law* (Edward Elgar Publishing 2024) 32.

¹²¹ Hague Adoption Convention.

¹²² 'HCCH | #33 - Status Table' (*Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry adoption*) <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>> accessed 9 July 2026.

¹²³ Bunn (n 28) 695.

¹²⁴ Van Loon (n 55).

reward or duress.¹²⁵ Third, to establish communication and coordinating channels between authorities in sending and receiving states and lastly, to promote confidence for cooperation between sending and receiving countries.¹²⁶

The main objective of the 1993 Hague Convention, as set out in Article 1, is to establish safeguards, ensuring that intercountry adoptions take place in the best interests of the child and with respect for their fundamental rights, while preventing the abduction, sale and trafficking of children.¹²⁷ The convention thus, sets a minimum standard protection in order to comply with ethical principles of human rights and gives direct effect to the CRC in the preamble. For this reason, the convention is widely regarded as a human rights instrument. Article 2(1) states that the convention applies to “*a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") [...]*” for the purpose of (2) creating a “*permanent parent-child relationship*”.¹²⁸ In Article 4, the requirement for adoptions is set out, including that (2(b)) it has been determined the possibilities for a placement within the state of origin and has been given due consideration that an adoption abroad is in the child’s best interests.¹²⁹ While not explicitly mentioned, but widely interpreted is, that the Convention implies intercountry adoption is preferred over children in institutions as the preamble states “*intercountry adoption may offer the ‘advantage’ of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.*” The preparatory work of the Hague Convention notes that it was assumed that the standard response to abandoned children in many societies and by governments, was to institutionalise them as the primary solutions to care, given the limited will and financial meanings of countries of origin.¹³⁰ This observation may have played a significant role in how intercountry adoption is viewed also within the legal framework of the Hague Convention, that places importance on the solution within a permanent family, rather than an institution, as this is regarded to be in the best interests of the child.

The Hague Convention is additionally an instrument of private international law, meaning that its main function is to facilitate and enable the cooperation between states, rather than discipline.¹³¹ However, as the explanatory document states, the convention does not intent to “*serve as a uniform law of adoption*”, but as a judicial administrative cooperation.¹³² The

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ Hague Adoption Convention.

¹²⁸ *ibid* art 2.

¹²⁹ *ibid* art 4.

¹³⁰ Van Loon (n 115).

¹³¹ Van Wichelen (n 22) 677.

¹³² Purvine (n 66) 15.

placement between individuals is thereby considered a matter of private law or civil law. However, the solution to adopt children abroad is also regarded, as a measure of ‘social’ protection where state parties are intervening and thus it is also a matter of public law.¹³³ The distinction between the public and private parties are not always strictly visible, which will be more clear within Chapter 4.¹³⁴ Because the convention enables, unlike other international legal instruments, specific legislation, there are also possibilities for sanctions by non-compliance of the convention by national governments.¹³⁵ This may open a gate-way to address certain questions around legal remedies and accountability, which is however a topic outside of the scope of this thesis. The agreement of the Hague Convention additionally contains various protocol such as the Guides on Good Practise, that were published in 2008 and 2013, which ultimately form the principles on the implementation of the convention.¹³⁶

3.1.1 Best interests of the Child

The movement of a child across border may represent a loss that is beyond birth family, since it entails a movement from a different natural, cultural or ethnic environment, as well as a linguistic environment.¹³⁷ Through Article 16 HCIA it is established that *after* the child’s adoptability is satisfied *(b) due consideration is given to the child’s upbringing and to his or her ethnic, religious and cultural background.*¹³⁸ The best interests principle is of *paramount* importance within ICA, as laid down within Article 21 of the CRC and presents a stronger consideration in the specific context of adoptions.¹³⁹ In its core it means that it cannot be balanced against competing interests, including the wish of prospective parents. However, the question arises, what if the child is unable to express those needs themselves because it is very young or it has been relinquished, as in many adoption cases? What are the *best interests* weighted against alternatives? These questions form central parts of the legal analysis in the process, that must be taken into consideration in justifying adopting a child internationally, removing it from its former environment. This is a reason why the best interest of the child principle is of ‘paramount’ instead of ‘primary’ importance as within the CRC, only in the

¹³³ Laura Carpaneto and Senior Research Fellow, ‘Cross-Border Placement of Children in the European Union’ (European Parliament, Directorate-General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs 2016) Study PE 556.945 6.

¹³⁴ *ibid* 8,9.

¹³⁵ Sarah Sargent, ‘Suspended Animation: The Implementation of the Hague Convention on Intercountry adoption in the United States and Romania’ (2004) 10 *Tex Wesleyan L Rev* 351, 353–354.

¹³⁶ Hague Conference on Private International Law (HCCH), ‘Information Brochure - The Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry adoption’ (2013).

¹³⁷ Momoh (n 120) 52.

¹³⁸ Hague Adoption Convention art 16.

¹³⁹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3(1)

context of intercountry adoption.¹⁴⁰ While this principle is generally recognized within this framework, it is challenging to assess it under real life conditions, especially in individual cases.¹⁴¹ The explanatory report highlights, that the best interest of the child means, that it entails the existence of other interests therein too, that need to be taken into consideration, but not as decisive factors. Other interests are for example the interest of biological parents or prospective adoptive parents.¹⁴² This principle is as we can see highly debated and thus form a central part of the discourse on the legitimisation of intercountry adoption also within this thesis.

3.1.2 Principle of Subsidiarity

The second ethical principle underling adoptions, that informs the concept of the best interests of the child principle, is the principle of subsidiarity, that sets forth intercountry adoption should be seen as the *last* resort in child protection under the CRC Article 21 (b) “*inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin*”.¹⁴³ ‘Subsidiarity’ as a term is however, not mentioned in neither CRC or HCIA but describe the preferential order of placement for a child.¹⁴⁴ Only the Guide to Good Practise from the Hague Convention gives an explanation, defining it as following: “*Subsidiarity means that States Party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered.*”¹⁴⁵

Intercountry adoption is thus considered a residual measure, which implicate that the CRC gives preference to domestic care options, which may even include institutional care, over the transfer of the child abroad through intercountry adoption. Regarding alternative care, Article 20(3) says: “[..] such care could include, *inter alia*, foster placement, *kafalah* of Islamic law,

¹⁴⁰ Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child’ (United Nations Committee on the Rights of the Child 2013) para 38.

¹⁴¹ Loibl (n 24) 83.

¹⁴² Gonzalo Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry adoption (1993 Adoption Convention)* (1994) para 49.

¹⁴³ Convention on the Rights of the Child 1989 (1577 UNTS 3) art 21.

¹⁴⁴ Sarah-Vaughan Brakman, ‘The Principle of Subsidiarity in the Hague Convention on Intercountry adoption: A Philosophical Analysis’ (2019) 33 *Ethics int aff* 207, 209.

¹⁴⁵ Hague Conference on Private International Law (HCCH), ‘The Implementation and Operation of the 1993 Hague Intercountry adoption Convention: Guide to Good Practice No. 1’ (Hague Conference on Private International Law 2008) para 47.

adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background".¹⁴⁶ The article thus acknowledges that 'continuity' in a child's upbringing is an important consideration. This stands in contrast to the Hague Convention's emphasis on providing a 'permanent' family, which gives preferential status to a family-based upbringing. This dimension of continuity within the CRC places particular importance on the aspect of preserving the child's cultural identity as a primary consideration in determining the child's best interests.

Some argued during the drafting process to implement "community of origin" as a wording to strengthen the subsidiarity principle, meaning giving preference to a community as a larger concept than family, first.¹⁴⁷ This was however rejected later. What is important here, is that subsidiarity in the convention means that institutional care should be considered as a last resort for a child in 'need of a family'.¹⁴⁸ To simplify, if a child cannot be placed in domestic adoption, intercountry adoption can be considered, to prevent institutionalisation of a child, which would be the least preferred solution as read in the Hague Convention.¹⁴⁹ A critical question that arises in this context is: if national solutions are widely rejected, whose interests are ultimately served by intercountry adoption?¹⁵⁰

3.1.3 Processing Adoption within the Hague Framework

The Convention ensures a system in which all Contracting States work together to ensure the protection of children by establishing cooperation-agreements. This is done through intra-state procedures.¹⁵¹ The first step is to designate a central authority to fulfil its obligations.¹⁵² The central authority can then authorize so-called 'accredited bodies' (Art. 10-12), which are liable for the adoption process as long as it meets "[...] *the requirement of integrity, professional competence, experience and accountability of that state*" as well as, "*are qualified by their ethical standards and by training or experience to work in the field of intercountry*

¹⁴⁶ CRC art 20.

¹⁴⁷ Van Loon (n 55).

¹⁴⁸ Gonzalo Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry adoption (1993 Adoption Convention)* (1994).

¹⁴⁹ Hague Conference on Private International Law (HCCH), 'Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2' (Hague Conference on Private International Law 2013) 30.

¹⁵⁰ Van Wichelen (n 22) 701.

¹⁵¹ Hague Adoption Convention, arts 1(b) and 7.

¹⁵² *ibid* art. 6.

adoption”.¹⁵³ This means the Hague Convention permits private bodies or agencies to facilitate intercountry adoptions under specific conditions.¹⁵⁴ These accredited bodies may only pursue ‘non-profit objectives’ as laid down in Article 11 HCIA. Article 32 of the convention repeats the underlying ethical principle that (1) “*no one shall derive improper financial or other gain from an activity related to intercountry adoption*”.¹⁵⁵ The exceptions are, only costs and ‘reasonable’ professional fees that are involved in the adoption process. Directors, administrator or employee bodies (3) “*shall not receive remuneration which is ‘unreasonably’ high*”, but are allowed to receive a financial compensation.¹⁵⁶ The Hague Convention fails to give insights as to what could be a ‘reasonable fee’ and which fees are ‘unreasonably high’.¹⁵⁷ This leaves considerable discretion to the Contracting States and the accredited bodies, making it difficult to distinguish legitimate costs, from financial incentives, that contribute to irregularities in practice.¹⁵⁸ What is also high for one agency might be relatively ‘reasonable’ for another, as in the case, for example, with bigger agencies like Holt America.¹⁵⁹ The convention eventually fails to acknowledge the difference in resources between receiving and sending states in this regard. The majority of administrative burden lies, nonetheless often in the sending countries who are equipped with less governmental infrastructure to carry out the tasks of the convention.¹⁶⁰ Ultimately, the convention also explicitly allows “[...] *maintaining control over the numbers of adoption[s] by deciding to work only with a limited number of States and accredited bodies*” and “*choosing to suspend adoptions if a receiving state does not respect the rules of the Convention or the requirements of a State*”¹⁶¹. Therefore, it allows States to limit or suspend intercountry adoption, recognising that receiving states have a considerable influence in determining cooperation and compliance. Revising General Comment no. 19 of the CRC: “*States Parties have an obligation to cooperate with one another in the promotion of universal respect for, and observance of, Human Rights, including the rights of the child. State Parties with resources for international cooperation have an obligation to*

¹⁵³ Hague Adoption Convention.

¹⁵⁴ Bunn (n 28) 696.

¹⁵⁵ Hague Adoption Convention art 32.

¹⁵⁶ *ibid.*

¹⁵⁷ Bunn (n 28) 711.

¹⁵⁸ Hague Conference on Private International Law (HCCH), ‘Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2’ (n 149) 42.

¹⁵⁹ Sébastien Roux, ‘In Their Best interests: Diplomacy, Ethics, and Competition in the French World of Adoption’ (2020) 38 French Politics, Culture & Society 64, 81.

¹⁶⁰ Bunn (n 28) 696.

¹⁶¹ Hague Conference on Private International Law (HCCH), ‘Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2’ (n 149) 42.

provide such cooperation with the aim of facilitating the implementation of children's rights in the recipient State."¹⁶²

3.2 European Normative Framework on Intercountry Adoption

Historically, Europe occupied a dual position within the system of intercountry adoption, as having receiving and sending states.¹⁶³ During the turn of the century several Eastern European countries, especially Romania, Bulgaria and Russia were significant countries of origin. Romania rapidly more or less ended intercountry adoption in 2005, which was seen as influenced by the European Union in order for Romania to accede to the EU.¹⁶⁴ All European states ratified the Hague Adoption Convention.¹⁶⁵ Today, Europe is predominantly a region of receiving states, with only a limited number continuing as sending states such as Bulgaria, Hungary and Ukraine.¹⁶⁶ Over the last years, there has been a very steep decline about 90% in intercountry adoptions to Europe.¹⁶⁷ Even though many countries have reconsidered their policies towards intercountry adoption, there had been no recent fundamental debate on the EU-level on intercountry adoption.

3.2.1 The Best Interests of the Child in the European Human Rights Framework

Within the Council of Europe, a treaty was established in 1967 and reformed in 2008 which is the European Convention on Adoption of Children (European Adoption Convention).¹⁶⁸ This framework applies to adoptions both domestically and across the borders and does not fundamentally distinguish between the two. There are two provision which are exclusively addressing intercountry adoption, that is Article 12 and 15, who concern information exchange between state parties.¹⁶⁹ In addition to provision that are similar to the CRC and HCIA, such as adoption can only be granted by competent authorities through Article 3, or adoption must be in the best interests of the child, the treaty covers explicitly the nature of the sex and adopters in Article 7. Article 7 states that national law must permit adoption by two persons of 'different sex'. In addition, the minimum age difference between adopted person and the adopter is

¹⁶² Committee on the Rights of the Child, 'General Comment No. 19 (2016) on Public Budgeting for the Realization of Children's Rights (Art. 4)' (United Nations 2016) CRC/C/GC/19.

¹⁶³ Selman, 'The Rise and Fall of Intercountry adoption in the 21st Century' (n 53).

¹⁶⁴ *ibid* 590.

¹⁶⁵ 'HCCH | #33 - Status Table' (n 122).

¹⁶⁶ Peter Selman, 'Global Statistics for Intercountry adoption: Receiving states and States of origin 2004–2022' (Hague Conference on Private International Law 2022) 3.

¹⁶⁷ Selman, 'Global Statistics for Intercountry adoption: Receiving states and States of origin 2004–2022' (n 54).

¹⁶⁸ European Convention on the Adoption of Children (Revised) 2008 (CETS No 202).

¹⁶⁹ *ibid*.

regulated in Article 9.¹⁷⁰ Sweden and the United Kingdom for example, withdrew from the European Adoption Convention in 2003 due to allowing same-sex couples do adopt under their national jurisdiction.¹⁷¹ The Netherlands on the other hand became party of the revised convention.¹⁷² The revised convention extended provision by 7(2) allowing adoption by same sex couples. When it was amended in 2008, the adoption process requires additionally today the consent of the father in most cases, as well as trying to strike a better balance between the child's right to know their origin and the right of the biological parents to stay anonymous through Article 22.¹⁷³ The 1967 European Adoption Convention largely protected secrecy in adoptions and was thereby not seen as serving the best interests of the child anymore.¹⁷⁴ This development was majorly influenced by the ECtHR judgment *Odièvre v France* (2003).¹⁷⁵

3.2.1.1 The European Adoption Convention

The European Convention on the Adoption of Children was established as a response to social and legal developments in Europe at that time and to harmonise different national approaches.¹⁷⁶ Over the years it gradually aligned with the CRC and the Hague Convention. The European Adoption Convention also prioritises the care by a family, instead of institutionalisation, and its aim is also to prevent the sale and trafficking of children.¹⁷⁷ However, the European Convention is less influential than the HCIA as it has only been ratified by ten out of 46 Member States of the Council of Europe.¹⁷⁸ In 2011 the Council of Europe's Commissioner for Human Rights recommended to amend national legislation and practises to the 1993 Hague Convention and the European Convention of the Adoption of Children and "*ratify these conventions immediately where this has not yet been done*".¹⁷⁹ The European Adoption Convention, similarly as the Hague Convention, requires the 'competent authorities' to be satisfied that an adoption serves the best interests of the child in Article 4(1).¹⁸⁰ However, annulment and revoking the adoption is for example regulated under the framework of the

¹⁷⁰ *ibid.*

¹⁷¹ Council of Europe, 'Explanatory Report to the European Convention on the Adoption of Children (Revised)' (2008) CETS No. 202.

¹⁷² 'Full List - Treaty Office - Wwww.Coe.Int' (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 6 July 2026.

¹⁷³ Council of Europe (n 171) art 5.

¹⁷⁴ 'European Convention on the Adoption of Children (Revised) (CETS No.202) – European Sources Online'.

¹⁷⁵ Council of Europe, 'Explanatory Report to the European Convention on the Adoption of Children (Revised)' (2008) CETS No 202 art 22 <<https://rm.coe.int/16800d3833>> accessed 3 July 2026.

¹⁷⁶ Council of Europe (n 171).

¹⁷⁷ Council of Europe (n 175).

¹⁷⁸ 'Full List - Treaty Office - Wwww.Coe.Int' (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 4 July 2026.

¹⁷⁹ Nigel Cantwell, 'Adoption and Children: A Human Rights Perspective' (Council of Europe Commissioner for Human Rights 2011) CommDH/IssuePaper(2011)2 5.

¹⁸⁰ European Convention on the Adoption of Children (Revised) art 4.

European Adoption Convention, but not the Hague convention which leaves this procedure to Member States.¹⁸¹ The main difference between the Hague Convention and the European Adoption Convention is that it addresses substantive aspects of adoptions laws, that are within the national competence under the Hague Convention, such as age difference and safeguards regarding consent.¹⁸² Assumingly, a possible reason why only a few countries ratified the European Conventions, is that states are more reluctant to ratify a treaty that concerns political sensitive issues. By contrast the Hague Convention focuses primarily on procedural safeguards and the cooperation between States, setting a minimum standard for Contracting States, which makes the convention more broadly acceptable.

3.2.1.2 The Position of the Parliamentary Assembly on Intercountry Adoption

Particularly outspoken on matters regarding international adoption is the Parliamentary Assembly of the Council of Europe (PACE) which adopted a recommendation on intercountry adoption in 2000 and a resolution in 2012.¹⁸³ PACE is especially highlighting the cooperation among Member States to ensure that the principle of subsidiarity and children's rights are respected.¹⁸⁴ A key motivation for the Recommendation 1443 (2000) was growing concern over the commercialisation of intercountry adoption. The Parliamentary Assembly warned against the transformation of intercountry adoption into a market governed by supply and demand, stressing that there is no "right to a child" and that the rights and best interests of the child must remain the primary consideration.¹⁸⁵ In Resolution 1909 (2012), PACE acknowledged the existence of trafficking and other illicit practices within some intercountry adoptions and recommended that states consider suspending intercountry adoptions from countries where serious irregularities had been identified, until adequate safeguards could be ensured.¹⁸⁶

The resolution starts by highlighting that intercountry adoption is only 'one' of several possible care option for children without parental care.¹⁸⁷ It further highlights it is important to handle adoption with 'utmost' care as it concerns children who are coming from traumatising

¹⁸¹ *ibid* 14.

¹⁸² Masłowiec and Kowalski (n 53) 21.

¹⁸³ Parliamentary Assembly of the Council of Europe (PACE), 'Recommendation 1443 (2000): International Adoption: Respecting Children's Rights' (Parliamentary Assembly of the Council of Europe 2000) Recommendation 1443 (2000); Parliamentary Assembly of the Council of Europe, 'Resolution 1909 (2012): Intercountry adoption: Ensuring That the Best Interests of the Child Are Upheld' (Parliamentary Assembly of the Council of Europe 2012) Resolution 1909 (2012).

¹⁸⁴ Parliamentary Assembly of the Council of Europe (n 183).

¹⁸⁵ Parliamentary Assembly of the Council of Europe (PACE) (n 183).

¹⁸⁶ *ibid*.

¹⁸⁷ Resolution 1909 (2012): Intercountry adoption: Ensuring that the Best Interests of the Child Are Upheld para 1.

experiences.¹⁸⁸ It continues by stating that it finds intercountry adoption, in light of ‘recent trends’ in Europe around family formation, to continue to be a possible and ‘interesting’ care option for many children, despite the irregularities.¹⁸⁹ By suggesting Member States should “*strengthening wherever possible to respond to the demand of an increasing number of people willing to adopt.. [..]*” the Council of Europe, appears to adopt a more accommodating approach towards prospective adoptive parents.¹⁹⁰ This marks a notable shift from its earlier warnings against the commodification of intercountry adoption, as it arguably encourages to respond to the growing ‘demand’ for adoption. The use of this language reveals the very tension within the objective of facilitating intercountry adoptions and safeguarding child protection. The word indicates in my opinion, a shift away from the child’s perspective in intercountry adoption towards emphasising European society’s interests at large.

This framing portrays parenthood as an aspiration that ought to be fulfilled. Yet it raises a fundamental question: does a right to adopt exist under international human rights law and, if so, how can such a right be reconciled with the principle that the best interests of the child must be the paramount consideration in every intercountry adoption? More broadly, how is intercountry adoption situated within the wider project of family formation in Europe? The effectiveness of the legal safeguards in Europe within intercountry adoption and thereby the interpretation of the best interest of the child principle in the regional context, could be best examined case-by-case through an analysis of the European Court of Human Rights' jurisprudence under Article 8 of the European Convention on Human Rights. As the Convention contains no specific right to adoption, Article 8 provides the principal framework through which the Human Rights Court assesses whether domestic adoption measures are compatible with the *Rights to Private and Family Life*.

3.2.2 Is there a Right to Adopt under the ECHR?

The European Convention on Human Rights acts as a vital regional human rights mechanism and is of growing importance for establishing adequate safeguards in intercountry adoption.¹⁹¹ In this chapter we investigate, the European Court of Human Rights and its jurisprudence of Article 8, Right to Respect for Private and Family Life, and its interpretation of the best interests of the child within the context of intercountry adoption.¹⁹² Elements such as continuity

¹⁸⁸ *ibid* 2.

¹⁸⁹ *ibid* 6.

¹⁹⁰ *ibid* 19.

¹⁹¹ Masłowiec and Kowalski (n 65).

¹⁹² Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ETS No 5) art 8.

of a child's upbringing or preservation of cultural identity may reveal how the concept of the best interests of the child is operationalised within the regional context.

First and foremost, the European Convention on Human Rights contains no explicit provisions on intercountry adoption. Instead, the European Court of Human Rights has addressed key adoption-related issues under Article 8, including questions of consent, identity rights, and procedural obligations. This jurisprudence raises the broader question of whether, and to what extent, the exercise of a claimed 'right to adopt' falls within the scope of the right to respect for private and family life.¹⁹³ The notion of 'family life' on the one hand entails biological, 'de jure' relationships but also 'de-facto' relationships which includes emotional bonds. 'Family life' may thus also exist between couples and unrelated children who have existing emotional bonds. Thereby the provision protects family member who are biologically unrelated like in adoption cases.¹⁹⁴ The positive obligation of states is in protecting children from harm, not in introducing adoption legislation per se, but by intervening when there is evidence of child abuse.¹⁹⁵ This obligation extends to situations in which there is a risk of such harm through the child's best interests' -lens, that establishes both a substantive and procedural obligation.¹⁹⁶ The ECtHR clearly states that obligations arising from Article 8 in connection with intercountry adoption must be interpreted from the 1998 Hague Convention and the 1989 UN CRC.¹⁹⁷ The following analysis adopts the ECtHR's evolutive approach to interpret the Convention as a living instrument and thus reflecting its dynamic role in the protection of human rights.

3.2.2.1 Jurisprudential Assessment

The first landmark case concerning adoption under Article 8 was *Frette v France* (2002), in which the European Court of Human Rights examined whether the French authorities' refusal to authorise the applicant to adopt, pursued a legitimate aim, was justified by law and proportionate under the convention.¹⁹⁸ The court held that adoption is a legal institution governed by domestic statutory law, rather than a fundamental right protected by the convention and thereby does not constitute a fundamental right protected under the convention.

¹⁹³ Carmen Drăghici, 'Adoption and the European Court of Human Rights: From Laissez-Faire to Judicial Law-Making' *Studi in Onore di Claudio Zanghi* (Giappichelli Editore) 279.

¹⁹⁴ Päivi Hirvelä and Satu Heikkilä, 'Right to Respect for Private and Family Life, Home and Correspondence: A Practical Guide to the Article 8 Case-Law of the European Court of Human Rights' (European Court of Human Rights 2022).

¹⁹⁵ *E and Others v the United Kingdom* [2002] ECtHR [31].

¹⁹⁶ Masłowiec and Kowalski (n 65) 27.

¹⁹⁷ Masłowiec and Kowalski (n 65).

¹⁹⁸ *Frette v France* [2002] ECtHR 60168/09.

*“The Court notes that the Convention does not guarantee the right to adopt as such [...] Moreover, the right to respect for family life presupposes the existence of a family and does not safeguard the mere desire to found a family [...]”*¹⁹⁹

The ECtHR stated in this case that the *“the rights of the child set the limits of the right to have children”*²⁰⁰ and that adoption means *“providing a child with a family, not a family with a child”*²⁰¹. However, the applicant argued that refusing to authorise the adoption on the basis of his sexual orientation, as he alleged Article 8 taken in conjunction with Article 14 of the Convention, would constitute an interference with his right to respect for private and family life.²⁰² The court acknowledge that it was partly based on the applicant's homosexuality, but claimed the decisive factor was not the applicant's sexual orientation alone, but that there was no European consensus on adoption by a single homosexual person at that time.²⁰³ The court ultimately held that the refusal to authorise the adoption pursued a legitimate aim and fell within the French State's wide margin of appreciation under Article 8.

Another significant judgment concerning the claimed ‘right to adopt’ is *Pini and Others v Romania* (2004). An Italian couple invoked their rights under Article 8 as they alleged that the Romanian authorities had refused to execute adoption orders by transferring custody of the children to the adoptive parents. The ECtHR recognised that the notion of ‘family life’ under Article 8 may encompass the process of establishing family ties where a legal parent-child relationship has already been created, even if the parties have not yet lived together.²⁰⁴

The court, however, attached a significant weight to the interests of the children in this case, arguing, that the desire to found a family is legitimate but does not prevail over the interests of the children.²⁰⁵ While the adoption proceeding had begun when they were only three years old, by the time of the judgement, the children were eight and nine and clearly expressed their wish to stay in Romania.²⁰⁶ The age considered by the Romanian court to give formal consent was ten, but the court considered their view to be sufficiently mature to give substantial weight. This was because they also had never met the adoptive parents²⁰⁷. The court held that their interests’ lays, in not having imposed upon them, against their own will, to establish emotional

¹⁹⁹ *ibid* 32.

²⁰⁰ *ibid* 36.

²⁰¹ *ibid* 42.

²⁰² *ibid* 28.

²⁰³ *ibid* 36–41.

²⁰⁴ *Pini and Others v Romania [extracts]* [2004] ECtHR 78028/01, 78030/01 [107].

²⁰⁵ *ibid* 154–155.

²⁰⁶ *ibid* 159–160.

²⁰⁷ *ibid* 82.

ties with whom they perceived as strangers.²⁰⁸ The court noted that “*there is no reason in the instant case to cast doubt on the compliance of the adoption orders with domestic legislation or with the relevant international treaties*”.²⁰⁹ Adoptive parents could rely on decisions issued by the Romanian court. However, their right enjoyed no absolute protection, as it would have required to force the children in joining the adoptive parents by Romanian authorities.²¹⁰ The judgment ruled that the right to prospective parents to develop legal ties with their adopted children is hereby overruled by the children’s interests as established by international law instruments such as the Hague Convention and the European Adoption Convention in light of the child's best interests principle.²¹¹

In *Chbihi Loudoudi and Others v Belgium* (2014), the court considered whether Belgium's refusal to authorise the adoption of the first applicant's niece from Morocco constituted a violation of Article 8 of the Convention.²¹² The court held that the refusal to grant a full adoption was in accordance with the legal framework of *kafala* under Islamic law and did not interfere with the child's right to reside in Belgium.²¹³ The ECtHR considered that the child's best interests were best protected by preserving a single legal identity under Islamic law. Alternative forms of legal protection, such as guardianship, would nonetheless remain available for them in order to establish a family.²¹⁴ Although the case concerned *kafala* rather than intercountry adoption as defined under the HCIA, it reflects the broader principles of international child protection, particularly those embodied in the CRC, concerning the preservation of the child's identity and furthermore on respecting the child’s family, cultural and legal framework of the country of origin.²¹⁵

One landmark case that is not directly linked to intercountry adoption but examines the subject of surrogacy arrangement’ within the meaning of adoption laws and Article 8, is *Paradiso and Campanelli v Italy* (2017). The case is particularly significant for its interpretation of ‘de facto’ family life and for illustrating the broader scope of Article 8 in relation to alternative forms of parenthood beyond adoption. The Italian applicants filed a complaint that they were refused the recognition of a legal-parent child relationship, with a Russian child under a surrogacy arrangement, as the child was permanent removed by them by Italian authorities.²¹⁶ Although

²⁰⁸ *ibid* 153.

²⁰⁹ *ibid* 144.

²¹⁰ *ibid* 130.

²¹¹ *ibid* 100, 165.

²¹² *Chbihi Loudoudi and Others v Belgium* [2014] European Court of Human Rights 52265/10.

²¹³ *ibid*.

²¹⁴ *ibid*.

²¹⁵ *ibid*.

²¹⁶ *Paradiso and Campanelli v Italy* [2017] ECtHR [GC] 25358/12.

the Chamber found a violation of Article 8 in 2015, the Grand Chamber reversed that judgment in 2017, holding that Italy had acted within its margin of appreciation in enforcing its domestic prohibition on surrogacy and that there had been no violation of Article 8. Whereas the Chamber held that the relationship between the applicants and the child was sufficiently close to constitute "family life" within the meaning of Article 8, the Grand Chamber reached the opposite conclusion.²¹⁷ It found that, in the absence of any biological ties, the relatively short duration of the relationship, and the fraudulent circumstances surrounding the child's registration in Russia, the applicants had not established the threshold of 'family life'. Accordingly, the case was examined solely under the aspect of the applicants' 'private life'. The grand chamber decided that, although removing the child permanently after several months with the Italian couple was an extreme measure, it followed a legitimate aim and constituted as proportionate, given the circumvention in national laws, but also by referring specifically to the international protection under the Hague Adoption Convention Article 35.²¹⁸ There are two vital aspects of the case that fall under the reasoning of the court to formally handle the case as an illegal adoption case. First, the applicants had registered themselves as the child's biological parents, despite the absence of any biological link.²¹⁹ Although such registration was possible under Russian law, it was regarded as unlawful under Italian law. Secondly, the commercial nature of the surrogacy arrangement reinforced the court's view that the applicants had deliberately circumvented the domestic legal framework governing surrogacy and the establishment of legal parenthood.²²⁰

In *Paradiso v Italy*, the best interests of the child were first examined from a future intended parental care perspective. However, the child was already placed permanently in foster care in another family at that time of the judgement.²²¹ For the Grand Chamber, the decisive consideration was that, in the public interest, states must be able to protect children from trafficking and other illicit practices by enforcing their domestic legal framework governing surrogacy and parenthood. These considerations outweighed the applicants' interests, leading the court to eventually decide that there had been no violation of Article 8.²²² The judgment therefore illustrates the ECtHR's broader tendency to afford states a wide margin of

²¹⁷ *ibid* 165.

²¹⁸ *ibid* 202.

²¹⁹ *ibid* 37.

²²⁰ *ibid*.

²²¹ 'Comments of the ECHR Case of *Paradiso and Campanelli v Italy*' (*European Centre for Law and Justice*, 28 January 2015) <<https://eclj.org/family/echr/comments-of-the-echr-case-of-paradiso-and-campanelli-v-italy-?lng=en>> accessed 4 July 2026.

²²² *Paradiso and Campanelli v. Italy* (n 216) para 202.

appreciation in matters concerning family formation and parenthood.²²³ As the court has consistently reiterated, the Convention does not guarantee a right to found a family through adoption or other alternative means of parenthood.²²⁴

3.2.2.1.1 State Obligations in the Context of Intercountry Adoption

In *Paradiso Campanelli v Italy*, *E.B v France*, *Pini and others v Romania* and several cases the ECtHR denied the general ‘right to adopt’. Article 8 is primarily formulated as a negative obligation, requiring States to refrain from unjustified interference with private and family life. Accordingly, in the context of adoption, a refusal to authorise or recognise an adoption, or to acknowledge the existence of “family life”, must be justified under Article 8(2).²²⁵ The ECtHR has also clearly accepted that children must have a strong say in the definition of their best interests, once they have reached an age at which it could reasonably be considered that they had attained the necessary maturity to express their opinions (*Pini and Others v Romania*). The right however also entails a positive obligation of states which emphasizes the right to have a familial relationship recognised as such. In diverse cases the emphasis lays on legal certainty and status of the child as a main factor within the merits and legal discourse around adoption (*E.B. v France*, *Wagner and J.M.W.L. v Luxembourg*). The protection under Article 8 also covers the right to know one’s origin as well as the circumstances at birth as a vital aspect of one’s identity (*Odeviere v France*). An interesting aspect in the ECtHR is that it also considers and acknowledges the vulnerable position of the birth mother.²²⁶

The ECtHR has consistently recognised that placement in public care must remain a measure of last resort and that, wherever possible, children should be raised within their birth family, as reaffirmed in *H.K. v. Finland*.²²⁷ Similarly, in *Soares de Melo v. Portugal*, the ECtHR held that material poverty alone cannot justify the removal of a child from parental care.²²⁸

When a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited.²²⁹ The mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life, and

²²³ Hirvelä and Heikkilä (n 194) 15.

²²⁴ *Paradiso and Campanelli v. Italy* (n 216) para 141.

²²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms 1950 art 8(2).

²²⁶ Hirvelä and Heikkilä (n 194).

²²⁷ *H.k v Finland* [2006] ECtHR 76987/01.

²²⁸ *ibid*; Parliamentary Assembly of the Council of Europe, ‘Resolution 2049 (2015): Social Services in Europe: Legislation and Practice of the Removal of Children from Their Families in Council of Europe Member States’ (Parliamentary Assembly of the Council of Europe 2015) Resolution 2049 (2015).

²²⁹ *H.k. v. Finland* (n 227) para 155.

national measures preventing such an enjoyment may amount to an interference with the right to private and family life.²³⁰

3.3 Conclusion

In conclusion, the international and European legal framework does not adopt a definitive position on whether intercountry adoption is, per se, in the best interests of the child. But it recognises and regulates the institution of intercountry adoption as a legitimate form of childcare, as reflected in the ratification of the Hague Convention by its Member States and the facilitation through the European Adoption Convention of Children. The European Adoption Convention however is only ratified by a few Member States and thereby less influential than the HCIA. The Hague Adoption Convention places particular emphasis on providing children with a permanent family environment and on strengthening cooperation between states and generally proceeds from the assumption that a permanent family care should be preferred over institutional care. Unlike the Hague Convention, the CRC does not suggest that intercountry adoption should be preferred over institutional care in every circumstance, as continuity in form of cultural identity plays also a crucial factor in the assessment. The European Court of Human Rights further reinforces this approach by placing the child at the centre of its assessment in all cases. The preference of hierarchy of care by a family or institution, are not necessarily clear and the court often affords a wide margin of appreciation to states in this matter. Article 8 ECHR, however, does not create a right to adopt, which is continuously reaffirmed in the jurisprudence. Ultimately, the legitimacy of intercountry adoption under the international and European legal framework depends not on the promotion of adoption itself, but on whether the rights, identity and protection of the child can be effectively guaranteed in accordance with international Human Rights standards. Taken together, these instruments which seek to protect the best interests of the child, simultaneously legitimise the institution of international adoption. However, the balance between these competing understandings is ultimately left to national implementation.

²³⁰ *Strand Lobben and Others v Norway* [2019] ECtHR [GC] 37283/13 [202].

4 Reassessing International Adoption in Europe: A Comparative Analysis of Sweden and the Netherlands

Having traced the historical development of intercountry adoption and the shift in the legal discourse from humanitarian rescue towards children as rights holder, as seen in the context of the European Court of Human Rights, this chapter turns to the country-specific contexts of Sweden and the Netherlands. These countries were selected because both have established official commissions of inquiry, appointed through the state, which gives an explanation about how these countries reassessed the past and insights into what the national specific challenges and debates are. The comparison is particularly relevant because both countries are major receiving states in northern Europe and operate broadly within similar legal and institutional frameworks, including the UNCRC, the 1993 Hague Convention and regional Human Rights instruments such as the ECtHR. Despite these shared legal commitments, similar welfare standards and comparable political pathways through establishing the commissions, the two states have responded differently to the question of their future intercountry adoption system. This divergence forms the basis for the comparative discourse analysis, using the best interests of the child principle as a main tool of assessment. It will examine how the best interests of the child are formulated, negotiated, and narrated within these two national debates, considering the growing recognition of irregularities and deficient structures within the adoption system, by applying a Comparative Discourse Analysis (CDA).

As Eva Erman, a political philosopher argues, Human Rights derive their legitimacy through processes of public and institutional discourse, which is making a comparative discourse analysis a suitable method for explaining how different understandings of rights are constructed and justified.²³¹ This analysis may give answers, as to what aspects lead to a position on the continuation, thereby legitimization or discontinuation, a form of delegitimization of intercountry adoption as a child welfare measurement.

²³¹ Eva Erman, *Human Rights and Democracy: Discourse Theory and Global Rights Institutions*. (Ashgate, cop 2005).

4.1 Sweden: Reconfiguring State Responsibility for Intercountry Adoption

This chapter examines how the best interests of the child are interpreted and applied in the contemporary and historical debates on intercountry adoption in Sweden. The Swedish case study is limited to Volume I of the Swedish Commission of inquiry (SOU 2025:61), which, provides a sufficient and comprehensive basis for this analysis.²³² The discourse analysis draws on the final report together with articles retrieved from the national news outlet *Dagens Nyheter* using the search term "adoption", to examine how the best interests of the child are constructed and invoked within the Swedish discourse. This was chosen because the newspaper published a wide range of article on the topic of intercountry adoption and is one of the largest newspapers in Sweden.

Since 1970's there have been many media reports about unethical adoptions to Sweden and individuals have been politically active in demanding investigations for years.²³³ However, these individuals had limited impact on the public discourse and the political agenda until now. In January, only some weeks before the release of the Dutch state report on intercountry adoption by the so-called *Joustra Committee*, the Newspaper *Dagens Nyheter* started an article series with the title "Children at all costs" ("Barn till varje pris") which resulted in intense debates about intercountry adoption across Sweden.²³⁴ As a direct response to these developments, the Swedish government adopted a proposal to investigate intercountry adoption activities that occurred in Sweden, which was led by Prime Minister Stefan Löfven (a national adoptee himself).²³⁵ It was the first proposal unanimously decided between very different political parties in Sweden.²³⁶ After the latest election, the right-centre coalition led by Prime Minister Ulf Kristersson from the Moderate Party ("Moderaterna") received the final report SOU 2025:61 "*Sweden's international adoption activities - Lessons and the way forward*" ("*Sveriges internationella adoptionsverksamhet – lärdomar och vägen framåt*") in June 2025.²³⁷ The Prime Minister of Sweden has also been a former chairmen of the adoption

²³² Adoptionskommissionen, 'Sveriges Internationella Adoptionsverksamhet: Lärdomar Och Vägen Framåt' (2025) SOU 2025:61 vol 1.

²³³ Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (n 102) 2.

²³⁴ Tobias Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (2025) 9 *Genealogy* 77, 2.

²³⁵ Tobias Hübinette, 'Sweden at a Crossroads: The Struggle for Finding the Truth about Transnational Adoption in the World's Leading Adopting Nation' (2024) 12 *ado* 158, 159 <<https://muse.jhu.edu/article/947399>>.

²³⁶ Tobias Hübinette, 'Sweden at a Crossroads: The Struggle for Finding the Truth about Transnational Adoption in the World's Leading Adopting Nation' (2024) 158, 159.

²³⁷ Adoptionskommissionen, *Sveriges internationella adoptionsverksamhet – lärdomar och vägen framåt*, vol 1, SOU 2025:61 (Regeringskansliet 2025) 123.

agency Adoptionscentrum (AC). AC was founded in 1969 and processed the highest number of foreign adoptions through its organisation and is also the second biggest intercountry adoption association after American Holt worldwide.²³⁸ Other major mediating organisations in Sweden are Children's Friends ("Barnens vänner" BV) or Children Above All ("Barnen framför allt" BFA).

4.1.1.1 Mandate of the Inquiry

In the meeting on the 28th of October 2021 the government appointed Civil Law Professor Anna Singer from Uppsala University as the leading investigator to analyse whether irregularities in connection with intercountry adoption have occurred in Sweden. In 2021 Anna Singer stated in the introduction of the report, that she thought it is a straightforward task and that there were probably no irregularities in connection to foreign adoptions to Sweden.²³⁹

The Commission uses the term irregularities, meaning 'illegal' or 'unethical' adoptions, that include procedures, that provide no basis for assessing the principle of the best interests of the child, which is paramount to each transnational adoption.²⁴⁰ 'Illegal' adoptions are adoptions, which are the result of abuse, such as abduction, sale, human trafficking and other illegal activities,²⁴¹ The Commission understands 'irregularities' as encompassing various forms of unethical and inappropriate conducts by actors involved during the process.²⁴² The report acknowledges that the distinction between illegal adoptions and irregularities is not always clear. However, in assessing the irresponsibility of the actors, the Commission is bound by the legal frameworks and agreements and it is as well considering the prevailing social norms, that existed at that time.²⁴³

The main task was to investigate the occurrence of irregularities and how relevant stakeholders reacted, such as the government, the state authorities, municipalities, private actors and organisations, based on their role and responsibilities.²⁴⁴ This shall ultimately inform guidance for the future international adoptions to Sweden.²⁴⁵ The investigation consisted of many legal experts and different government ministries, but was also accompanied by a reference group. Importantly, the report does not assess the best interests of the child in individual cases, but

²³⁸Hübinette (n 2) 159f.

²³⁹ Adoptionskommissionen, 'Sveriges Internationella Adoptionsverksamhet: Lärdomar Och Vägen Framåt' (2025) SOU 2025:61 vol 1, 92–93.

²⁴⁰ *ibid* 63.

²⁴¹ *ibid*.

²⁴² *ibid*.

²⁴³ Adoptionskommissionen (n 20) 93-94.

²⁴⁴ *ibid* 93.

²⁴⁵ *ibid*.

children as a *group*.²⁴⁶ The basis of the assessment were international conventions and Swedish law at that time of the adoption. During the investigation Anna Singer says, she was approached several times by people who argued that the inquiry is unnecessary, given that alleged irregularities concern past cases and that most adoptees have despite turned out to be well.²⁴⁷ She responded by saying that it is irrespective of the fact that someone has had a good life to investigate, if Human Rights and other rights of a person were violated.²⁴⁸ The report thus clearly states it does not assess ‘good’ intentions but takes into account the ‘spirit’ of that time. The focus of the commission were the ten largest countries from where Sweden adopted based on official statistics. These are South Korea, Colombia, China, Sri Lanka, Chile, Thailand, Vietnam, Poland and Ethiopia.²⁴⁹

Tabell 3.1 Antalet adopterade från de 10 vanligaste ursprungsländerna samt totalt antal adopterade, 1969–2022

Land	1969– 1979	1980– 1989	1990– 1999	2000– 2009	2010– 2019	2020– 2022	Totalt
Korea, rep	4 266	2 569	956	1 023	364	41	9 219
Indien	2 180	3 238	976	516	231	28	7 169
Colombia	599	2 419	1 562	762	335	21	5 698
Kina	0	7	591	3 077	607	2	4 284
Sri Lanka	797	2 273	301	14	8	1	3 394
Chile	940	1 091	88	9	5	0	2 133
Thailand	1 091	204	315	303	179	26	2 118
Vietnam	31	34	1 134	647	69	11	1 926
Polen	220	430	669	243	113	0	1 675
Etiopien	527	158	203	281	107	1	1 277
Summa	10 651	12 423	6 795	6 875	2 018	131	38 893
Totalt antal adopterade	15 803	14 525	9 774	9 670	4 310	420	54 502

Källa: MföF.

Figure 1 Sweden Intercountry adoption from 1969-2022; SOU:2025:61

The numbers in *Figure 1* may not include all intercountry adoption, especially for private adoptions, there are no uniform numbers of intercountry adoptions regarding the report. The statistical trends as outlined above provide the foundation for the discussion in the following sub-chapter about the historical developments and how Sweden became the largest adopting country.

4.1.1.2 Historical Development: Sweden pioneered International Adoption

International adoption came up on the political agenda in Sweden in the early 1960's and Sweden, together with the USA, was the first country that facilitated intercountry adoption after the World War II. This time constituted, as elsewhere, a decline in national numbers due

²⁴⁶ ibid 51.

²⁴⁷ ibid 3–4.

²⁴⁸ ibid 4.

²⁴⁹ ibid 140.

to an increase in social welfare system and other factors. This developments increased the waiting times in national adoptable children, which was around 4-5 years in Sweden at that time.²⁵⁰ The National Board of Health (NIA) has been hesitant in Sweden about establishing intercountry adoption at that time due to racial reasons, as it may be difficult for children with non-Swedish appearance to have a ‘good life’ in Sweden.²⁵¹ As a response, the Swedish parliament (“Riksdag”) argued that this statement lacked factual basis and only provides grounds for discrimination.²⁵² The proponents of international adoption to Sweden argued, that due to the poverty in the ‘third world’ at that time, it may even be a moral obligation to adopt children than have biological one’s.²⁵³ Critiques in the past, have already argued that it may be an inappropriate response to poverty to move children from other countries, as they may have other family members in their country of origin who could care and that it would be a better welfare solution to support the countries themselves rather than adopting children.²⁵⁴ The inquiry eventually concluded to facilitate intercountry adoption to Sweden and that adoptions shall not be restricted on race.²⁵⁵ Mainly the society itself shall support those who seek to adopt, because it was viewed primarily as a private project with a certain amount of support by the state.²⁵⁶ The inquiry at that time stated positively that children were offered in Sweden things through international adoption, that they would not get in their home country, such as a family, education and a safe growing up.²⁵⁷ Childless swedes on the other hand could have children and an increasing understanding of other cultures and countries.²⁵⁸ However, it may be necessary to create campaigns for tolerance of these foreign children.²⁵⁹ Several countries whom Sweden should cooperate in the future were sceptical in the beginning. For example Ethiopian officials expressed their concern that children with dark skin colour may probably be not accepted in the same way as other children in Sweden.²⁶⁰ In the early years it is documented that NIA and AC provided application forms for example where prospective parents could tick besides gender and age also the skin colour of the child.²⁶¹ The reactions

²⁵⁰ *ibid* 142–150.

²⁵¹ *ibid* 142.

²⁵² *ibid*.

²⁵³ *ibid* 143.

²⁵⁴ *ibid* 142.

²⁵⁵ *ibid* 141–144.

²⁵⁶ *ibid* 142.

²⁵⁷ *ibid* 142–150.

²⁵⁸ *ibid*.

²⁵⁹ *ibid*.

²⁶⁰ *ibid* 144.

²⁶¹ *ibid* 148.

were mixed about the existences of such a form, but most people took the option for skin colour.²⁶² Most children coming to Sweden were consequently and still are transracial.²⁶³

4.1.2 Sweden as World's Welfare State

Swedes who have lived or travelled abroad saw the poverty in the world and how children were treated in orphanages and institution.²⁶⁴ In the 1970's intercountry adoption became thus a popular movement in Sweden and an expression of solidarity and as a way to improve the world.²⁶⁵ People who lived abroad helped other families with contacts and tips and the activity of adopting children from the Global South became almost uncontrollable.²⁶⁶ People who worked at the National Board for Intercountry Adoption so called NIA (*"Statens nämnd för internationella adoptionsfrågor"*), the AC and in social service, said that swedes who lived abroad came to Sweden with children without any kind of preparation in Sweden, nor papers in the early 1970's and 1980's.²⁶⁷ It became an accepted practise that people travelled abroad to pick up children which would be handed over to other families when they got home.²⁶⁸ Especially religious missionaries were involved in facilitating intercountry adoption in the beginning, as seen in the Chilean cases for example, in connection with the so-called Pentecostal Movement (a Christian movement).²⁶⁹ The costs for arrival were also typically covered by the Swedish state, thereby contributing to the state's role in facilitating the adoption of those children.²⁷⁰

4.1.2.1 Adoptions beyond State Control?

During the 1973-1979, around 9.000 children were mediated through intercountry adoption to Sweden, while only 5.400 of them through official adoption organisations, the remaining were privately arranged.²⁷¹ The prospective parents stated that they felt frustrated, due to the lengthy processes and felt the selection was also not transparent and unfair, thus choose to adopt privately.²⁷² Private adoptions refer to adoptions that were carried out outside of the authority or authorised adoption organisation and consequently without the approval of the social welfare

²⁶² *ibid.*

²⁶³ Wyver (n 73) 3.

²⁶⁴ Adoptionskommissionen (n 232) 144.

²⁶⁵ *ibid.*

²⁶⁶ *ibid* 144-145.

²⁶⁷ *ibid.*

²⁶⁹ Adoptionskommissionen (n 232) 357.

²⁷⁰ 'Pingstadoption Utreds Som Brott Mot Mänskliga Rättigheter' (*DN.se*, 18 November 2021)

<<https://www.dn.se/sverige/pingstadoption-utreds-som-brott-mot-manskliga-rattigheter/>> accessed 4 July 2026.

²⁷¹ Adoptionskommissionen (n 232) 231.

²⁷² *ibid* 147.

board (NIA).²⁷³ When NIA was confronted with the issue of private adoptions, they stated that mediation of adoptions would be a sensitive task and that ‘society’ (*in this regard authorized agencies*) must be responsible for connecting children and parents, in order to guarantee the best interests of the child.²⁷⁴ In 1977 a working group was appointed by the government due to the lack of control over private adoptions.²⁷⁵ Despite neighbouring countries’ warnings about the potential abuse in private adoption, NIA did not counteract private adoptions and accepted them due to the given situation of high demands and long waiting lists at official adoption agencies.²⁷⁶

While in the beginning of the 1990’s there has been a small decline in adoptions to Sweden the numbers increased again in the year 2000 and campaigns can be found in many areas of Sweden, advertising international adoption as part of family formation with slogans saying: “*Are you trying to have children? We are trying to have parents*”²⁷⁷. Many applicants regarding the inquiry, demanded children that were under six months, and therefore it became difficult for agencies to place older children for adoptions.²⁷⁸ This was among others due, to the social workers that urged families to have smaller children in order to have less problems.²⁷⁹ When NIA confronted the social workers about this issues, they stated that older children might be better suited in the country and the respective culture instead of adoptions abroad.²⁸⁰

In the year 2000 a study was published by A. Hjern et al., which described that suicide attempts, hospital care and serious crimes were higher among internationally adopted children than domestically adopted.²⁸¹ This study provoked strong reactions from some adoptive parents but also adoptees, as they feared to become stigmatized.²⁸² The director of NIA was interviewed about the role of the authorities when it came to support for adoptees at that time.²⁸³ She replied that the NIA had no such responsibility, the authority's mission was mainly to facilitate the adoption of foreign children to Sweden.²⁸⁴ What is assumed in the early years is, that post-

²⁷³ *ibid* 132.

²⁷⁴ *ibid* 149.

²⁷⁵ *ibid* 148.

²⁷⁶ *ibid* 147.

²⁷⁷ *ibid* 160.

²⁷⁸ *ibid* 159.

²⁷⁹ *ibid*.

²⁸⁰ *ibid* 159–160.

²⁸¹ Anders Hjern, Frank Lindblad and Bo Vinnerljung, ‘Suicide, Psychiatric Illness, and Social Maladjustment in Intercountry Adoptees in Sweden: A Cohort Study’ (2002) 360 *The Lancet* 443.

²⁸² Adoptionskommissionen (n 232) 160–161.

²⁸³ *ibid* 162.

²⁸⁴ *ibid*.

adoption services was only an addition to facilitating adoptions, and thereby not necessarily a prerequisite.

4.1.2.2 Uncovering Irregularities in Swedish Intercountry Adoptions

In the decade beginning of 2000, the perception on intercountry adoption changed within Sweden. Swedish society became more aware of the psychological issues and difficulties connected to adoption but also awareness was raised through investigative work revealing irregularities in adoption mediations. Adoptees themselves publicly criticised the adoption process and lack of support for adoptees.²⁸⁵ In 2002 a documentary was released that showed irregularities in adoptions from Thailand within private but also mediated adoptions.²⁸⁶ AC apologised to have contributed to such adoptions consequently and NIA received public money to help Thai adoptees to remedy their illegal adoptions.²⁸⁷ Increasingly irregularities were also found in other countries such as from Chile and China.

4.1.2.2.1 The Crisis of Trust in Adoption Practises

In 2004 the Chinese Embassy of Sweden contacted AC and stated that children were made available through criminal channels.²⁸⁸ In regard to China, one indicator for irregularities that was determined, was that 35 children adopted to Sweden were registered to come from the same village in China.²⁸⁹ Another indicator for an irregular adoption case was that 90% of all orphans were girls and most of them only a few weeks or days old, when they were ‘found’ as stated in the official documents.²⁹⁰ For Chinese adoption it was mandatory for prospective parents to additionally donate a high amount of money to the orphanage, but it was unclear for which purpose it was used.²⁹¹ Kristersson’s who was chairman at AC that time, claims that he never knew of such practises of donations to China in those years.²⁹² On the other hand, Brian Stuy, who led the research into the Chinese adoptions believed that AC should have asked more questions back then, as their professional business relied on livelihoods.²⁹³ An investigation

²⁸⁵ *ibid* 166.

²⁸⁶ *ibid* 162.

²⁸⁷ *ibid* 163–65.

²⁸⁸ *ibid* 420ff.

²⁸⁹ *ibid* 343–344.

²⁹⁰ *ibid*.

²⁹¹ *ibid* 430.

²⁹² ‘Ulf Kristersson Fick Larm Om Kinesisk Barnhandel – Adoptionerna Fortsatte’ (*DN.se*, 21 November 2022) <<https://www.dn.se/sverige/ulf-kristersson-fick-larm-om-kinesisk-barnhandel-adoptionerna-fortsatte/>> accessed 10 July 2026.

²⁹³ ‘Ulf Kristersson Fick Larm Om Kinesisk Barnhandel – Adoptionerna Fortsatte’ *DN.se* (21 November 2022) <<https://www.dn.se/sverige/ulf-kristersson-fick-larm-om-kinesisk-barnhandel-adoptionerna-fortsatte/>> accessed 10 July 2026.

did not lead to the end of cooperation between Sweden and China. Nooshi Dadgostar stated in a party debate years later, that this was an unfortunate moment, as many other countries may have acted more ‘seriously’ after the revelation of illegal Chinese adoptions, while Sweden and in specific AC continued to even campaign for adoptions from China.²⁹⁴

The Swedish government authorized an inquiry in 2001 led by Annika Nilsson, to investigate issues in intercountry adoption due to the many irregularities.²⁹⁵ In June 2003 the final report was published “*Adoption at what price?*” *SOU 2003:49* (“*Adoption - till vilket pris?*”), where she wrote that Sweden must take a position on what is ethically justifiable and how to reduce the risks of child trafficking in connection to intercountry adoptions.²⁹⁶ Strong reactions against stricter requirements were coming from parents, as it was expected that this investigation may reduce the numbers of adoptable children significantly, if new rules would be implemented.²⁹⁷ Stronger regulations were seen as a disadvantage for the children in institutions and the waiting parents, and not at least may break with the spirit of the Hague’s Convention regarding mutual trust.²⁹⁸ The proposal for stricter rules did not get through at that time after the investigation, but the result of the inquiry was that the NIA was replaced by the new authority in Sweden, MIA (“Myndigheten för internationella adoptionsfrågor”), with clearer supervision role.²⁹⁹

In 2015, adoptees from South Korea demanded that Sweden stops adoptions from South Korea altogether because several investigations showed that the country was violating the Convention on the Rights of the Child.³⁰⁰ A employer of AC, who is an adoptee from South Korea, said that during her own travels in South Korea, she has never faced testimonies of involuntary adoptions, but she would believe that there are cases where irregularities happened, of that she is not aware of.³⁰¹ Due to the Swedish inquiry, South Korea has been one of the countries where irregularities have been the most systematic, and it was found that adoptions were made administratively possible despite missing information, through a system of parallel documentation.³⁰² This means that children had been systematically registered as orphans, so called ‘paper orphans’, even though they had known parents, and were registered in a separate

²⁹⁴ ‘Kristersson Försvarar Donationer till Barnhem’ *DN.se* (11 June 2025)

<<https://www.dn.se/sverige/kristersson-forsvarar-donationer-till-barnhem/>> accessed 10 July 2026..

²⁹⁵ Adoptionskommissionen (n 232) 160.

²⁹⁶ Regeringen och Regeringskansliet, ‘Adoption - till vilket pris?’ (*Regeringskansliet*, 1 June 2003)

<<https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2003/06/sou-200349/>> accessed 4 July 2026.

²⁹⁷ Adoptionskommissionen (n 232) 163.

²⁹⁸ *ibid.*

²⁹⁹ *ibid* 164.

³⁰⁰ *ibid* 166.

³⁰¹ ‘Adoptionscentrum: ”Kan Ha Blivit Utnyttjade”’ *DN.se* (1 June 2025)

<<https://www.dn.se/sverige/adoptionscentrum-kan-ha-blivit-utnyttjade/>> accessed 10 July 2026.

³⁰² Adoptionskommissionen (n 232) 374–375.

family registry.³⁰³ The report also states that it is not enough to just declare that the parent has left the child in order to have fulfilled the obligation necessary to ensure the child's best interests.³⁰⁴ Missing information and inaccuracies in information violate the child's right to know their origins and thereby the child's right to their original identity.³⁰⁵ A right which is as mentioned in the previous chapter, established in the ECtHR under Article 8 as well.³⁰⁶

4.1.2.3 Failures to Protect Children's Rights under the Hague Convention

For many decades, intercountry adoption was widely portrayed in Sweden as both an anti-racist and a feminist project. It was framed as an expression of solidarity, whereby (white) Swedish women helped women of colour, while reinforcing Sweden's self-image as a colour-blind and post-racial society.³⁰⁷ However, this framing made it very difficult to recognise over the years, that even a project presented as benevolent and well-intended potentially produce and perpetuate serious human rights violations. The inability to prevent irregularities over these years may have been due to the weakness in the system itself, where also the ratification of the Hague Convention did not significantly changed the legal certainty in Sweden's intercountry adoption process.³⁰⁸ As mentioned above NIA was not against private adoption as it is also legal in some circumstances under the Hague Convention.³⁰⁹ However, NIA at that time was concerned that private adoptions would damage Sweden's reputation as an adoption country.³¹⁰ Sweden was for example the country that adopted the most children from Sri Lanka, where around 3.400 children were adopted through private adoption.³¹¹

Although the NIA handbook had already established safeguarding principles in 1983, Sweden continued to facilitate adoptions from Sri Lanka after serious irregularities were found, including child trafficking and the sale of children for international adoption, which has now been widely documented.³¹² Sweden also continued authorizing adoption from countries that have neither signed or legislated the convention such as Guatemala, China, South Korea and Vietnam.³¹³ An adoptee argued that it may have been because they had a 'good deal' (*as the*

³⁰³ *ibid* 327–328; Hjern, Lindblad and Vinnerljung (n 281).

³⁰⁴ Adoptionskommissionen (n 232) 351–365.

³⁰⁵ *ibid* 366.

³⁰⁶ *Odievre v France* (ECtHR [GC]).

³⁰⁷ Richey Wyver, *Exploring Swedish International Adoption Desire: Transracial Bodies and Nation-Building in the "Goodest" Country* (Palgrave Macmillan 2023) 45.

³⁰⁸ Adoptionskommissionen (n 232) 225.

³⁰⁹ Hague Adoption Convention Art. 22(2), Art. 17.

³¹⁰ Adoptionskommissionen (n 232) 211.

³¹¹ Adoptionskommissionen (n 6) 219–232, 340.

³¹² *ibid* 269.

³¹³ 'S-Regering Kände till Omfattande Barnhandel Redan 1997' *DN.se* (19 April 2021)

<<https://www.dn.se/sverige/s-regering-kande-till-omfattande-barnhandel-redan-1997/>> accessed 10 July 2026.

adoption field become highly competitive as well).³¹⁴ This shows that despite regulatory frameworks and safeguards it was not always ensured that child trafficking could be prevented in cases of adoptions to Sweden.

4.1.3 Key Lessons and Recommendations for a Way Forward

Anna Singer states that to ensure “legal certainty”, which she sees as the most significant parameter to assess the best interests of the child, there should be a clear division of roles and responsibility in the Swedish international adoption system.³¹⁵ What the report also revealed is that it is not clear from the documentation if national solution as laid down in the principle of subsidiarity for example, were considered before adopting abroad to Sweden.³¹⁶ The rapid procedure in many cases, especially from South Korea, indicates that the principle of subsidiarity is consequently unlikely fulfilled. The investigators assessment is that the Swedish actors have deviated in various ways from a legally secure intercountry adoption, to fasten the process, thereby bypassing protective measures that were established in adoption processes to respect the child’s fundamental rights.³¹⁷ Furthermore, the report states that those who worked in adoption agencies in Sweden have been convinced that regulation have been followed and that they have only saved children from an ‘uncertain’ future.³¹⁸ It is however noted that the adoption mediation system at that times was characterized by a high level of trust in countries of origin, the subsequent stages of the administrative process, and the supervisory authorities.³¹⁹ The Swedish supervisory authority on the other hand trusted the agencies.³²⁰ Consequently, the measures adopted to prevent the continuation of irregularities have often proved insufficient.³²¹ Anna Singer stated in an interview that there was little further scrutiny because adoption agencies faced considerable pressure to facilitate adoptions.³²² According to the agencies, there was a lack of regulations and clear guidelines, both in Sweden and in the countries of origin, regarding which documents were required for an adoption.³²³ The supervisory authority likewise lacked the necessary tools and institutional capacity to exercise

³¹⁴ *ibid.*

³¹⁵ Adoptionskommissionen (n 232) 21.

³¹⁶ *ibid* 391.

³¹⁷ *ibid* 3.

³¹⁸ *ibid* 165–170.

³¹⁹ *ibid* 406.

³²⁰ *ibid.*

³²¹ *ibid.*

³²² ‘Utredaren: staten bör förbjuda internationella adoptioner’ (*DN.se*, 2 June 2025)

<<https://www.dn.se/sverige/utredaren-staten-bor-forbjuda-internationella-adoptioner/>> accessed 9 July 2026.

³²³ Adoptionskommissionen (n 232) 224–225.

effective oversight of the process.³²⁴ These shortcomings significantly complicated the process, particularly because the Hague framework provides only limited guidance on these issues.³²⁵

4.1.4 The Aftermath of the Swedish Adoption Inquiry

The number of international adoptions is sharply declining in Sweden today too. In 2024 there were only 54 children adopted to Sweden.³²⁶ New safeguarding measurements have been taken by the MFoF to ensure increased legal certainty by improving for example documentation.³²⁷ According to new regulation by MFoF in 2021 adoption mediations also include a risk report in connection with the adoption which include, financial aspects, the political situation in the country of origin, corruption risks and the overall legal certainty for the child.³²⁸ However, in the report's assessment, it is not clear in one third of the cases assessed in 2024, if local solution were sought before adopting abroad, or the beforementioned risk factors.³²⁹ According to the MFoF, most children who are adopted internationally today have special needs ("särskilda behov").³³⁰ But the official review for 2024 shows that almost a third of the children were not even assessed if they have special needs.³³¹

4.1.4.1 Intercountry Adoption at the Crossroads

The Swedish report concluded its assessment by recommending to phasing out all intercountry adoption mediation activities until 2028.³³² Under this proposal intercountry adoption shall no longer exist in the current form due to the demand that created risks for serious human rights violations and hinder long-term improvements for children in countries of origin.³³³ The report further states that financing the activity based on fees from adoptive parents is therefore also not compatible with today's view on international human rights law.³³⁴ While the language of phasing out is used, it is not a complete halt. International adoption according to the recommendations made in the report, shall be reformed to a state-based solution.³³⁵ This measure is intended to reduce the risk of irregularities associated with the private nature of adoption agencies while also providing a practical response to the declining number of

³²⁴ *ibid.*

³²⁵ *ibid.*

³²⁶ *ibid* 523–538.

³²⁷ *ibid* 328.

³²⁸ *ibid* 526.

³²⁹ *ibid* 393,512.

³³⁰ *ibid* 372.

³³¹ *ibid* 512f.

³³² *ibid* 676.

³³³ *ibid* 549.

³³⁴ *ibid* 553.

³³⁵ *ibid* 677–684.

intercountry adoptions.³³⁶ The Commission clearly indicates that intercountry adoption should be possible under special circumstances.³³⁷ These are for example close personal relationship. The inquiry also recommends a resource centre for adoptee's support.³³⁸ The proposal to phase out intercountry adoption mediations is primarily based on systemic rather than individual concerns.³³⁹ While international adoption may represent the best solution for some individual children, the Swedish Government Inquiry concludes that the system itself is inherently dependent on a demand for children from receiving countries.³⁴⁰ As Swedish authorities cannot effectively oversee or verify adoption procedures conducted abroad, they are unable to guarantee that children's rights are consistently protected. As Hübinette (2001) argues, intercountry adoption to Sweden entailed multiple burdens for adoptees, indicating that being saved from an 'uncertain life' did not necessarily guarantee a positive outcome.³⁴¹ The inquiry therefore concludes that, despite the potential benefits for individual children, intercountry adoption can no longer be regarded as a sustainable child protection measure and that discontinuation of mediating children, better serves the rights of children as group.³⁴² This means not that the commissioners deny the benefits of intercountry adoption as the best care solution for some children.³⁴³ Barnen Framför Allt (BFA), the only remaining adoption organization besides AC, decided to phase out its intercountry adoption activities on its own initiative.³⁴⁴ The organization concluded that the expected number of adoptions each year would be too low to make its continued operation as a private adoption agency economically viable. In addition, a relatively small group of children are affected by the closure of mediation activities.³⁴⁵ The question then arises, what is feared to be lost for AC given the economic situation and the results of the report, indicating that international adoption in its current form cannot guarantee the child's best interests? Another question that naturally comes up is if private actors cannot mediate adoptions, how are state actors able to take over the task in the future? While the report rejects a state-based mediation as seen in Australia and Denmark, it suggests that in exceptional circumstances the states directly process the adoptions where there is already a certain connection, making the 'mediation' in these few cases obsolete.³⁴⁶

³³⁶ Adoptionskommissionen (n 232) 677–684.

³³⁷ *ibid.*

³³⁸ *ibid* 589.

³³⁹ *ibid* 677.

³⁴⁰ *ibid.*

³⁴¹ Tobias Hübinette, 'The International Adoptees of Sweden and the Theory of Multiple Burdens'.

³⁴² Adoptionskommissionen (n 232) 549–557.

³⁴³ *ibid* 555.

³⁴⁴ *ibid* 685.

³⁴⁵ *ibid* 557.

³⁴⁶ *ibid* 550–553.

4.1.4.2 Societal Responses to the Adoption Inquiry

To the question on how to best respond to the inquiry's findings and the connected feelings, a psychotherapist tells the newspaper Dagens Nyheter, that the state that has approved and enabled international adoption should also be responsible for establishing adequate support.³⁴⁷ But if the state does not take responsibility, it is the adoptive parent's responsibility, to provide as much accurate information on the child's adoption as well.³⁴⁸ In an interview one adoptee says, while the Adoption Commissions' review is important she still hopes that we (Sweden) can help children, even if it is only one or forty individuals per year and wishes that adoption would continue for those individuals.³⁴⁹ In an article, Anna Singer confirms, that by examining closely, one can see that the regulation and standards and guidelines which are currently applied in international adoption have already existed for a long time.³⁵⁰ This means that additional safeguards may not present a viable solution to the risks for human rights violations within intercountry adoption. An adoptee argues that since Sweden has had knowledge about these issues it is reasonable to ask for compensation from the Swedish state for redress as well.³⁵¹ However, Singer says she is not tasked to consider financial redress for individuals affected by irregularities in intercountry adoptions.³⁵² However, she does recommend financial remedies in cases of irregular adoptions. Further recommendation from the Swedish report entails a public apology to adoptees and families for the shortcomings in international adoptions to Sweden.³⁵³ This has not been officially decided by the government until now. Social Democratic, Leader Lena Hallengren, states that a public apology is the bare minimum, but nevertheless wants international adoption to be continued.³⁵⁴ Another possibility for redress, may be opened through Sweden's ratification of the International Convention on Protection of all Persons from Enforced Disappearance (CPPED).³⁵⁵ This has been emphasised in the inquiry, but also by the Human Rights Institute Sweden ("Institutet för mänskliga rättigheter"), as an

³⁴⁷ 'Psykoaterapeuten: Så kan du som adopterat tänka efter granskningarna' *DN.se* (19 June 2021) <<https://www.dn.se/insidan/psykoaterapeuten-sa-kan-du-som-adopterat-tank-a-efter-granskningarna/>> accessed 9 July 2026.

³⁴⁸ *ibid.*

³⁴⁹ 'Adoptivmamman Fanny: "Stoppa Inte Adoptionerna"' *DN.se* (26 June 2025) <<https://www.dn.se/sverige/adoptivmamman-fanny-stoppa-inte-adoptionerna/>> accessed 10 July 2026.

³⁵⁰ 'DN Debatt. "Sverige Bör Stoppa Internationella Adoptioner"' *DN.se* (1 June 2025) <<https://www.dn.se/debatt/sverige-bor-stoppa-internationella-adoptioner/>> accessed 10 July 2026.

³⁵¹ Text Jenny Martorell, "Erkännandet måste sättas i praktik" *DN.se* (2 June 2025) <<https://www.dn.se/sverige/erkannandet-maste-sattas-i-praktik/>> accessed 9 July 2026.

³⁵² Adoptionskommissionen (n 232) 479.

³⁵³ *ibid.*

³⁵⁴ 'Lena Hallengren: "Svårt Att Se Varför Man Inte Vill Ge Drabbade En Ursäkt"' *DN.se* (29 May 2026) <<https://www.dn.se/sverige/lena-hallengren-svart-att-se-varfor-man-inte-vill-ge-drabbade-en-ursakt/>> accessed 10 July 2026.

³⁵⁵ Sweden, 'National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21: Swede' (United Nations Human Rights Council 2025) A/HRC/WG.6/49/SWE/1 Place: Geneva.

important mechanism for recognising rights for adoptees, as well as a facilitating access to reparation in cases of illegal adoptions that may amount to enforced disappearances.³⁵⁶ A major step in the process of reconciliation for adoptees was the government's recent decision to establish a National Resource Centre for Adoptees and Adoption issues by January 2027, implementing a recommendation that had already been made in the 2003 national inquiry.³⁵⁷ In conclusion, the Commission argues that Swedish society has long failed to fully recognise the profound and lifelong consequences of intercountry adoptions. It states that the historical reliance on non-governmental organization, particularly Christian missionaries, contributed to a lack of critical scrutiny to intercountry adoptions to Sweden.³⁵⁸ Accordingly, humanitarian motivations created incentives to mediate as many adoptions as possible without consideration of practises and conditions in countries of origin.³⁵⁹

4.1.5 Preserving an Adoption Nation: Sweden's State-Based Solution

However, currently there is no clear common ground for a vision on how to move further with adoptions from abroad in Sweden.³⁶⁰ It has even been speculated that the upcoming general election in autumn 2026 has contributed to the government's slow decision-making process, as well as delaying an official apology for over a year, discouraging the government from taking a clear position in either direction.³⁶¹ However, the investigation was seen as an important step to rectify what has already been known by several actors within the adoption society. For many, Sweden's identity as a humanitarian welfare state carries a particular responsibility to lead and pioneer efforts to prevent child trafficking and other adoption-related abuses.³⁶²

There are different views on whether and how intercountry adoption should continue, however Anna Singer recommends phasing out the practice of placing children for adoption in Sweden.³⁶³ This has been also a pressing demand by many adoption networks in Sweden and outside as well.³⁶⁴ The review of the report showed that there are systemic shortcoming in

³⁵⁶ Institutet för mänskliga rättigheter, 'Sveriges internationella adoptionsverksamhet' (6 October 2025) <<https://mrinstitutet.se/vara--publikationer/remissvar/remissvar-2025/2025-10-03-sveriges-internationella-adoptionsverksamhet>> accessed 9 July 2026.

³⁵⁷ 'Regeringen Ger Adopterade Resurscentrum – Ingen Ursäkt Än' *DN.se* (28 May 2026) <<https://www.dn.se/sverige/regeringen-ger-adopterade-resurscentrum-ingen-ursakt-an/>> accessed 10 July 2026.

³⁵⁸ Adoptionskommissionen (n 6), 46.

³⁵⁹ *ibid* 317.

³⁶⁰ *ibid* 549ff.

³⁶¹ 'Efter Adoptionsutredningen – Tyst Från Regeringen' *DN.se* (25 April 2026) <<https://www.dn.se/sverige/efter-adoptionsutredningen-tyst-fran-regeringen/>> accessed 10 July 2026.

³⁶² 'Jörgen Huitfeldt: Det Är Dags Att Förpassa Idén Om Sverige Som En Humanitär Stormakt till Historien' *DN.se* (4 March 2021) <<https://www.dn.se/ledare/jorgen-huitfeldt-det-ar-dags-att-forpassa-iden-om-sverige-som-en-humanitar-stormakt-till-historien/>> accessed 10 July 2026.

³⁶³ Adoptionskommissionen (n 232) 559.

³⁶⁴ *ibid* 538.

almost all adoption regarding the child's origin.³⁶⁵ Singer thereby plays a great emphasis in her assessment on the parameter of 'legal certainty' as a dimension that eventually ensures the best interests of the child within intercountry adoption the most.³⁶⁶ The question remains is 'legal certainty' always in the child's best interests? In the Swedish case, the best interests of the child, are ultimately interpreted through a state-based solution.³⁶⁷ Sweden does not fully reject intercountry adoption as a legitimate measure for *some* children. The inquiry argues that stronger public control and direct state responsibility could reduce the risks created by private mediation and ensure that any remaining adoptions are carried out in line with the child's best interests and thus create increased 'legal certainty'.³⁶⁸ The distinction of abolishing the system of intercountry adoptions in Sweden versus the proposal by the commissioner to phase out *mediation* for intercountry adoption is a small but significant fact and has been overlooked in some media responses.³⁶⁹ Regarding the inquiry it is assumed that the underlying concern is that prospective parents create a demand for adoptions that may conflict with the guiding principle of the child's best interests.³⁷⁰ However, this assumption may not apply in the same way when the child's country of origin actively requests to identify a suitable family in Sweden for that child.³⁷¹ It is thereby assumed that in a globalised world there will always be a need for intercountry adoption in exceptional situations.³⁷² Consequently, it is considered in the Swedish case that continued availability of intercountry adoption in some circumstances is the most proportionate and viable policy solution for Sweden.

4.2 The Netherlands' Reckoning with Intercountry Adoption

This chapter examines the main findings of the Joustra Committee and investigates which were the underlining arguments to eventually delegitimize intercountry adoption from the perspective of the best interests of the child principle in the Netherlands. In addition to the report, newspaper articles retrieved from the Dutch national newspaper *Trouw* are used with the search term "adoptie" and related, to assess the public discourse surrounding intercountry adoption to the Netherlands. This newspaper outlet has devoted a continuous and extensive coverage on the topic of intercountry adoption, including interviews with various stakeholders

³⁶⁵ *ibid* 366.

³⁶⁶ *ibid* 224–225.

³⁶⁷ *ibid* 677–682.

³⁶⁸ *ibid* 543–544.

³⁶⁹ *ibid* 49.

³⁷⁰ *ibid* 554.

³⁷¹ *ibid*.

³⁷² *ibid* 677–678.

ranging from policymakers, adoptive parents and experts. Its reporting is therefore especially useful for tracing developments in the public discourse.

4.2.1.1 Road to Political Change: From Reforming to Discontinuing Inter-country Adoption

The Netherlands became the first European receiving country which decided to permanently phase out intercountry adoption.³⁷³ Due to a case that had been filed within the Ministry of Justice and Security it was revealed that the Dutch state has been involved in illegal adoptions from Brazil.³⁷⁴ This case ultimately triggered several more cases of irregular intercountry adoptions such as the Sri Lankan case by a woman named Dilani Butink, which is still pending.³⁷⁵ As a result the government (“Riksdag”) appointed an inquiry in 2019.³⁷⁶ This committee shall examine intercountry adoption activities and the involvement of the Dutch state. In 2016 the Council for Criminal Justice Application and Youth Protection (RSJ) advised the government to completely stop intercountry adoption, but the Dutch government declined the proposal back then. The RSJ argued, similar as in the Swedish report, that adoption on the micro-level can have positive effects, but is undermining child protection on the macro level.³⁷⁷

The report from the so-called Joustra Committee, identified systematic irregularities connected to intercountry adoptions and urged the Netherlands to suspend all new adoptions from abroad.³⁷⁸ The conclusion was that the current system with private elements is too susceptible to fraud and created conditions for several human rights violations which ultimately harmed the child’s best interests.³⁷⁹ According to professor D. Smolin this was a pivotal moment in history, as it would recognize the systemic nature of abuse in intercountry adoption for the first time.³⁸⁰

³⁷³ Ministerie van Justitie en Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NL’ (21 May 2024) <<https://www.government.nl/latest/news/2024/05/21/no-new-inter-country-adoptions-effective-immediately>> accessed 8 Juni 2026.

³⁷⁴ Stephanie van den Berg and Stephanie van den Berg, ‘Court Finds Dutch State Acted Illegally in “Brazil Baby Affair”’ *Reuters* (24 November 2021) <<https://www.reuters.com/world/court-finds-dutch-state-acted-illegally-brazil-baby-affair-2021-11-24/>> accessed 2 July 2026.

³⁷⁵ ‘Eight Adult Adoptees Suing Dutch State over Fraud with Adoption Papers | NL Times’ (26 July 2023) <<https://nltimes.nl/2023/07/26/eight-adult-adoptees-suing-dutch-state-fraud-adoption-papers>> accessed 2 July 2026.

³⁷⁶ Commissie Onderzoek Interlandelijke Adoptie (n 105).

³⁷⁷ NICOLE BESSELINK and REDACTIE POLITIEK, ‘Nederland moet stoppen met adoptie’ *Trouw* (2 November 2016) <<https://www.trouw.nl/nieuws/nederland-moet-stoppen-met-adoptie~b82a3dca/>> accessed 2 July 2026.

³⁷⁸ Commissie Onderzoek Interlandelijke Adoptie (n 105) 134–140.

³⁷⁹ *ibid* 140–141.

³⁸⁰ Loibl (n 24) 43.

Sander Dekker, Minister for Legal Protection, in who received the report on the 8th of February 2021, said that apologies would already be in place and that he is thankful to the committee for the ‘mirror’ which they have provided to the government.³⁸¹ Several stakeholders strongly criticised the decision as unfounded and started a petition opposing the suspension of intercountry adoption to the Netherlands by Minister Dekker.³⁸² A group of adoptive parents argued that adoption shall remain possible from certain countries with more strict procedures.³⁸³ Adoption agencies such as the World Children’s mediation organization, also expressed shock at this decision, arguing that the committee’s investigation only covered the period until 1998 and not the present.³⁸⁴ They argued that adoption practices and oversight have changed and thus it may be an extreme measurement to suspend adoptions.³⁸⁵

4.2.1.1.1 Resumption and Child Protection Concern

A year later, the government under the next Minister for Legal Protection, Franc Weerwind, decided to resume adoption but in a reformed way and with fewer countries, Hungary among others.³⁸⁶ The European Centre for Roma Rights which conducted year-long research, reported that mainly Roma children were given up for adoption in Hungary.³⁸⁷ According to several reports, children were taken away by the Hungarian state from parents due to poverty, a measurement that violates not only the Hungarian Child Protection Act but also the 1989 Childs Rights Convention.³⁸⁸ While poverty has long been an accepted central part of adoption, current ethical standards prohibit child separation or intercountry adoption primarily due to poverty.³⁸⁹ The rationale for resuming intercountry adoption was to establish a more strongly-regulated system, with financial and organisational responsibility through a single central mediation organisation, the Intercountry Adoption Mediation Netherlands Foundation (“Stichting

³⁸¹ Ministerie van Justitie en Veiligheid, ‘Toespraak door minister Dekker bij de in ontvangstneming van het rapport van de Commissie Joustra | Rijksoverheid.nl’ (8 February 2021)

<<https://www.rijksoverheid.nl/documenten/2021/02/08/toespraak-door-minister-dekker-bij-de-in-ontvangstneming-van-het-rapport-van-de-commissie-joustra>> accessed 2 July 2026.

³⁸² Judith Harmsen, ‘Het kabinet stopt met buitenlandse adopties wegens misstanden’ *Trouw* (9 February 2021) <<https://www.trouw.nl/binnenland/het-kabinet-stopt-met-buitenlandse-adopties-wegens-misstanden~b229cfe4/>> accessed 2 July 2026.

³⁸³ *ibid.*

³⁸⁴ Rianne Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties: “Je Kunt Niet Alle Landen over Één Kam Scheren”’ *Trouw* (15 February 2021) <<https://www.trouw.nl/zorg/adoptieouders-starten-petitie-tegen-volledige-stop-op-adopties-je-kunt-niet-alle-landen-over-een-kam-scheren~b4390ee3/>> accessed 2 July 2026.

³⁸⁵ *ibid.*

³⁸⁶ Machteld Veen and Investico, ‘Nederland Adopteert Kinderen Uit Hongarije, Hoewel Er Behoorlijk Wat Mis Lijkt’ *Trouw* (21 June 2024) <<https://www.trouw.nl/binnenland/nederland-adopteert-kinderen-uit-hongarije-hoewel-er-behoorlijk-wat-mis-lijkt~b9e17f28/>> accessed 2 July 2026.

³⁸⁷ *ibid.*

³⁸⁸ *ibid.*

³⁸⁹ Loibl (n 24) 22.

Interlandelijke adoptiebemiddeling Nederland”)³⁹⁰ This reform was intended to strengthen oversight, reduce risks of misconduct and eventually bring an end to a period of uncertainty for intercountry adoption in the Netherlands. Similarly to the Swedish Commission ‘legal certainty’ shall be a prevalent factor for the assessment of the child’s best interests in intercountry adoptions.³⁹¹ However, a parliamentary member, Michiel Van Nispen, called in a proposal on the 16th of April 2024 to phase-out intercountry adoption.³⁹² In this motion (“motie”) he proposed to phase-out intercountry adoption, in line with the recommended of the Joustra Committee, and criticised the government’s proposal for a partial resumption of intercountry adoption as insufficient to adequately prevent abuses in the future.³⁹³ Furthermore he expressed serious doubts as to whether a new legal framework that could realistically be designed to effectively prevent abuses in intercountry adoption.³⁹⁴ He also emphasised that the best interests of the child is served, when he or she can be safely taken care of domestically, in the respective culture or region.³⁹⁵

4.2.1.1.2 The Government’s Policy Shift

Van Nispen’s proposal to discontinue intercountry adoption in the Netherlands ultimately received broad parliamentary support, leading the government to decide to permanently end intercountry adoption and introduced a six-year phase-out period.³⁹⁶ Franc Weerwind writes in response in a government letter, “[...]in light of the motion to develop a phase-out plan, I no longer consider it feasible or desirable to continue establishing the foundation.”³⁹⁷ The letter acknowledged the concerns that were previously raised in the parliamentary discussion and marked a shift in the governments positions, with Weerwind subsequently announcing to suspend intercountry adoption.³⁹⁸ It was decided that the four remaining adoption organisation,

³⁹⁰ ‘Netherlands to Resume International Adoptions from Selected Countries’ *Reuters* (2 November 2022) <<https://www.reuters.com/world/europe/netherlands-resume-international-adoptions-selected-countries-2022-11-02/>> accessed 2 July 2026.

³⁹¹ *ibid.*

³⁹² ‘Personen- En Familierecht’ (10 April 2024) <<https://www.tweedekamer.nl/kamerstukken/moties/detail>> accessed 6 July 2026.

³⁹³ *ibid.*

³⁹⁴ *ibid.*

³⁹⁵ ‘Personen- En Familierecht’ (10 April 2024) <<https://www.tweedekamer.nl/kamerstukken/moties/detail>> accessed 4 July 2026.

³⁹⁶ Ministerie van Justitie en Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NL’ (21 May 2024) <<https://www.government.nl/latest/news/2024/05/21/no-new-inter-country-adoptions-effective-immediately>> accessed 2 July 2026.

³⁹⁷ Minister voor Rechtsbescherming, ‘Intrekken voorhang oprichting Stichting Interlandelijke Adoptiebemiddeling Nederland’ (Ministerie van Justitie en Veiligheid 2024); (translated with deepL.ai).

³⁹⁸ Ministerie van Justitie en Veiligheid, ‘Careful Phasing-out of Inter-Country Adoption over Six Years | Government.NL’ (9 December 2024) <<https://www.government.nl/latest/news/2024/12/09/careful-phasing-out-of-inter-country-adoption-over-six-years>> accessed 6 July 2026.

can mediate children internationally for adoption purposes until the 1st of May 2030.³⁹⁹ The decision brought a definitive end to the Netherlands' long standing tradition of intercountry adoption, as the first receiving country in the Western world to engage in the practice.⁴⁰⁰ Minister Weerwind was aware that the decision could give rise to a polarised public debate, considering the divergent experiences and perspectives of adoptees, including those who have experienced trauma and those who regard their adoption as a positive experience.⁴⁰¹ Against this background, he emphasised the importance of ensuring a carefully and responsible phase-out process but did not address the topic on future family formation.

4.2.1.2 The Joustra Committee's Mandate and Objectives of the inquiry

The Joustra Committee led by Mr Tjibbe Joustra LL.D investigated the role and responsibility of the Dutch government and in a horizontal relationship, Dutch officials, and their involvement in intercountry adoption during the years 1967-1988. The investigation focused on Brazil, Bangladesh, Colombia, Indonesia and Sri Lanka. Even though the mandate referred to these countries and the respective time frame, the actual study was not limited to them.⁴⁰² The main objectives were to investigate the existence and nature of abuses, the Dutch government awareness of and potential involvement in such practices and the extent to which these abuses may have been structural.⁴⁰³ Abuses as mentioned in the analysis and the report are defined as following:

*“acts or omissions in violation of applicable national and international laws and regulations as well as acts or omissions that are not formally in violation of applicable national and international laws and regulations but are ethically irresponsible”*⁴⁰⁴

The Dutch report uses explicitly the term “abuse” instead of “irregularities” (“oegentligheter”), the term more commonly employed in the Swedish report, adopts a comparatively more implicit expression in my opinion. These acts of abuses can appear to be more identifiable where they involved breaches of procedural requirements or legal provision. However, by contrast, practises such as the ‘improper’ relinquishment of children or the absence of

³⁹⁹ *ibid.*

⁴⁰⁰ Ministerie van Justitie en Veiligheid, ‘Careful Phasing-out of Inter-Country Adoption over Six Years | Government.NI’ (9 December 2024) <<https://www.government.nl/latest/news/2024/12/09/careful-phasing-out-of-inter-country-adoption-over-six-years>> accessed 10 July 2026.

⁴⁰¹ Ministerie van Justitie en Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NI’ (21 May 2024) <<https://www.government.nl/latest/news/2024/05/21/no-new-inter-country-adoptions-effective-immediately>> accessed 6 July 2026.

⁴⁰² Commissie Onderzoek Interlandelijke Adoptie (n 105) 13.

⁴⁰³ Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NI’ (n 396) 11.

⁴⁰⁴ *ibid* 14.

documentation from adoption files were less clearly addressed by exploit prohibition and therefore more difficult to characterise as violations of specific legal requirements.⁴⁰⁵ As in the Swedish case, the focus of the Commission's focus was not on individual cases but rather on broader historical patterns and practises. Even though, the Joustra Committee also focuses on identifying general patterns, specific cases are presented to illustrate these patterns.⁴⁰⁶

4.2.2 Revisiting the History of Intercountry Adoption in the Netherlands

The first foreign adoption-wave mainly consisted of children from Greece, Austria and Germany.⁴⁰⁷ These adoptions were unregulated until the Dutch Foster Care Association ("Nederlandse Vereniging voor Pleeggezinnen") as well as the Dutch Single Mother Association for the Federal Territory ("Federatie van Instellingen voor de Ongehuwde Moeder, "Fiom") advocated for better regulations which in part led to the Dutch Adoption Act of 1956 that established the legal child-parent relationship through adoption.⁴⁰⁸ With the introduction of the Dutch Social Assistance Act in 1963 ("Bijstandswet") it was then possible for single mothers to independently care for children in the Netherlands.⁴⁰⁹ During the following decades the official numbers of foreign adoptions increased and superseded the numbers of domestic adoption in 1975.⁴¹⁰ This first wave was characterised by Dutch society as an act to improve the world by saving orphans from dire or poor circumstances and war, to enable a better future in the Netherlands. Many also felt that it is their moral duty to adopt a child as well.⁴¹¹ This generation is described as generally more idealistic and naive towards establishing a family through intercountry adoption.⁴¹² In 1989 the Act on the Placement of Foreign Children for Adoption ("Wet opnemng buitenlandse kinderen ter adoptie (Wobka)") was introduced because foreign adoption grew rapidly to approximately 1500-1700 children per year and thus a need for a regulatory framework, including the authorisation for adoption mediation organisations, was needed.⁴¹³ This act was later in the year 1993, amended to the regulation of the Hague Convention.⁴¹⁴

⁴⁰⁵ *ibid.*

⁴⁰⁶ *ibid* 13.

⁴⁰⁷ Commissie Onderzoek Interlandelijke Adoptie (n 105) 16.

⁴⁰⁸ Veiligheid, 'No New Inter-Country Adoptions Effective Immediately | Government.NI' (n 396) 16.

⁴⁰⁹ Commissie Onderzoek Interlandelijke Adoptie (n 105) 17.

⁴¹⁰ *ibid.*

⁴¹¹ *ibid.*

⁴¹² Rianne Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' *Trouw* (20 February 2021) <<https://www.trouw.nl/binnenland/adoptie-leek-heel-lang-een-win-winsituatie-waarom-had-nederland-geen-oog-voor-de-misstanden~beedb670/>> accessed 2 July 2026.

⁴¹³ Commissie Onderzoek Interlandelijke Adoptie (n 105) 19.

⁴¹⁴ Veiligheid, 'No New Inter-Country Adoptions Effective Immediately | Government.NI' (n 396) 16–19.

4.2.3 *Landing in a better Future? Children in Transit*

During the 1980's babies would arrive in Schiphol airport, from orphanages around the world, for example from Bangladesh, Colombia and South Korea as a humanitarian response.⁴¹⁵ In the case of south Korea the media frequently referred to the social exclusion of mixed race children born to Korean women and U.S. soldiers after the Korean War (Amerasian).⁴¹⁶ These children were portrayed in the Dutch media as being marginalised within South Korean society and thus in need for adoption abroad.⁴¹⁷ At that time, people in the Dutch society argued that they can provide a more accepting environment for these children from South Korea in the Netherlands.⁴¹⁸ Professor René Hoksbergen, a scholar in the history of intercountry adoption, observed that the possibility of adoption within South Korea had not been adequately considered at that time.⁴¹⁹ Due to the pressing humanitarian situation around the world and the portrayal of intercountry adoption as a means of addressing the perceived needs for children, several interest groups exerted pressure on the Dutch government to speed up adoption procedures.⁴²⁰ The notion that Europe had a responsibility to 'help' children in the Global South and facilitate their advancement through adoption became embedded in Dutch national discourse and contributed to the country's self-perception as a humanitarian actor, similarly to Sweden.⁴²¹ The "rescue-narrative" was similarly framed as a "win-win situation", portraying the project of intercountry adoption in the Netherlands as mutually beneficial for the children, their adoptive parents and the broader situation of economic inequality.⁴²²

4.2.3.1 **DIY Adoptions and their consequences**

In the early years mainly, intermediaries formed contacts for prospective parents in countries of origin and took initiatives to propose possible matchings of parents and children.⁴²³ These intermediaries were for example organisations such as *Flash*, which was founded by adoptive

⁴¹⁵ Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (n 412).

⁴¹⁶ Bergquist (n 35) 622.

⁴¹⁷ Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (n 412).

⁴¹⁸ *ibid.*

⁴¹⁹ INTERVIEW | IRIS PRONK, "'Buitenlandse Adoptie Houdt Zichzelf in Stand'" *Trouw* (28 August 2016) <<https://www.trouw.nl/nieuws/buitenlandse-adoptie-houdt-zichzelf-in-stand~b221d78f/>> accessed 8 July 2026.

⁴²⁰ Rianne Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (*Trouw*, 20 February 2021) 17 <<https://www.trouw.nl/binnenland/adoptie-leek-heel-lang-een-win-winsituatie-waarom-had-nederland-geen-oog-voor-de-misstanden~beedb670/>> accessed 2 July 2026.

⁴²¹ Rianne Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (*Trouw*, 20 February 2021) <<https://www.trouw.nl/binnenland/adoptie-leek-heel-lang-een-win-winsituatie-waarom-had-nederland-geen-oog-voor-de-misstanden~beedb670/>> accessed 2 July 2026.

⁴²² Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (n 412).

⁴²³ Commissie Onderzoek Interlandelijke Adoptie (n 105) 22.

parents.⁴²⁴ The adoption was then set up locally. These were referred to as “DIY adoptions” in the Joustra report, describing cases in which prospective adoptive parents identified a child independently rather than through an authorised adoption agency.⁴²⁵ This differs somewhat from cases of private adoptions in Sweden, where legal and administrative procedures were circumvented.⁴²⁶ Until 1989 there has also been no specific information or any mandatory training sessions pre-adoption required for prospective adoptive parents.⁴²⁷ An adoptive parent said that only when she came back from America where adoptions were much more prominent at that time, did she read literature about what could be possible challenges when adopting.⁴²⁸ Beforehand she believed that adoption was only beneficial for the baby and comes without major issues.⁴²⁹

4.2.3.2 Development of Intercountry Adoption: From Idealism to Realism

The peak of intercountry adoption to the Netherlands was in the 1980’s, where annually around 1500-1700 children were adopted.⁴³⁰ This period also marked a time where large-scale abuses made newspaper headlines. One incidence which provoked public concern, was when a mother in Indonesia was found with her 18 infants in an attic, reportedly intended for adoption by families in the Netherlands.⁴³¹ In the 1980’s first studies were published showing that international adoption comes also with many different challenges, such as adjustment problems, behaviours problems and identity formation issues.⁴³² The increased awareness led not only to the implementation of the Hague Convention in 1993, but also to a more realistic understanding among prospective parents of the complexities and potential risks associated with intercountry adoption. With the implementation of stricter regulations and procedural guidelines, prospective adoptive parents were required to meet increased eligibility criteria before an adoption could proceed. For this official adoption procedure the registered Central Authority in the Netherlands was the Adoption Services Foundation (“Stichting

⁴²⁴ *ibid* 97.

⁴²⁵ *ibid* 22.

⁴²⁶ Adoptionskommissionen (n 232) 132.

⁴²⁷ Commissie Onderzoek Interlandelijke Adoptie (n 105) 22.

⁴²⁸ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 412).

⁴²⁹ *ibid*.

⁴³⁰ Commissie Onderzoek Interlandelijke Adoptie (n 105) 26.

⁴³¹ *ibid* 88.

⁴³² Herma JM Versluis-den Bieman and Frank C Verhulst, ‘Self-Reported and Parent Reported Problems in Adolescent International Adoptees’ (1995) 36 *Journal of Child Psychology and Psychiatry* 1411 <<https://doi.org/10.1111/j.1469-7610.1995.tb01672.x>>.

Adoptievoorzieningen”) and the Child Care and Protection Board (“Raad voor de Kinderbescherming, RvdK”) in accordance with Article 5 HCCH.⁴³³

The implementation of the Hague Convention improved the legal framework but did not eliminate DIY adoptions. In essence, the Joustra Committee concluded that the Dutch Central Authority lacked sufficient oversight to effectively supervise the intermediaries that carried out these adoptions.⁴³⁴ An adoptive couple said that they thought extensively today about their decision in the past to choose a government-approved mediator and believe that they made a right decision, with goodwill and ethical awareness at that time, even though matching procedure lacked transparency.⁴³⁵ They were childless, while orphanages were portrayed as being overcrowded, reinforcing the perception that large numbers of children were in need of adoption.⁴³⁶ A second record high number of intercountry adoptions was recorded in 2004 when 1300 children were adopted into the Netherlands, 800 alone were from China.⁴³⁷ After these years the numbers declined sharply except from 2010 when children were adopted from Haiti after the earthquake.⁴³⁸ In 2019 only 145 children were adopted to the Netherlands.⁴³⁹ The total number were estimated to be 40.000 children from 1957-2019.⁴⁴⁰ Historically, the largest numbers originated from China, Colombia, South Korea, and Sri Lanka.⁴⁴¹ In more recent years, the principal countries of origin have been China, the United States, South Africa, and Taiwan.⁴⁴²

4.2.4 When the System failed: Tracing reported abuses in Intercountry Adoption to the Netherlands

One of the coordinators of the Joustra committee noted that he was surprised to find that, even during periods of particularly high numbers of intercountry adoptions to the Netherlands, critical voices had consistently challenged the practice throughout.⁴⁴³ Among these was

⁴³³ Commissie Onderzoek Interlandelijke Adoptie (n 105) 22.

⁴³⁴ *ibid* 130–131.

⁴³⁵ Isabel Baneke, ‘Snoeihard Rapport Doet Adoptieouders Pijn: “Alsof Ik Onderdeel Ben van Een Crimineel Circuit”’ *Trouw* (13 February 2021) <<https://www.trouw.nl/binnenland/snoei-hard-rapport-doet-adoptieouders-pijn-alsof-ik-onderdeel-ben-van-een-crimineel-circuit~bb2bdbec/>> accessed 8 July 2026.

⁴³⁶ *ibid*.

⁴³⁷ Commissie Onderzoek Interlandelijke Adoptie (n 105) 26.

⁴³⁸ *ibid*.

⁴³⁹ *ibid*.

⁴⁴⁰ *ibid*.

⁴⁴¹ *ibid*.

⁴⁴² *ibid*.

⁴⁴³ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 412).

Professor Miek de Langen, a Dutch legal scholar and Professor of Juvenile Law.⁴⁴⁴ At the same time, concerns regarding abuses within the intercountry adoption system continued to emerge, particularly in relation to adoption practices in African countries, especially former Dutch colonies.⁴⁴⁵ In 2012 there has been a temporary suspension of Adoptions from Uganda due to irregularities.⁴⁴⁶ In 2013 the Congolese government decided to temporarily stop all adopted children from exiting and formally closed intercountry adoption in the year 2016.⁴⁴⁷ Increasingly from 2007, several questions were raised also during parliamentary sessions about adoption abuse in countries such as India, China and Ethiopia.⁴⁴⁸ These incidences were also followed by the media and investigative journalists.⁴⁴⁹ However, usually questions about the Dutch officials were answered by referring to the authorities in the origin and their investigations.⁴⁵⁰ In a working visit in 2010, before the end of the one-child policy, the Chinese central authority strongly discouraged Dutch adoptees from searching for their biological parents, on the grounds that such searches could expose birth parents to legal consequences of having violated Chinese law.⁴⁵¹ The Dutch authorities accepted and tolerated this position, rather than challenging the restriction on adoptee's effort to access information about their biological origins.⁴⁵² The approach reflected in the commissioner's assessment, that inherently broke with spirit of the CRC and Article 30 of the Hauge Convention which shall ensures the right to know one's origin.⁴⁵³ The rationale was that cooperation with states of origin could be challenging and that maintaining such cooperation required the Dutch authorities to exercise caution and thus it was seen as striking a balance between safeguarding adoptee's interests and pursuing demands that could realistically be accommodated by the states of origin to continue cooperations.⁴⁵⁴ One Chinese adoptee said that Chinese couples had to meet much stricter requirements than foreign couples at those times.⁴⁵⁵ Until the year 1993 approximately 200.000 children were adopted to Chinese couples before the country opened up to foreign adoption,

⁴⁴⁴ Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (n 421).

⁴⁴⁵ Commissie Onderzoek Interlandelijke Adoptie (n 105) 114.

⁴⁴⁶ *ibid.*

⁴⁴⁷ *ibid.*

⁴⁴⁸ *ibid.*

⁴⁴⁹ *ibid.*

⁴⁵⁰ *ibid* 121.

⁴⁵¹ *ibid* 117–118.

⁴⁵² *ibid* 117-118.

⁴⁵³ *ibid.*

⁴⁵⁴ *ibid.*

⁴⁵⁵ Cindy Huijgen, 'Cindy Huijgen (32) werd geadopteerd uit China: "Elke keer als ik meer te weten kom, draait mijn maag om"' (*Trouw*, 8 March 2024) <<https://www.trouw.nl/tijdgeest/cindy-huijgen-32-werd-geadopteerd-uit-china-elke-keer-als-ik-meer-te-weten-kom-draait-mijn-maag-om~bdb4c37d/>> accessed 2 July 2026.

contrasting the belief of many, that the orphaned children would not find a suitable home in China.⁴⁵⁶

The following sections examine selected historical examples which were discussed by the Joustra Committee, organised by country of origin, to illustrate the challenges and deficiencies connected to intercountry adoptions to the Netherlands.

4.2.4.1 Bangladesh

Bangladesh was a war-torn country when it opened for adoption in the year 1972 through the *Abandoned Children Order*, due to the widespread issues of social exclusion of unwed mothers and unwanted pregnancies through rape.⁴⁵⁷ Adoption and abortion were inherently against the Islamic Laws of Bangladesh, but were seen a necessary measurement at that time for those abandoned children.⁴⁵⁸ Due to rising irregularities, foreign adoption was eventually stopped by a legal Act in 1982 again.⁴⁵⁹ One controversial case was connected to a Dutch Citizen in Bangladesh, Eva den Hartog, named the “Dutch mother Teresa” by the media.⁴⁶⁰ The commission’s findings have found evidence that several adoption files were altered, where she was involved as an intermediary in Bangladesh, organising DIY adoptions.⁴⁶¹ She started a dispute with the adoption mediation organisation Stichting Bureau Interlandelijke Adoptie (BIA later known as Wereldkinderen), accusing them of monopoly in the adoption market and high fees, whereas BIA accused her of surpassing regulation.⁴⁶² Eva den Hartog began her mission in 1974 and ended her mission already in 1975, due to issues, among others, Bangladeshi authorities.⁴⁶³ During this short amount of time, she mediated more than 100 children from Bangladesh to the Netherlands.⁴⁶⁴ One Dutch board member said that these people [*Eva den Hartog and others*], never where for profits but really involved with the children in need.⁴⁶⁵ He further said it is a disgrace to accuse those who showed so much courage and selflessness at that time.⁴⁶⁶ However, her mission started primarily in response to the lengthy waiting lists of prospective adoptive parents and against the backdrop of a period of significant political instability in Bangladesh. A recurring pattern reported in Bangladesh at the

⁴⁵⁶ *ibid.*

⁴⁵⁷ Commissie Onderzoek Interlandelijke Adoptie (n 105) 42.

⁴⁵⁸ *ibid.*

⁴⁵⁹ *ibid* 43.

⁴⁶⁰ *ibid* 45.

⁴⁶¹ *ibid.*

⁴⁶² *ibid* 46.

⁴⁶³ *ibid* 45–46.

⁴⁶⁴ *ibid.*

⁴⁶⁵ *ibid* 46.

⁴⁶⁶ *ibid* 45–46.

time involved employees of foreign-run child welfare organisations encouraged children to enter their facilities by offering access to food, education and shelter, some of them operating as orphanages.⁴⁶⁷ It was reported that mothers who then sought to visit their children were often unable to locate them, as the children had already been placed for adoption abroad.⁴⁶⁸ One explanation given is that many birth mothers did not fully understand the concept of adoption as known to the receiving countries and consequently may have agreed to them without their full understanding.⁴⁶⁹

4.2.4.2 Brazil

Wereldkinder was the biggest Dutch adoption organisation and mediated about 30 adoption per year from Brazil only.⁴⁷⁰ In Brazil adoption was mainly regulated on a regional basis due to the size of the country. The fragmented and decentralized regulatory frameworks, created opportunities for abuse within local informal adoption networks.⁴⁷¹ Many adoptions for example took place in states where Dutch emigrants lived, who organised adoptions independently.⁴⁷² Brazilian society and politics increasingly became aware of the abuses and circumventing practises.⁴⁷³ Due to a case of a couple registering a child from Brazil as their own, the Dutch Public Prosecution Service eventually started to investigate into illegal adoption in South America between 1981-1984.⁴⁷⁴ The result verified 43 cases of irregularities, which however were then dismissed, even though officials of the Dutch embassy were actively involved.⁴⁷⁵ The reason was that the parents acted in 'good faith' and thereby were not deliberately committing a crime.⁴⁷⁶

The first case that, *inter alia*, triggered the inquiry for investigation intercountry adoptions in the Netherlands, is the case of Patrick Noordoven, who was illegally adopted from Brazil by a couple who registered him as their own child in order to avoid waiting lists of adoption organisations.⁴⁷⁷ The case further revealed, that his adoptive parents had also been investigated by the Dutch National Police in the early 80's and that their adoption had already been documented as unlawful at that time.⁴⁷⁸ The family adopted another child through official

⁴⁶⁷ *ibid* 47.

⁴⁶⁸ *ibid*.

⁴⁶⁹ *ibid* 138.

⁴⁷⁰ *ibid* 54.

⁴⁷¹ *ibid* 55.

⁴⁷² *ibid* 57–58.

⁴⁷³ *ibid* 57.

⁴⁷⁴ *ibid* 58.

⁴⁷⁵ *ibid* 60–61, 68.

⁴⁷⁶ *ibid* 57–61.

⁴⁷⁷ *ibid* 65–66.

⁴⁷⁸ *ibid* 67.

channels in Brazil later again.⁴⁷⁹ Patrick Noordoven brought legal proceedings against the Dutch State concerning the circumstances of his intercountry adoption that subsequently became a landmark case concerning the rights of person affected by illegal intercountry adoption under inter alia, Article 8 of the ECHR.⁴⁸⁰ However, although the state acknowledged the violation in relation to his right to identity, it could not be held liable for the actions of his adoptive parents. Consequently, no monetary compensation was ultimately awarded.⁴⁸¹ The ruling had a broader significance for intercountry adoptees in the Netherlands, as it recognised that the state has a responsibility for safeguard an adoptee's right to identity and knowledge of their origin, thereby an important legal basis for claims concerning the state's failure to protect these rights.⁴⁸²

4.2.4.3 Indonesia

The first officially registered Indonesian adoptee arrived in the Netherlands in 1973.⁴⁸³ Over the following decade, almost 3,100 Indonesian children were adopted into the Netherlands. The period between 1979 and 1981 formed the peak, with more than 500 Indonesian children arriving each year on average.⁴⁸⁴ A prominent case investigated by the Joustra Committee concerns a child named Kurniawati (her Indonesian name), who was deliberately taken from her hometown and transferred to an orphanage, where she was intended to be sold to a Dutch couple.⁴⁸⁵ The circumstances of her removal and intended transfer for adoption are indicative of human trafficking. The case received a lot of media attention as the birth father himself filed a lawsuit in 1981 against the adoption in Indonesia.⁴⁸⁶ The child was about 6 years at that time of the legal proceedings. The Indonesian court ordered her back, but the Dutch court ruled that since she is with the family in the Netherlands already for a considerable time it may not be in her best interests to be removed from the adoptive family and sent back.⁴⁸⁷ In parallel, the court also determined that the adoption was unlawful under the law applicable at that time.⁴⁸⁸ The

⁴⁷⁹ *ibid* 66.

⁴⁸⁰ *ECLI:NL:RBDHA:2021:5308*, *Rechtbank Den Haag*, C/09/585234 / HA ZA 19-1286 [2021] Rb Den Haag *ECLI:NL:RBDHA:2021:5308*.

⁴⁸¹ *ibid* 65–67.

⁴⁸² Kristel van Teeffelen, 'Rechter: Staat Had Meer Moeten Doen Voor Illegaal Geadopteerde Patrick' (*Trouw*, 24 November 2021) <<https://www.trouw.nl/binnenland/rechter-staat-had-meer-moeten-doen-voor-illegaal-geadopteerde-patrick~ba66839c/>> accessed 3 July 2026.

⁴⁸³ Commissie Onderzoek Interlandelijke Adoptie (n 104) 82.

⁴⁸⁴ *ibid* 82.

⁴⁸⁵ *ibid* 89–90.

⁴⁸⁶ *ibid* 89.

⁴⁸⁷ Marlou Schrover, 'Parenting, Citizenship and Belonging in Dutch Adoption Debates 1900-1995' (2021) 28 *Identities* 93, 101–103 <<https://doi.org/10.1080/1070289X.2020.1757252>> accessed 3 July 2026; 'Inter-Agency Guiding Principles on UNACCOMPANIED and SEPARATED CHILDREN' (n 47).

⁴⁸⁸ Commissie Onderzoek Interlandelijke Adoptie (n 105) 89.

Indonesian government temporarily suspended adoptions to the Netherlands as a direct reaction to this case.⁴⁸⁹ The orphanage Kasih Bundi, where the Indonesian adoptee was from, was blacklisted, but renamed and established itself under a new name again.⁴⁹⁰ BIA consequently terminated its involvement in intercountry adoptions from Indonesia in 1981, while the intermediaries Flash and Kind en Toekomst continued facilitating adoptions until Indonesia permanently discontinued intercountry adoption to foreign countries in 1984. ended intercountry adoption to Indonesia in 1981.⁴⁹¹

4.2.4.4 Sri Lanka

In 1979 intercountry adoption was legally possible to a limited extend also from Sri Lanka. Already from 1973 children were adopted to the Netherlands ever year.⁴⁹² The documented ‘babyfarms’ however led the government to restrict the rules in 1992 prohibiting mothers to give birth in unregistered homes and generally the retention of pregnant women or children.⁴⁹³ Babyfarms were facilities where women were reportedly brought to give birth, sometimes under coercive circumstances, with their children being relinquished for intercountry adoption in exchange for financial compensation.⁴⁹⁴ In 1970’s the Dutch organisation *Wereldkinderen* accused its competitor *Flash*, for malpractices in connection with intercountry adoption from Sri Lanka. *Flash* denied any involvement, maintaining that the alleged “babyfarms” was a fabricated account.⁴⁹⁵ Due to the Joustra Committee it is clear now that the Dutch Ministry of Foreign Affairs was informed about the phenomenon by Sri Lankan officials.⁴⁹⁶ The Joustra Committee concluded that the documented abuses violated the Dutch and Sri Lankan regulations applicable at the time, yet the existing legal and administrative frameworks had nevertheless failed to prevent their occurrence.⁴⁹⁷ The aftermath of the scandals led to tighter national legislation to prevent abuses. In 1992 a law was introduced, prohibited foreign prospective parents to pay Sri Lankan contacts for mediation and Sri Lanka put a quota for domestic adoptions.⁴⁹⁸ In 1993 Sri Lanka was also one of the first countries to sign the Hague Convention.⁴⁹⁹

⁴⁸⁹ *ibid* 82.

⁴⁹⁰ *ibid* 90.

⁴⁹¹ *ibid* 89–93.

⁴⁹² *ibid* 94.

⁴⁹³ *ibid* 94–96.

⁴⁹⁴ *ibid* 100.

⁴⁹⁵ *ibid*.

⁴⁹⁶ *ibid*.

⁴⁹⁷ *ibid* 106–107.

⁴⁹⁸ *ibid* 95.

⁴⁹⁹ *ibid* 105.

4.2.4.5 Haiti

Haiti was not included as a focus country in report but has been discussed extensively throughout the 20th century as a country, where irregularities were ubiquitous.⁵⁰⁰ Already in 2002 the intermediary *Flash* was suspended by the Dutch government due to falsified and incorrect documents of children's background of mediated adoptions by them.⁵⁰¹ In 2010, the Dutch Adoption Foundation (NAS) and the organisation World children who operated in Haiti and organised airlifts of 109 children, immediately after the earthquake in 2010 from Haiti.⁵⁰² These children were then placed for adoption in the Netherlands, including some whose adoption procedures had not been completed due to the state of emergency.⁵⁰³ Following the resumption of intercountry adoptions from Haiti by other countries, including the United States, Germany, and Switzerland, representatives of NAS questioned why the Netherlands would not likewise be able to resume adoptions from Haiti.⁵⁰⁴

Professor Hoksbergen argued that many adoptive parents were insufficiently prepared to address the complex needs of children who had experienced trauma from the separation during the earthquake. While he acknowledged their admiration and patience demonstrate, but states that the adoptive parents often underestimate the extent of experiences and burdens those children carried with them.⁵⁰⁵ In 2019 the Dutch state secretary suspended adoption from Haiti again on the premise that it does not serve the child's best interests.⁵⁰⁶ NAS argued that they ensured that the parents voluntarily waive their children and that there is informed consent and understanding of the concept of adoption and the adoption resumed in 2020 again.⁵⁰⁷ This happened despite the background of several serious reporting of child trafficking and falsified documents and was seen as stemming from a pressure of prospective adoptive parents on the Dutch government.⁵⁰⁸ A spokesperson of an organisation that actively works in Haiti today, to prevent adoptions abroad, stated that Haitian mothers would see the painted walls and toys from the foreign run orphanages, things which they could not offer their child and think that

⁵⁰⁰ *ibid* 120.

⁵⁰¹ Van onze verslaggeefster, 'Adoptie Kinderen Uit Haïti via Flash Gestaakt' *Trouw* (23 August 2016) <<https://www.trouw.nl/voorpagina/adoptie-kinderen-uit-haiti-via-flash-gestaakt~b4009548/>> accessed 6 July 2026.

⁵⁰² Pronk (n 481).

⁵⁰³ Commissie Onderzoek Interlandelijke Adoptie (n 105) 120.

⁵⁰⁴ ANP, 'Haïti Geeft Toestemming Voor Adoptiekinderen' *Trouw* (27 August 2016) <<https://www.trouw.nl/nieuws/haiti-geeft-toestemming-voor-adoptiekinderen~b5c9f924/>> accessed 3 July 2026.

⁵⁰⁵ Iris Pronk, 'Adoptievlucht Is 'zwakgebod'' *Trouw* (27 August 2016) <<https://www.trouw.nl/nieuws/adoptievlucht-is-zwakgebod~b2f9b4e8/>> accessed 3 July 2026.

⁵⁰⁶ Commissie Onderzoek Interlandelijke Adoptie (n 105) 120.

⁵⁰⁷ *ibid*.

⁵⁰⁸ *ibid*.

the orphanages are the best place for the child.⁵⁰⁹ Three months after they place their children, the child would be gone and leaves a lifelong grief on them. She says that if people are really concerned, they shall support them rather here.⁵¹⁰

4.3 No Longer in the Child's Best Interests? How the Netherlands ended Intercountry Adoption

The Joustra Committee concluded by stating that most international adoptions were in accordance with Dutch law.⁵¹¹ This, however, does not mean that the best interests of the child were given due consideration in each case, as the observed risks were considerably high, which is contrary to the general believe of parents and the wider public. It goes as far as stating that the desire to found a family has been paramount in many cases.⁵¹² Some adoptive parents in the Dutch case intentionally pushed the limits of the regulatory framework and sometimes acted unlawful.⁵¹³ The findings indicate that irregularities and abuses where the rule instead of the exception in intercountry adoption.⁵¹⁴ Although the Dutch authorities acknowledged the existence of abuses and expressed an intention to strengthen oversight, responsibility for preventing irregularities continued to be delegated to the authorities in the countries of origin.⁵¹⁵ This was done partly to prevent disruption of the adoption process and to preserve diplomatic relations with the countries of origin.⁵¹⁶ As a result, adoption documents were not sufficiently verified. An adoptee says that she never gave permission to the adoption but the Dutch state, so in her view, is liable for the misconducts in foreign adoptions and responsible for illegal adoptions.⁵¹⁷

One issue raised by the Joustra Committee is that the adoption system had no oversight of checks and balances as the government fulfilled both roles at the same time.⁵¹⁸ Thus, rules were in many cases not properly enforced.⁵¹⁹ This eventually means that stricter regulations have not

⁵⁰⁹ Sigrid Deters, 'Deze Haïtiaanse Schreeuwt Het Letterlijk van de Daken: "Geef Je Kind Niet Aan Een Weeshuis!"' (*Trouw*, 18 January 2018) <<https://www.trouw.nl/nieuws/deze-haitiaanse-schreeuwt-het-letterlijk-van-de-daken-geef-je-kind-niet-aan-een-weeshuis~b16475423/>> accessed 3 July 2026.

⁵¹⁰ *ibid.*

⁵¹¹ Commissie Onderzoek Interlandelijke Adoptie (n 105) 131.

⁵¹² *ibid* 132.

⁵¹³ *ibid.*

⁵¹⁴ *ibid* 96.

⁵¹⁵ *ibid* 144.

⁵¹⁶ *ibid.*

⁵¹⁷ Johan van Heerde, 'Hoeveel Kans Maakt de Zaak van Acht Illegaal Geadopteerden Tegen de Nederlandse Staat?' *Trouw* (26 July 2023) <<https://www.trouw.nl/binnenland/hoeveel-kans-maakt-de-zaak-van-acht-illegaal-geadopteerden-tegen-de-nederlandse-staat~b0889019/>> accessed 8 July 2026.

⁵¹⁸ Commissie Onderzoek Interlandelijke Adoptie (n 105) 129.

⁵¹⁹ *ibid* 144.

led to the elimination of abuses present in the system of supply and demand that persist until today, but rather enabled intercountry adoptions to go ‘underground’ in the case of the Sri Lanka-Jordan-Netherlands adoption route.⁵²⁰ In its conclusion the Committee recommended to suspend intercountry adoption altogether, as there is a doubt that a redesign of the system, where no abuse can appear, may not be realistic or possible under public law and the risks for the children to be trafficked within the system of intercountry adoption is too high.⁵²¹

4.3.1.1 The Countermovement

In May 2021, in a joint statement, license holders which are the adoption agencies, reacted to the findings of the Report with shock and accused the commissioners to have portrayed a false picture and furthermore that suspending the system is an extreme decision in regard to the unfounded ‘evidence’.⁵²² As declared in the statement, the decision may have far reaching consequences for children, adoptees and their families, as well as international cooperation and for the organisations themselves.⁵²³ A mother counterargued that only because a small number may have suffered from traumas does not mean that this shall be ‘projected’ on all adoptions.⁵²⁴ Moreover, it is pointed out that there are still an exceptional high number of orphanages with children and that studies have shown how disastrous it is for children to grow up in an institution.⁵²⁵ Karen Gregory, is one of the initiators of the petition that was started by parents against the suspension.⁵²⁶ She acknowledged the existence of historical abuses, but argued that abolishing intercountry adoption altogether, fails to do justice for the scrutiny and care with which adoptions are conducted today by adoptive parents.⁵²⁷ On the contrary an adoptee stated that it has been a historic and long-awaited moment for many adoptees.⁵²⁸ He mentions that we

⁵²⁰ *ibid* 103.

⁵²¹ *ibid* 140.

⁵²² TRES- [tres.nl](https://www.tres.nl), ‘Opschorting Interlandelijke Adoptie Ongefundeerd – Persbericht Vergunninghouders’ (*Wereldkinderen*) <<https://www.wereldkinderen.nl/nieuws/opschorting-interlandelijke-adoptie-ongefundeerd-persbericht-vergunninghouders>> accessed 7 July 2026.

⁵²³ Stichting Wereldkinderen, ‘Opschorting Interlandelijke Adoptie Blijkt Ongefundeerd’ (2021) <<https://www.wereldkinderen.nl/media/1441/2021-05-17-persbericht-opschorting-interlandelijke-adoptie-blijkt-ongefundeerd.pdf>> accessed 7 March 2026.

⁵²⁴ Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties’ (n 384).

⁵²⁵ Marinus van IJzendoorn, ‘Voor Een Kind Is Het Leven in Een Tehuis Altijd Nog Erger Dan Adoptie’ *Trouw* (10 February 2021) <<https://www.trouw.nl/opinie/voor-een-kind-is-het-leven-in-een-tehuis-altijd-nog-erger-dan-adoptie~b2b67a67/>> accessed 8 July 2026.

⁵²⁶ Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties’ (n 384).

⁵²⁷ Rianne Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties: “Je Kunt Niet Alle Landen over Één Kam Scheren”’ *Trouw* (15 February 2021) <<https://www.trouw.nl/zorg/adoptieouders-starten-petitie-tegen-volledige-stop-op-adopties-je-kunt-niet-alle-landen-over-een-kam-scheren~b4390ee3/>> accessed 8 July 2026.

⁵²⁸ Marten van de Wier, ‘Eind buitenlandse adopties verrast activiste Dong Hee Kim: “Dit is historisch”’ *Trouw* (22 May 2024) <<https://www.trouw.nl/binnenland/eind-buitenlandse-adopties-verrast-activiste-dong-hee-kim-dit-is-historisch~bde3764d/>> accessed 3 July 2026.

[adoptees] never dared to believe it would ever really happen, especially by the same ministry who wanted to resume adoptions again.⁵²⁹

4.3.2 The Last Chapter of Intercountry Adoption in the Netherlands

As a reaction to the joint statement by the license holder, the Joustra Committee submitted an explanatory memorandum to the Government in March 2021.⁵³⁰ This document gathered 60 signals of possible irregularities, based on interviews and research material collected during the investigation. The Joustra Committee argued in this notice, that the report is not a paper of proven misconduct but an accumulation of signals from different countries and actors that presents the structural vulnerability of the system.⁵³¹ The recommendation to suspend intercountry adoption is thus not based on individual proven cases but on systematic risks and failures.⁵³² Some shared the commission's view to believe, that as long as the system is not watertight it is better to stop it altogether.⁵³³ Other arguments entail that there is no such thing as a waterproof system and the question arises, if we even want to strive for one because there should be room for 'personal considerations', as a truly just system also offers the space to make exceptions.⁵³⁴ One adoptee stated that the experience of being adopted is not sufficiently understood as she was never provided with space to grieve and deal for her loss and that files erased that she ever had a past, or origin.⁵³⁵

After the first prominent Case of Dilani Butink from Sri Lanka, more adoptees advocated for justice and some decided for a collective lawsuit.⁵³⁶ The main demands by adoptees are compensations and redress for past mistakes.⁵³⁷ Similarly, as in Sweden, illegal adoption cases are often framed as one of state negligence.⁵³⁸ Court of Appeal of The Hague (12 July 2022), held that the Dutch State and the adoption agency had acted unlawfully ("onrechtmatig"), because they relied too heavily on the Sri Lankan authorities and should have done more in

⁵²⁹ *ibid.*

⁵³⁰ Commissie Onderzoek Interlandelijke Adoptie, 'Brief van de Commissie Onderzoek Interlandelijke Adoptie Aan de Minister Voor Rechtsbescherming d.d. 18 Maart 2021' (Ministerie van Justitie en Veiligheid 2021).

⁵³¹ *ibid.*

⁵³² *ibid.*

⁵³³ Alexandra van Ditmars, 'Een Adoptiesysteem Dat Echt Waterdicht Is: Bestaat Dat Wel?' (*Trouw*, 18 February 2021) <<https://www.trouw.nl/religie-filosofie/een-adoptiesysteem-dat-echt-waterdicht-is-bestaat-dat-wel~b5d59ba6/>> accessed 8 July 2026.

⁵³⁴ *ibid.*

⁵³⁵ Joep van Zijl, 'Opinie: Hoe Het Voelt Om Afgestaan Te Zijn, Heeft Nog Nooit Iemand Gevraagd' *Trouw* (14 April 2026) <<https://www.trouw.nl/opinie/opinie-hoe-het-voelt-om-afgegaan-te-zijn-heeft-nog-nooit-iemand-gevraagd~b4f3b3e2/>> accessed 8 July 2026.

⁵³⁶ Heerde (n 517).

⁵³⁷ *ibid.*

⁵³⁸ Adoptionskommissionen (n 232) 480.

light of known abuses.⁵³⁹ This was already celebrated as a major step forward by adoptees.⁵⁴⁰ Under international law, victims of Human Rights violations have the right to effective remedies even though the Hauge Convention itself does not provide a standard for such a procedure. The investigators final reflection says that by the imminent believe over the past decades to do something ‘good’ made possible for abuses to rise and persist.⁵⁴¹ There has been no room for unwelcoming judgements which may have only distort the picture of the inherent good nature of adoptions.⁵⁴² This follows the same observation and argument that was made in the previous report from Sweden, emphasized by Professor Anna Singer.⁵⁴³

4.4 Saving Children or Safeguarding Rights?

Analysis & Reflection

This concluding chapter summarises the central findings of the case analysis and reflects on them considering the broader human rights framework. It further brings the perspectives of the different stakeholders involved in the adoption project into dialogue and incorporates insights from the interviews conducted during this research to ultimately answer the research question.

The normative value of intercountry adoption remains highly debated among the different actors within the national discourses, before and after the inquiry’s findings. As the preceding country-specific cases have demonstrated, determining what constitutes the best interests of the child from a Human Rights perspective is not universally agreed upon and functions both as a legal principle and as a normative value, through which competing positions are justified. Both Sweden and the Netherlands developed their modern systems of intercountry adoption in the decades following World War II, while international adoption as an institution and from countries in the Global South, expanded significantly during the 1970’s. In both countries, adoption was initially framed as a humanitarian response to children in need. This discourse has legitimised the establishment of the practise. In Sweden, intercountry adoption was presented not only as a rescue project but also as an anti-racist project and at times even a moral obligation to express international solidarity.⁵⁴⁴ Similar humanitarian narratives emerged in the Netherlands, although they were shaped by different historical experiences, including colonial

⁵³⁹ The State of the Netherlands and Stichting Kind en Toekomst v Butink, Court of Appeal of The Hague, 12 July 2022, ECLI:NL:GHDHA:2022:124

⁵⁴⁰ Heerde (n 517).

⁵⁴¹ Commissie Onderzoek Interlandelijke Adoptie (n 105) 127.

⁵⁴² *ibid.*

⁵⁴³ *ibid* 121.

⁵⁴⁴ Hübinette, Lundström and Wikström (n 82).

ties within the Dutch context. In both cases, the dominant discourse portrayed adoption as primarily an unquestionable child protection measure, that would benefit children, and in the same instance reflect the generosity and compassion of receiving societies.⁵⁴⁵ As demand for intercountry adoption increased, both systems experienced growing pressure. Long waiting lists in adoption agencies and perceptions of unfairness, encouraged prospective adoptive parents to seek alternative channels. In Sweden this occurred through private adoptions, while in the Netherlands through so-called "DIY" adoptions, which were often facilitated by private intermediaries. Gradually these parallel systems increasingly lacked transparency and were difficult to supervise from the receiving states and states of origin. From the outset, both adoption systems were largely built upon trust: trust in intermediaries, trust in sending states and trust in the humanitarian purpose of adoption itself.⁵⁴⁶ This trust rested on the assumption that intercountry adoption was inherently beneficial. The possibility that a measure, intended to protect children, such as international adoption, could simultaneously facilitate serious violations of children's rights, proved difficult for many actors to reconcile and remains one of the central tensions that consists within the contemporary debate as well. The establishment of the commissions of inquiry in both countries, represents a significant historical turning point. Importantly, these investigations were not initiated solely by governments but followed decades of advocacy and demand for justice by adoptees. Researcher and adoptee, Tobias Hübinette, mentioned, that he had been demanding such an inquiry in Sweden for over 20 years.⁵⁴⁷

4.4.1.1 Power Asymmetries Between Sending and Receiving States

While both commissions were established with broadly comparable mandates, and resulted also in comparable conclusions, they ultimately reached different state practise on how to resume about the future legitimacy of intercountry adoption. Despite these different policy outcomes, both inquiries fundamentally challenged the traditional narrative within their countries. Contrary to long-standing assumptions, both concluded that intercountry adoption had underlying problems, which were not presented as isolated incidents, but as recurring risks connected to the structure of the system of intercountry adoption itself. Both reports identified the imbalance of power, between sending and receiving states, combined with financial incentives and the marketisation of adoption. The Sri Lankan case, where 'baby farms'

⁵⁴⁵ See (2.1.)

⁵⁴⁶ Commissie Onderzoek Interlandelijke Adoptie (n 105) 115.

⁵⁴⁷ Interview with Tobias Hübinette (ICAV) conducted via [Microsoft Teams] (June 19, 2026) 5-6.

emerged, is illustrative for this development.⁵⁴⁸ The imbalance between receiving and sending states was also addressed through questioning, if the principle of subsidiarity was given due consideration. In some cases, as described by a Chinese adoptee, domestic prospective parents have had more criteria to fulfil, or are not given priority over international adoptions.⁵⁴⁹ The landmark decision *Pandey v India* for example, has reinforced the principle of subsidiarity within intercountry adoption significantly.⁵⁵⁰ From the perspective of sending states, intercountry adoption and the best interests of the child assessment, may also risk being subjected as to what constitutes as “material welfare”, and leaves out the dimension of states obligations to establish care facilities. Additionally, the discourse may even leave out “cultural welfare” as an important element of a child. The central problem is therefore not only whether a child can have better material conditions abroad, but whether international adoption has been used to compensate for structural failures that should instead have been addressed through domestic solutions. The main question in both reports is consequently not whether individual adoptions may have benefitted from intercountry adoption, but whether the system itself can reliably guarantee the best interests of the child(ren).⁵⁵¹

4.4.1.2 Safeguarding Rights Through Legal Certainty

Coming back to the research question, both countries increasingly delegitimise intercountry adoption as a child-protection measure at the systemic level, while recognising that individual adoptions may nevertheless have served the best interests of (some) children. In both countries, *legal certainty* emerged as the decisive criterion for this assessment. An assessment of the child’s best interest can therefore not be sufficiently carried out, where the legal origin of the child, or the parental consent is missing or coerced. The Swedish report notes that, it is therefore not enough, to declare that the parents left or relinquished the child, to have fulfilled the obligations of the best interests of the child, because it does not provide measurements for considering legal certainty.⁵⁵² The question ultimately arises, can legal certainty be the determining factor for the assessment of the best interests of the child? Does legal certainty extents to the power imbalance between receiving and sending states? Or the absence of voice and agency by the birth mother? If legally, consent has been given by the birthmother, does this eliminate the factor of real uncertainty in the light of the paradox of choice she has, for

⁵⁴⁸ See (4.2.4.4.).

⁵⁴⁹ See (4.1.2.2.1.)

⁵⁵⁰ *Lakshmi Kant Pandey v Union of India* (1984) 2 SCC 244 (SC) para 15.

⁵⁵¹ See (4.1.1.1.) & (4.2.1.2).

⁵⁵² Adoptionskommissionen (n 196) 224–225.

example. The debate illustrates that the birthmother can hardly be described as a free agent, as she is sometimes even unaware of what an international adoption means.⁵⁵³

4.4.1.3 Different Paths Under Shared Frameworks

Ultimately, the two countries differ in how they interpret the implications of these findings. Sweden concludes that the current *mediation-based* system should be discontinued because it creates demands that may conflict with the child's best interests.⁵⁵⁴ At the same time, it argues that intercountry adoption should not be abandoned altogether. Instead, responsibility should be transferred entirely to the State, thereby discontinue to mediate children through private intermediaries.⁵⁵⁵ This conclusion reflects Sweden's broader tradition of a strong public institutions and extensive state responsibility. It also reflects the practice of other states who are turning towards a state-based solution instead of private actors in international adoption.⁵⁵⁶

In the Dutch case it is more clearly demonstrated, that governmental oversight and reporting mechanisms had failed over several decades, despite recurring indications and reporting of abuse, which is why the Netherlands are completely phasing-out intercountry adoptions.⁵⁵⁷ Moreover, it has been emphasised by both cases, that even after the implementation of the Hague Convention irregularities occurred. As discussed in Chapter 2, the Hague Convention provides a minimum standard to make cooperation possible and does not function as an instrument, that primarily safeguards international adoptions.⁵⁵⁸ The interviewee Lynelle Long, describes the Hague Convention as a “toothless tiger”, a system that is without accountability, as it has no enforcement mechanisms, except for the national mechanisms.⁵⁵⁹ The resulting decision to phase out intercountry adoption in the Netherlands reflects that there is no alternative solutions, as there may be no design of law that reflects a just system in intercountry adoption. It does however not reflect the mere Dutch societal disinterests.

⁵⁵³ See (4.2.4.1.)

⁵⁵⁴ Adoptionskommissionen (n 232) 677–680.

⁵⁵⁵ See (4.1.3).

⁵⁵⁶ Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026), 35-39.

⁵⁵⁷ Commissie Onderzoek Interlandelijke Adoptie (n 530) 136.

⁵⁵⁸ Interview with Lynelle Long (ICAV) conducted via [Zoom] (June 11, 2026).

⁵⁵⁹ See (3.1.)

4.4.1.4 Stakeholders and the Legitimacy of Intercountry adoption

From a societal assessment there are major voices that argue international adoption is in the best interests of the child, and to discontinue adoptions abroad is a form of negligence.⁵⁶⁰ The comparison also reveals important differences in how various stakeholders participate within these discourses. Birth parents remain largely absent from both legal and public debates, despite being among those most directly affected. Their lack of agency and their limited ability to challenge unlawful adoptions, is illustrated by cases such as Kurniawati, where both Indonesian and Dutch courts recognised that the adoption had been unlawful, yet the child was never returned to the biological parents.⁵⁶¹

In Sweden the current tendency shows that adoptive parents are in favour of most recommendations from the inquiry, but not the fact that the state takes over and mediation discontinues.⁵⁶² The recommendations, such as the resources centre, may also help adoptive or prospective parents, as the analysis showed that they were relatively little information as to what regards the long-term consequences for some adoptees. Hübinette said that [resource centres] are already a common infrastructure in Sweden, for other groups in society, such as children with disabilities, or national minorities.⁵⁶³ An issue for many adoptees is that their experiences as transracial adoptee is vastly different from domestic adoptees.⁵⁶⁴ Thereby the resource centre may considerably help to redress specific challenges connected to intercountry adoption. The idea of such a national resource centre is also welcomed by the adoption agencies who are generally advocating against the phasing-out of international adoption in Sweden.⁵⁶⁵

For adoptees, the inquiries were long awaited by many, but also critically assessed by other adoptees. Adoptees themselves are not a homogenous group in the discourse.⁵⁶⁶ This is due to the multitude of experiences that entails international adoptions.⁵⁶⁷ For adoptees, irregular adoption can carry consequences extending far beyond procedural deficiencies. If the adoption itself is unlawful, uncertainty affects the adoptee's identity itself.⁵⁶⁸ In the Netherlands there has been a public apology immediately after the release of the report. In Sweden this

⁵⁶⁰ See (4.1.4.2.)

⁵⁶¹ See (4.2.4.3)

⁵⁶² Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026)

⁵⁶³ Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026), 45-54.

⁵⁶⁴ Interview with Lynelle Long (ICAV) conducted via [Zoom] (June 11, 2026), 41-45.

⁵⁶⁵ Hübinette interview (n 1) 63-65.

⁵⁶⁶ Commissie Onderzoek Interlandelijke Adoptie (n 105) 138.

⁵⁶⁷ Adoptionskommissionen (n 232) 8-11.

⁵⁶⁸ *ibid* 81.

recommendation from the inquiry was not addressed properly by the Swedish government. This may be because, the current Prime Minister in Sweden, himself is an adoptive father who was actively downplaying corrupt adoptions in Sweden.⁵⁶⁹

4.5 The Author's Assessment

From this broader assessment, I conclude that intercountry adoption is illegitimate from a broader Human Rights perspective, taking into account the vilification of the birth mother in the discourse and her absence of choice, given the alternatives welfare systems available in countries of origin. In my view, the current model of intercountry adoption no longer adequately reflects either a culturally diverse understanding of care or the contemporary Human Rights framework. Its permanent nature of severing the child's legal and familial identity embodies in my view, a predominantly Western understanding of family that increasingly conflicts with contemporary Human Rights principles recognising identity, culture and community as a wider aspect. At the same time, I do not believe that all forms of cross-border child protection should be abandoned, but possibly reimagined or even renamed. This may be important, so that it is clear, that there is a differentiation from the system of mediation in today's international adoptions. In a global world, it will be necessary to facilitate such a system of cross border child protection and thus will require international solutions. More broadly, I believe, the debate on the legitimacy of intercountry adoption cannot be separated from a wider question, of what constitutes future family formation. Alternatives to international adoption would be limited by completely abolishing the idea of intercountry adoption. Nonetheless, taken together, the various conflicts and the abuse in the system that is not limited to incidental cases, but has been verified on a systematic basis, intercountry adoption cannot be regarded as primarily in the best interests of the child. Against this background I believe that the benefits of intercountry adoption no longer justify the risks it entails, and its current institutional form can therefore no longer be regarded as a legitimate human rights practise in today's world.

⁵⁶⁹ Hübinette interview (n 2), 66-73.

5 Conclusion: Did Intercountry Adoption Survive the Human Rights Turn?

The global discourse on intercountry adoption demonstrates a profound shift in how adoption has been understood and justified within the framework of the best interests of the child. Initially, children were predominantly portrayed as vulnerable subjects in need of rescue or ‘saving’, particularly by Western receiving states. As reports of irregularities, child trafficking and the commodification of children increasingly emerged, this discourse gradually evolved towards one centred on regulation and child protection. International legal frameworks, most notably the 1993 Hague Convention, introduced the principles of subsidiarity and the best interests of the child as the normative foundations, which governs intercountry adoption. Throughout this thesis, the best interest’s principle has functioned as an indicator of how states have framed and legitimised child protection, within changing political, legal and social contexts, with a focus on Sweden and the Netherlands. Rather than resolving the legitimacy of intercountry adoption, the growing recognition of systemic abuses, financial incentives and unequal power relations has fundamentally challenged the assumption that the system itself necessarily serves the best interests of the child and its legitimacy.

The European Human Rights framework similarly provides no definitive answer as to whether intercountry adoption always provides the best interests of the child. While the Council of Europe continues to recognise intercountry adoption as a legitimate child-protection measure under strict safeguards, the jurisprudence of the European Court of Human Rights demonstrates that the assessment of the child's best interests must remain central and highly context-specific. By granting states a wide margin of appreciation, in matters of family life, the court acknowledges the diversity of national approaches while consistently rejecting the existence of a general right to adopt under Article 8 ECHR.

Against this background, the Swedish and Dutch case studies illustrate how states operating under the same international legal frameworks, may nevertheless arrive at different policy responses, while relying on considerably similar findings. Both inquiries concluded that irregularities were not isolated incidents, but reflected structural weaknesses within the intercountry adoption system that persisted despite increasing legal safeguards.

Consequently, both states increasingly struggled to legitimise intercountry adoption as a child-protection measure from a systemic perspective. Although individual international adoptions may have served the interests of children, both inquiries questioned, whether a system that is characterised by imbalance of power, financial incentives and recurring irregularities, can reliably guarantee the best interests of the child on a macro level. The Netherlands concluded that these risks could not be sufficiently eliminated through reform and therefore decided to phase out intercountry adoption, whereas Sweden has thus far pursued a reform-oriented approach by discontinuing mediations but continuing to process cases in intercountry adoption through the state, while simultaneously questioning the future viability of the existing system of mediation.

The thesis further demonstrates that contemporary developments have not been driven exclusively by governments or international organisations. Rather, adoptees themselves have become central actors in the discourse. Through advocacy, and public testimony and reconciliation processes, adoptees have challenged the dominant humanitarian narrative that historically legitimised intercountry adoptions and have demanded recognition of historical injustices.

In answer to the research question, this thesis finds that states operating under shared international Human Rights frameworks frame and (de)legitimise intercountry adoption through competing interpretations of the best interests of the child. While international law continues to permit intercountry adoption under strict conditions, the meaning attached to the best interest's principle has evolved from facilitating adoption, towards critically assessing whether the system itself can satisfy contemporary Human Rights standards such as the Right to know one's identity. Whether intercountry adoption remains a legitimate child-protection measure, ultimately depends not on the existence of a universal legal answer, but on whether states can convincingly demonstrate that the rights and interests of children, not the interests of institutions, receiving societies or of prospective adoptive parents, remain the primary consideration throughout the international adoption process.

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7 Appendices

Appendix A – Interview -Transcript

Interview 1: Lynelle Long (ICAV)

Interviewee: Lynelle Long, Founder Intercountry Adoptee Voices (ICAV)

Interviewer: Priya Schweiger

Date: June 11, 2026

Format: Online, semi-structured Expert-Interview

Duration: 30 minutes

Where: Online

Interviewer 0:03

1. As you have, both roles being an adoptee and also founding this network, can introduce yourself and how you have
2. developed to found this network, and how this network also contributed to the public and political discourse over the time, and
3. what impact your network had on the adoptee voices, and in a discussion on inter-country and illegal adoptions

Lynelle 0:55

4. I'm Lynelle Long, a Vietnamese-born person taken to Australia in 1973 as a five month old baby. I was very much illegally
5. adopted, and I arrived here in 1973 and was taken in by this, was actually facilitated by them through private lawyers in
6. Vietnam. In this, was in the middle of the Vietnam War, or just at the end of the war, and so as a five-month-old baby, I arrived
7. in Australia with just a passport, that's all I've ever seen, and I grew up in a family who had four biological children, two older,
8. two younger, I was in the middle, the only adopted one, the only person of color, they raised me in a very rural regional area of
9. Australia on a dairy farm, must be the only Asian on a dairy farm, and so my life was very isolated growing up in a place like
10. that, so my whole life, while I went to schools, high schools, church, any sporting things, I was the only person of color,
11. except for the indigenous Aboriginals, of which you barely saw any of them either, so because of that life growing up very
12. isolated, very regionally, very much, and because I was adopted in 1973 this is way before Australia began its formal
13. program, which was really about 1990 late 1980s So this was in the stage when adoptive parents would create their own
14. adoption organizations and agencies, they would form connections in birth countries, and they would facilitate themselves,
15. children from those birth countries, in exchange for at the time in the war, they would give formula nappies, food in exchange
16. for babies, and these babies would then, you know, get to different families, but my parents actually hired
17. a private lawyer through the adoption network in Vietnam, who it looks like he probably got me out of a maternity hospital, so
18. I was never in an orphanage that I know of, but because I have no paperwork, it's really hard to know, so it's all based on what

19. I've found in the 50 years that I've spent trying to track down my origins, so that life that I had growing up isolated, meant that
20. by the time I was in my mid 20s I was very suicidal, I was very much struggling, I'd also had a very abusive life in that adoptive
21. family, they sexually abused me and emotionally abused me that whole time. I was like a family slave. My father actually pled
22. guilty about three years ago. I pressed charges legally and had him prosecuted. So, yeah, that was the extent of my life in that
23. family, which wasn't very good for me, and I guess really, because of all of those struggles, and so much to deal with, going
24. through it alone, you could say that that's had a massive impact on why I've created and founded this network called Inter
25. Country Adoptive Voices, having no support, having no one to turn to, having no education, no training, no no groups, nothing
26. existed back then. And when I was in my mid 20s and suicidal, you know, one of the attempts where I ended up in hospital, I
27. thought to myself, "Fuck, I can't even kill myself properly, so I've either got to decide to live properly and well, or I just knock
28. myself off and do it properly, right. So, there's, you know, when you get to that point where you realize you've got nobody in your
29. life that gives a damn, you've really got to make a decision as to whether you're going to live or not. So, for me, I decided I'm
going
30. to just live and give it a go, so that's when I really started committing hard to dealing with what I realized was all the trauma of
31. my life, and it took me quite a while, but I went looking for support. I went to post-adoption organizations here in Australia, but
32. they really only dealt with domestic adoptees. They didn't, they weren't catering for people of color, for people who were trans
33. racial, for people who had come from another country, and definitely not for people who are trafficked in situations like mine.

5:35

34. What was the kind of support that were offered there?

Lynelle 5:44

35. Post-adoption support.

Lynelle 5:46

36. The offered support, but when I went to, like, the first group day, where it was all about adoption, it was all with other domestic
37. adoptees. So I, again, was the only person of color sitting amongst these white Australians. Yes, there are things you know as
38. well as I do, as being adopted, that there are things we share in common, but there's an awful lot that's missing from domestic
39. adoption that we have on top, and so I said to them at the time, I said, don't you have any other people like me? you know, who
40. are people of colour and born in another country and they said, well, we haven't really seen a lot, but there's occasionally one
41. or two, so at that time I just said, here, here's my name and number, I'm just going to start up a group, and if anyone contacts
42. you, please feel free to share my details, and I'll create a group, because I could see the big need, right. It's like surely I'm not
43. the only one kind of struggling
44. with this, so that is why I developed this [network]. I did not know back then in 1995 what it would become today in 2026 so
45. I've been doing this for 28-29 years, and it has been a massive journey, and it is amazing what has happened, because initially I
46. started just providing support to people in my own country, here in Australia, I worked for IBM, I was in IT, and I also studied
47. psychology, so at that time I immediately created a website, so that people could find this network of adoptees, and straight
48. away from everywhere around the world I had people joining from the Netherlands, Denmark, USA, Canada, and I thought,
49. wow, there's there's so many of us! So from the very beginning, my network has always been for all inter-country adoptees, not
50. just those of us based in Australia. So, I've always allowed them, I've always welcomed them, I've always talked to them, I've
51. always shared with them and listened to their stories. So, yeah, so that's kind of how it started, and back then, at that stage, for
52. the first 10-15 years, I really just focused the group on just supporting one another, peer support, where we, you know, got

53. together in person or online and we chat and share and connect. We did various projects together in Australia. I did certain
54. programs where I actually connected to all the central authorities in Australia, the people who facilitate inter-country adoption.
55. And what I did was, I got adoptees who wanted to do something positive, I connected them in, so that they could be the
56. adoptees to speak at prospective parent education sessions, so that parents who are getting educated about considering
57. adoption were actually hearing from real lived experience to hear what it was really like, so that was really the first start of me
58. realizing that we can get our voices into important spaces and change the future of what's happening in inter-country adoption,
59. and that was really powerful, and so many adoptees, like myself, it felt like, oh my god we're not just telling our stories, but
60. we're telling our stories for a purpose, you know, it's actually to help the next generation of adoptive parents do a better job
61. than what we got from our adoptive parents, so it was very powerful way just to experience lived experience expertise in action
62. informing adoption practice and education, so that was really powerful. Then what happened next in Australia was the parent
63. all got upset because they couldn't get enough children quick enough through inter-country adoption, so our government ran
64. an investigation for the first time, and this was back in 2004, back then they ran a government investigation because they were
65. trying to make the processes better, easier, speedier, and more awesome, so that adoptive parents could get children faster
66. quicker, and better, and that was the first time I contributed to, like, a parliamentary investigation, and I had my network
67. contribute to that. Then, what happened as an outcome of that was they made recommendations that there should be an
68. advisory group to the Australian government, so that when they continue to do inter-country adoption, there is a group of lived
experience that was

Lynelle 10:28

69. informing the government and how they're conducting intercountry adoption, so at that time there were 18 positions that went
70. to be on this advisory group, and only one of them was for an adoptee, the other 17 were all for adoptive parents, so that
71. showed you the ratio of government's care factor for adoptees, but I was that first adoptee to actually be in that government
72. consultation group, so for two years that was my first introduction to The Hague and to understanding that Australia was a
73. signatory to some international convention, and that there were rules and guidelines and procedures and processes that they
74. were supposed to meet, supposed to develop and follow, and so that began my education in all of the baseline understanding
75. of how is inter-country adoption facilitated by governments of governments. What are their roles? What are the processes, the
76. policies? What's all the terminology? Then what I did in Australia was, once I learned a lot of that, I then set up my org to be
77. more focused on speaking and trying to change policy process practice, because I realized how pro adoptive parent it was, and
78. how it completely misses everything about the adoptee experience, our rights, our protections, all of these things that can go
79. wrong, which do go wrong. So that's how things kind of developed, and that's how I got really involved politically first. Then, in
80. Australia, because of my understanding, I actually took a group of adoptees, and I was very careful in selecting that, because I
81. made sure it was a range of birth countries groups that were represented. I also made sure it was a range of generations, so
82. different ages, and I took us as a group to meet our Prime Minister, which is the highest level in government, and I actually
83. asked for a meeting, and we were successful, and got that, and I asked first of all that the government consult us directly about
84. inter-country adoption, so that it wasn't just adoptive parents that they were listening to. Secondly, I asked for post adoption
85. support because nothing existed at that time, apart from the domestic support, which wasn't really at all catering for us, and
86. certainly they weren't funded to help us with cross border issues. So that was my first experience of dealing, with advocacy
87. directly, and we were successful. So we have had a post adoption support completely funded for the whole of Australia for all
88. inter-country adoptees for the past 10 years, and we even now have that's expanded and grown, we even have funding that we
can apply for that allows adoptees to build our own community and create projects and do things to help our community
89. connect, grow, heal, you know, and all of that. So we're quite forwards in terms of compared to where a lot of other countries

90. are at, because of what ICAV's been doing, so in terms of that, I then what I've done with a lot of the adoptee leaders that I've
91. connected to around the world, I share what I'm doing, how it's worked, and encourage them to do the same in each of their
92. countries, now because of my understanding of the Hague in the way that inter-country adoption is done, I actually also set a
93. goal for myself to get to that forum, so that we could actually have a voice in there and influence it, just like I'd done in
94. Australia, I wanted to do that on an international scale, so and again I was successful in that, I managed to get to The Hague,
95. and to this day I'm still the only adoptee-led organization that continues to be consulted and involved in these Hague meetings
96. with the governments, where they discuss everything about how they do their business in inter-country adoption and.

Lynelle 15:00

97. The Korean adoptee organization had been in there for the last 20 years, but from my experience watching and observing them,
98. they never speak, they don't say anything, they just sit in the meetings and they literally observe, because the role that we're only
99. allowed to have is to observe, it's called an observer role, but that doesn't mean you don't say anything, and they've never
100. actually spoken up, so for 20 years you had Korean adoptee organizations attending these meetings, but never saying a word.
101. They literally just observed, and it's been me going in there and really challenging questioning and participating and
102. contributing, probably because I understand the Hague Convention itself that I can actually translate a lot of our lived
103. experience that I've gathered from around the world from all the adoptees that connect into me, I've been able to translate
104. that into their language in the Hague speak, so that they understand what's actually going on, and there's a big disconnect
105. between what they think they've set up between what actually happens, so that's why the network that I do is really important
106. to persuade and change and influence the way that inter-country adoption is done, because they never before had feedback
107. that was actually translating it into their language and explaining to them where the problems were, where the issues were,
108. where the lack of foresight has been, because they only ever saw us as perpetual children. They definitely did not see us as
109. growing up and wanting to step into their spaces and actually have a say. So that's what I've changed, is that they now realize
110. that inter country adoptees could have a valuable contribution to how these discussions are done, and it's interesting to watch,
111. you know, them react to that. In terms of your third question, How have I observed changes? So, definitely from that
112. government perspective, at The Hague, I've realized that in the years that I've been attending Hague meetings, that we actually
113. have a lot of allies. There's a lot of countries in Europe, particularly, that are very much aligned with adoptees and what we're
114. asking for in terms of our rights, things like there should be post adoption support, it should be free, it should be equitable, it should
be available to every adoptee.

Interviewer 17:25

115. Which Countries do have a mind [who are more aligned with adoptees voices]?

Lynelle 17:32

116. for example, you've got countries that are very proactive in that, such as Flemish, part of Belgium, such as Switzerland, both
117. of those countries have actually implemented amazing changes from hearing from adoptees and actually listening and
118. responding, like Belgium, for example, the Flemish part has actually been the first country in the world, just last year, to
119. implement legislation change that allows adoptees to prosecute the traffickers, now that's a first in the world, because even
120. though they've all signed these fake convention, what's missing with all of this is that the Hague Convention is like this loose
121. framework that there's been the bottom line of what all these countries can agree on. It may not be the top level of ideals, it's
122. the bottom level, because they can only agree on something, and it has to be everyone agreeing, otherwise it doesn't go. So,
123. because of their system of voting, and how things get passed through, it's all or nothing. So, everyone has to either agree and

124. vote, or it doesn't go at all, and that's why the Hague Convention, if you read the text, looks really shit from an adoptee
125. perspective. Excuse my language, because it's very bottom of what all these countries could agree on. So, countries like India,
126. for example, have such a low standard of care compared to countries like. I don't know if I could name a birth country that's
127. got high standards. But compared to an adoptive country that's got high standards, like Flemish, Belgium, they expect that,
128. you know, all of these things would be in place, and so there's a real disconnect between the countries who are signatories,
129. of which there's 107 countries at the moment. So some of those 107 have really baseline concepts of what inter-country
130. adoption should be. Some have really high, and there's a massive gap in between, so they don't all agree on everything, and
131. they have a lot of, you know, negotiating. Talking about how the politics actually works. ICAV has definitely contributed to those
132. discussions and helped support the countries who are more pro adoptee and adoptee rights. Yes, we've actually been like
133. allies, so when they vote for something, or when they suggest something, I back it up. When I suggest something, they back it
134. up, and they vote, because I don't have, as an observer, I don't have any voting rights. So that's the problem as well, is that we
135. might participate, but we have absolutely no rights, because it's government to government, and they are the ones with the voting
rights.

Interviewer 20:31

136. How did the UN statement that you worked with together in the on the drafting process influenced [the discussion]

Lynelle 20:46

137. It wasn't just me, Mariella from Belgium, she's a, she's a stolen, trafficked adoptee from Guatemala, and it's really been her in
138. Belgium, Flemish Belgium, that's pushed through all that change, as well as having a strong pro-adoption ally, the central
139. authority. So, Mariella has provided her case study alone, and she's done books, and she's done so much public media about
140. being stolen from a hospital where her mother was told she was dead, and then she got trafficked to Flemish part of Belgium
141. through inter-country adoption, and she didn't know all this until she went searching for a mother and found out that her
142. mother had been told she died. They thought they'd buried her body when she was a baby, right? So real shock, but because
143. of Mariella's work, she actually was the one who connected directly to the UN. I was the one that connected directly to the
144. Hague, but Mariella and I have worked closely together, and we have a good relationship of trust. I helped get her to the Hague,
145. so that she could speak as an organization and as an adoptee and participate in Hague meetings, she helped ICAV get to the
146. UN, and together with the UN, mainly through her, we got to participate with the UN joint committee, who was actually
147. compiling that joint statement, so we did get to look at the draft and vet it and give feedback on whether we thought it was
148. missing something, so yes, that joint statement from the United Nations has been work together with lived experience, which
149. has been very powerful, because now I continue to do work with the UN and have direct connection to the chairs and the vice
150. deputies and things like that, they're helping us. They are definitely our allies. They're one of our biggest allies, helping to push
151. countries, governments to do the right thing. When this has become such a massive trafficking situation, they can see it, you
152. know. They tell the states that they have a responsibility to fix this for the victims, but it's, it's like forcing a naughty child to
153. recognize that they've done something wrong when they don't want to, right? So, you know, yeah, so it's been really, really
154. interesting to work at such a level, you know, to to make and push for change, but of course, some of the most significant
155. problems in the current system is that the problem with the whole Hague Convention is that there is no independent
156. monitoring, there is no independent evaluation of whether and how countries are upholding their obligations, and there's
157. definitely no punishment mechanism. There's definitely no reporting mechanism for us as victims to be able to go to some
158. independent body, and we can say my adoption has been like this. This needs to be investigated by an independent

159. international organization who has the authority to actually hold them to account, that doesn't exist, and that's why when you
160. think about the Hague Convention, you need to remember it's a toothless tiger. It looks like it's got all the framework in place,
161. but if there's no mechanism to enforce it, if there is no mechanism to hold the states accountable to what they've signed up
162. to, it's literally just, it looks like a great thing, but it's empty. It doesn't actually provide any safety or security at all for us, in
163. particular, all our birth families. And so that's one of the most significant problems. The current form of inter-country adoption
164. still has no legislation in place in most countries, except Flemish, Belgium, to prosecute a wrongdoer if they traffic us, so
165. trafficking is completely enabled and allowed because all of these 107 signatory countries have not implemented any
166. legislation to even define what. What an illegal adoption is, or to put in criminal code that allows us to prosecute those who do
wrong, so that is one of your most significant problems.

Interviewer 25:23

167. I don't know how it is in Australia, but in Europe, there's a lot of countries who were established this process of looking into
168. past adoptions, but also to, as like the Netherlands, they abolish the system. What do you see the future in inter-country
169. adoption, and do you see a tendency? What development pointing towards abolishment as a kind of the way to ensure the best
interests of the child, or what do you see could be the future of Intercountry adoption [personally].

Lynelle 26:07

170. I've, I know that too many countries love adoption, because you know, think of it this way, in the child protection system,
171. adoption is the only form of care where the children are taken off the state responsibility in terms of cost and legal
172. responsibility and hand it over to a private person, that's why the states love adoption, because they no longer have to
173. financially be responsible, and they no longer legally have to be responsible for what happens to that little person, so I can't
174. actually see states ever giving up on adoption, because they absolutely love it. They want all children in care to be put into
175. adoption, not foster care, because foster care still costs them, you know, any other form of care. It still costs them lots of
176. resources to check up on the children, to make sure they're safe, to make sure they're being educated, and to try and help
177. them grow up, right? Whereas adoption, they go, 'Oh, awesome, no longer my responsibility, someone else's, right? So, while
178. that is still like that, I can't see adoption going away anytime soon, because even though there are multiple countries in Europe
179. who have done investigations and are deciding to close it down. I can't see them ending all of the adoption altogether because
180. of that reason, monetarily, legally. The problem for us as victims is that the system is a very outdated, archaic mode of care.
181. We really need to overhaul the whole concept and get rid of adoption, because it's got so much bad history and bad
182. connotations with it, but unfortunately, I can't see states, governments actually doing that work going to all cost when they've
183. already got a beautiful solution that's worked for them for decades, so what we want is to abolish because we've been, you
184. know, children traded and commodified this way, but I can't see politically unless adoptees all grew up and become politicians
185. and get into governments to make those decisions. I can't see adoption going away anytime soon. What will happen is what
186. we're seeing already, which is the numbers are severely dropping, but it'll never completely stop. Mostly, it'll probably just be
187. like what you've got in Austria - three, 4, 20, 50 cases year on year, but not a complete stop altogether. Because the problem
188. is, you think about why did the Hague Convention begin in the first place. It actually began in the first place because people
189. were doing black market private independent adoptions without any government involvement. That's that's why the Hague
190. Convention came about, because they could see that there was a lot of trafficking, there was a lot of problems, there was a
191. lot of, you know, conflict of interest of adoptive parents doing their own thing, creating agencies, buying children. So, the issue
192. is, if you abolish adoption, what happens to the demand? It just goes underground and becomes a black market again, like it
193. was when it first began. So, from that perspective, too, you got a way up, you know? Do you want - do you want a system that

194. curbs it, but at least pretends to have some kind of framework and baseline agreements, or do you want it just to go invisible,
195. where you can't even see who's doing what, and it just happens anyway, right? So, I don't know, it's kind of like, which devil do
you want, the devil you know, or the devil you already knew before?

Interviewer 29:56

Yeah, I understand this perspective.

Lynelle 29:58

thank you so much for you, time!

Appendix B – Interview -Transcript

Interview 1: Tobias Hübinette

Interviewee: Sam Dol Lee Gunnar Tobias Hübinette (Researcher)

Interviewer: Priya Schweiger

Date: June 19, 2026

Format: Online, szmi-structured Expert-Interview

Duration: 30 minutes

Where: Online

Interviewer 00:01

1. Start by introducing yourself, and also, I don't know in which extent you worked in the inquiry last year from the Swedish into Inter-Country Adoption in Sweden, and explain what what has changed since?

Tobias 00:23

2. so yeah, my name is Tobias Hübinette in Swedish, or Tobias in English, and I'm adopted from South Korea, and I've been
3. active both as both as a researcher and as an activist with regards to adoption issues, and both in relation to my country of
4. birth and to the country that adopted me, Sweden, and when it comes to this inquiry, I was involved from the beginning, so to
5. speak, in the sense that I have been a vocal proponent for establishing such an inquiry in Sweden already since more than 20
6. years ago I think when I started to criticize international adoption to Sweden in relation to the problem with illicit and corrupt
7. adoptions, and when the Swedish media started to report about such adoptions, it has happened intermittently. I have always
8. been involved in some way doing research for various media outlets, etc. For example, in 2018 when the knowledge about
9. the Chilean corrupt adoptions became more well known in Sweden, I was involved in, in, in that exposure, so to speak, and
10. finally in 2021 then the government inquiry in the Netherlands came out in February of that year, and during the same month,
11. the biggest Swedish morning newspaper, Dagens Nyheter, started an article series, which I was also involved in, as
12. it was built upon my own private archive and library concerning international adoption, and during that year, in 2021 me and
13. other adoptees tried to push the then government of Sweden, which was social democratic at that time, to do like the
14. Netherlands and also other European countries that have done the same, such as Switzerland, etc. and France, and
15. eventually, in October of 2021 the Social Democratic government of that time decided to create this inquiry, which submitted
16. its final report to the current Swedish government last year, almost one year ago, June of 2025 and from then on, which this
17. is common in Sweden and in other countries as well, there was a referral round in the sense that anyone involved in adoption,
18. adoptees, adoptive parents, but also universities, experts, child experts, etc. are invited to submit their own statements

19. concerning the recommendations of a certain inquiry, and the deadline was set in October of last year, and after that,
20. normally any government in Sweden, whether it's right wing or left wing, will decide, depending on these various statements
21. coming in from stakeholders and others, which recommendations from a certain inquiry will that will be realized, put into a
22. government bill. Basically, what happened last year was that very little happened, actually. So, there was a lot of impatience
23. among adoptees and others who have been engaged with the adoption issue, and eventually at the beginning of this year, the
24. responsible minister, which, who is the Minister for Social Affairs, basically she invited Camilla Waltersson Grönvall she,
25. who represents, I think, the Christian Democrats, I think, so one of the minor right-wing parties in the coalition government.
26. She invited all the stakeholders for a roundtable discussion, where she basically summarized the results to a referral round
27. about one month. Of later, also at the beginning of this year, and the Center Party and the Green Party, who are both part of
28. the opposition, they together they invited any, yeah, anyone who is interested, mostly adoptees to another kind of meeting at
29. the parliament, and this was not on the governmental level, however, representatives from all parties in the parliament came
30. to that meeting and declared how they stand in relation to recommendations, so it was the first time that all of us got the whole
picture of where various parties stand

Interviewer 05:39

31. so that was only this year

Tobias 05:41

32. Yes, yes.

Interviewer 05:43

33. Were you surprised by the outcome of the report? Because I, what, from what I understood, the inquiry didn't intend to
34. assess, whether to continue or not adoption, but only to assess if there has been irregularities, and then the report included this
recommendation [to discontinue ICA] as well, so it was outside the mandate?

Tobias 06:11

35. and that recommendation that you refer to now is the most controversial one, and it basically means that the inquiry and its
36. chairperson, Professor Anna Singer at Uppsala University, law professor, she recommends this because that is what many
37. other European countries have already done, they have basically forbidden private actors to conduct international adoptions
38. and instead they let the state take over responsibility for the remaining adoptions, because the numbers are also very small
39. today, and this has basically meant that the private agencies that were so powerful only a decade ago, they have done bankrupt
and dissolve themselves, more or less.

Interviewer 06:58

40. But AC is still upheld?

Tobias 07:03

41. The adoption center is, is there is the last remaining adoption mediating organization in Sweden, and if this recommendation goes through, it will for sure mean the end of AC,

Interviewer 07:18

42. okay? But just for private adoption, so if I understood it clearly?

Tobias 07:23

43. yeah, yes, so state adoptions would then be about rare occasions, for example, when immigrants adopt relatives from their
44. home countries, which have these adoptions have always happened, and then expat Swedes, for example, who adopt
45. children that they already care about in a certain country in the world, and other kind of rarer examples. In May of this year,
46. finally the government announced that one of the recommendations will for sure happen, and it will happen soon, and that's
the resource center, and that recommendation is one that is backed by all parties in the parliament.

Interviewer 08:15

47. Okay, do you find this surprising?

Tobias 08:19

48. I don't find it. No, I expected that the resource center would be created because there are similar centers around Europe already.

Interviewer 08:28

49. What entails the resource center?

Tobias 08:32

50. for everything, basically. It's, it's there are centers, state run and state finance centers like this for other groups in Sweden,
51. for example, people with disabilities, and so on, people belonging to national minorities, so and it will basically be a center
52. which will provide support when it comes to root search, etc. but also knowledge about adoption issues to various
53. professional groups who are encountering adoptive families with smaller children and adult adoptees, and in it is also it is
54. also a recommendation that has been on the table for more than 20 years, so it's an old one that has finally come through, and
it will open its doors, probably sometime after the election this autumn, for sure.

Interviewer 09:34

55. So the current status is to terminate inter-country adoption in Sweden. Did I understood it right?

Tobias 09:59

56. No. No, that has not been decided yet. No.

Interviewer 10:02

57. Okay, so

Tobias 10:03

58. no. So, so that, that is the most controversial recommendation, and it will probably not come through with this government, depending on the election result, but

Interviewer 10:16

59. only the resource center at the moment.

Tobias 10:20

60. it's the only recommendation that will be realized that we know will be realized at the moment. Yeah,

Interviewer 10:27

61. and I read the abstract for the conference in may in Lund, and I wanted to ask, How did you perceive the different stakeholders reacting to the inquiry so far? Is there any interesting or like vital reactions?

Tobias 10:46

62. Yeah, in general, adoptive parents are in favor of most of the recommendations, but not when it comes to the thing, the state
63. take over, so they want, yeah, they want the continuation. While the adoption center, which is the last remaining adoption
64. mediating organization, is very much against this controversial proposal. Otherwise, adoption AC is for a resource center, for
65. example, while adoptees as a group, or most adoptees are for almost all the recommendations, so that's more or less the division
between the three stakeholder groups.

Interviewer 11:56

66. if there's anything else you want to add?

Tobias 11:57

67. that's another controversial recommendation, and that's the public apology.

Interviewer 12:02

68. and that one is delicate, because the Prime Minister himself is an adoptive father, adoptive parent, and yeah,

Tobias 12:15

69. yes, and he was involved in, in downplaying corrupt adoptions when he was the chairperson of AC 20 years ago, so yeah, that
70. it is in a way natural that a public apology hasn't happened, and it is because other European countries have the leaders or
71. the representatives of the states in other European countries, that have already delivered such apologies. To adoptees and
72. their significant others, could also include adoptive parents, of course, and children of adoptees, etc. So the only reason I
73. think why it hasn't happened in Sweden, why it has happened in several other countries in Europe, is because of the Prime
Minister and his own personal history.

Interviewer 13:14

Thank you so much.