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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

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Abstract

This thesis examines the changing legal and public discourse surrounding intercountry adoption in Sweden and the Netherlands, as both states initiated official inquiries into past adoption practices but ultimately reached different conclusions regarding the future of Intercountry Adoption. The thesis compares how two major 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 and negotiate the legitimacy of intercountry adoption in legal and public discourse, examining the role of the best interests of the child, alongside competing understandings of child protection, family, identity and justice. Through a Comparative Discourse Analysis, the thesis examines how intercountry adoption has historically and politically been legitimised as a humanitarian child-protection measure within international Human Rights law, and how contemporary Human Rights concerns increasingly challenge that legitimacy. The findings demonstrate that both inquiries question whether intercountry adoption can on 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. While both countries conclude that the historical adoption system facilitated serious Human Rights violations, they differ in their assessment of its future. The Netherlands framed these structural deficiencies as incompatible with the best interests of the child and has therefore decided to phase out intercountry adoption. Sweden, by contrast, continues to regard intercountry adoption as a legitimate child-protection measure within exceptional circumstances, if responsibility is transferred from private intermediaries to the State. The thesis thereby contributes to a more differentiated understanding of the best interests of the child within intercountry adoption under International Human Rights Law.

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	Adoptiontioncentrum
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HCCH	Hague Conference on Private International Law
HCIA	Hague Convention on Protection of Children and Co-operation in Respect of Intercountry adoption (1993)
ICA	Intercountry Adoption
NGO	Non-Governmental Organisation
SOU	Statens offentliga utredningar (Swedish Government Official Reports)
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child (if you use "CRC", omit this to avoid duplication)
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 pursued a reform-oriented and state-based approach for future 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.

1.1 Definitions

The study adopts the terminology 'intercountry adoption' as defined and used 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 established² unlike other forms, such as foster children. The terminology of intercountry adoption is interchangeably used in this thesis as international adoption, foreign adoption, etc., and all refer to the same definition and meaning.

Another terminology that needs to be clarified is the use of "sending states" and "receiving state" 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

1.2 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 frameworks, 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. 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,

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

² *ibid.*

³ *ibid.*

which is characterised by unequal distribution of power resources, knowledge, and colonial histories.⁴

The theoretical framework builds upon the theory of social constructivism and postcolonial critique, as well as transnational feminist theory. Social constructivism assumes that social phenomena are historically and culturally produced rather than naturally given (Berger and Luckmann 1966; Foucault 1972).⁵ 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, justice and individualism.⁶

1.3 Methodology

This thesis adopts a critical socio-legal research approach using the methodology of a Comparative Discourse Analysis (CDA). CDA especially examines how language transports knowledge and power and how these interactions construct social realities. It is especially suitable in a Human Rights discourse where divergent understandings of rights are constructed. The study applies a comparative and 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.

1.3.1 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 both inquiries in the respective countries, parliamentary

⁴ Joan Heifetz Hollinger, *Adoption Law and Practice* (1988)

⁵ 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).

⁶ Makau Mutua, *Human Rights* (University of Pennsylvania Press 2002).

debates, and national media outlets on the topic of intercountry adoption. These are sites where meaning and public understandings are constructed. The comparative analysis 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.

1.3.1.1 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), the biggest adoptee network worldwide. The second interview was held with Tobias Hübinette, a Swedish researcher whose work has extensively examined transnational adoption, race, and identity in the Swedish context. These two interviews were mainly used to clarify ongoing developments and provide expert perspectives. 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.

1.3.2 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, such as the Swedish Inquiry SO:2025:61, using digital machine translation tools such as Google Translate, DeepL.ai and ChatGPT. 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 (ChatGPT, Grammarly) and retain full responsibility for the content and its findings in accordance with the EMA Guidelines.

1.4 Researcher's positionality

Following feminist epistemology and decolonial research, this thesis acknowledges that knowledge production is always situated, rather than entirely objective⁷. Instead of assuming a

⁷ (Haraway, 1988; Hooks, 1989; Kilomba, 2008).

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

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.⁸ In this regard, 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 critical engagement with multiple sources and different viewpoints.

1.5 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 parliamentary documents, official inquiries, 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.

1.6 Reading structure

The first chapter outlines the global perspective, conceptualising the wider historical and international context in which intercountry adoption emerged. It examines what informed the understanding of the best interests of the child in connection with intercountry adoption until today. The second chapter investigates the instruments that protect and regulate intercountry adoption, such as the Hague Convention and the Council of Europe's European Convention on Human Rights. Thereby, it analyses the broader negotiation of the child's best interests in international adoption within the European context. In continuation of this chapter, the national perspective on intercountry adoption within Europe is analysed through the two cases of Sweden and the Netherlands.

⁸ 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.

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.⁹ In one of the earliest sociological analyses of modern adoption. Mary Kathleen Benétargues, that a function of adoption is to compensate for the decline of extended kinship networks that are associated with modernisation in Western societies.¹⁰ The concept of the child thus varies across cultures: children may be understood as individuals requiring special protection and distinct from other members of society, or as social beings whose care and upbringing are shared within the wider community.¹¹ 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 those family links.¹² It may therefore not directly be 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.¹³ 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.¹⁴ Temporary care by relatives or community members is therefore not necessarily regarded as abandonment or a relinquishment of parental responsibility.¹⁵

Today, it is universally understood that adoption, and especially intercountry adoption, solely serves the needs of the child.¹⁶ To resolve a potential conflict of interest, the international

⁹ René AC Hoksbergen and JF Laak, ‘Changes in Motivation for Adoption, Value Orientations and Behavior in Three Generations of Adoptive Parents’ (1998) 2 *Adoption Quarterly*.

¹⁰ Mary Kathleen Benét, *The Politics of Adoption* (Free Press 1976) 15.

¹¹ Doris Chateaneuf, Anne-Marie Piché and Carmen Lavallée, ‘Focus on Adoption: Changes, Evolution and Areas of Tension’ [2024] *Enfances, Familles, Générations*, 1.

¹² Doris Chateaneuf, Anne-Marie Piché and Carmen Lavallée, ‘Focus on Adoption: Changes, Evolution and Areas of Tension’ [2024] *Enfances, Familles, Générations*, 1.

¹³ *ibid.*

¹⁴ 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*.

¹⁵ *ibid* 1723–1724.

¹⁶ Peter Conn, *Adoption: A Brief Social and Cultural History* (Palgrave Pivot 2013) 92.

framework sets out the principle that underlies and is paramount in every adoption “the best interests of the child principle” (plural). This shall be protected and assisted by state 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 times was an immediate response.¹⁷ 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 Acts in 1948.¹⁸ 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.¹⁹ International adoption became a child welfare measure against the abuse of children in the form of child labour or child trafficking.²⁰ 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.²¹ In addition, there was a rise in fertility problems. These included physiological issues, as well as the delay in founding families and the use of assisted reproduction.²² Amid the Club of Rome report “Limits to Growth (1972)”, some choose to refrain from procreation and instead choose adoption.²³ Thus, in the early 1970s, many adoptive parents’ wishes were to change the world for the better.²⁴

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, it promoted a

¹⁷ Peter Selman, ‘Intercountry adoption in Europe 1998-2007: Patterns, Trends and Issues’ *Social Policy Review 21: Analysis and Debate in Social Policy*, 2009 (2009).

¹⁸ *RETHINKING INTERCOUNTRY ADOPTION* 927

¹⁹ Sonja Van Wichelen, ‘Moving Children through Private International Law: Institutions and the Enactment of Ethics’ (2019) 53 *Law Soc Rev* 671, 699

²⁰ *ibid.*

²¹ Elvira Loibl, *Facing the Past: Policies and Good Practices for Responses to Illegal Intercountry adoptions* (1st ed, Boom Uitgevers Den Haag 2024) 260.

²² Chateauneuf, Piché and Lavallée (n 11) 2.

²³ Loibl (n 21) 239.

²⁴ *ibid* 242.

preference for boys.²⁵ Also, in India, unwed motherhood was still stigmatised, which led to many young women relinquishing their children.²⁶ Inter-country 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.²⁷ Another wave of increase in the number of inter-country adoptions was in the 1980s, due to the AIDS crisis in African countries.²⁸ Thereby, UNICEF campaigns promoted narratives depicting the myriads of orphans supposedly waiting to be adopted, as they were left in institutions or on the streets.²⁹ At the time, 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 were exaggerated.³⁰ The evolution of inter-country adoption as a humanitarian and developmental aid practice also evolved as a result of various media articles, such as “What will become of Africa’s Aids orphans”.³¹ What constituted the first wave of inter-country adoption is a politics of compassion. Images of suffering were made available through various media outlets, such as the Vietnam War. Operation Babylift was, and is until now, the biggest mass overseas evacuation of children as part of a humanitarian rescue mission.³² Financed and coordinated by the US, around 2500 - 3000 Vietnamese children were, and the children were brought mostly to the US but also to Canada, Australia and Europe in the final days of the Vietnam War.³³ The operation was marked by a tragedy when the first evacuation flight crashed, killing around 180 passengers, including the children.³⁴ 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.³⁵ Yale psychologist Edward Zigler warned that the operation was “ripping [the children] right out of their culture, their community”.³⁶ The aspect of culture was rarely

²⁵ Jordan Bunn, ‘Regulating Corruption in Inter-country adoption’ (2019) 52 *Vanderbilt Journal of Transnational Law* 685, 689.

²⁶ Arun Dole, ‘Inside Story of an Adoption Scandal’ (2008) 39 *Cumberland Law Review* 131, 27.

²⁷ Peter Selman, ‘Inter-country adoption in Europe 1998-2007: Patterns, Trends and Issues’ *Social Policy Review* 21: *Analysis and Debate in Social Policy*, 2009 (2009).

²⁸ Bunn (n 25) 689.

²⁹ Facing the Past, page 259

³⁰ Johanna Oreskovic and Trish Maskew, ‘Red Thread’ or Slender Reed: Deconstructing Prof. Bartholet’s Mythology of International Adoption’ (2008) 14 *Buffalo Human Rights Law Review* 71, 78.

³¹ 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.

³² 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.

³³ *ibid* 622.

³⁴ *ibid*.

³⁵ *ibid*.

³⁶ *ibid* 623.

addressed in the early discourse in intercountry adoption.³⁷ The Korean War was the second intervention, where children were adopted abroad in large numbers.³⁸ The international community intentionally bypassed official legal procedures that surrounded intercountry adoption at that time, given the life-threatening circumstances in the country of origin.³⁹ As a result, many Korean adoptees were illegally adopted and trafficked through the means of international adoption.⁴⁰ As seen in these 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 have exercised practices 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.⁴¹ However, research has shown that many of these intentionally good ideas served the purpose of profit in one way or another.⁴² Families were paid to send their children to the thus-far, empty institutions. Later, with an increasing number of children, these institutions later had to be sponsored by foreign investments to be kept alive.⁴³ Consequently, institutions substantially changed local structures and often created dependencies that did not exist before, instead of substantial improvements for these communities, in order to be able to keep the children.⁴⁴ 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 thereby a legitimate child welfare measurement.⁴⁵ In the 2000s celebrities such as Angelina Jolie and Madonna transported the message into the world, that there is an abundance of available children who ‘simply need to be picked up.’⁴⁶ Intercountry adoption, through these depictions of poverty, devastation and

³⁷ Bojan Perovic, ‘From Stalemate to Solutions: Rethinking Intercountry adoption through Vulnerability Theory and Technological Innovation’ (2025) 94 Mississippi Law Journal 923; Chateauneuf, Piché and Lavallée (n 10).

³⁸ Elvira Loibl, *Facing the Past: Policies and Good Practices for Responses to Illegal Intercountry adoptions* (1st ed, Boom Uitgevers Den Haag 2024) 240.

³⁹ Loibl (n 28) 240.

⁴⁰ *ibid* 58.

⁴¹ 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.

⁴² *ibid*.

⁴³ *ibid* 551.

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, 650–654.

⁴⁵ Rotabi, Roby and McCreery Bunkers (n 41).

⁴⁶ 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.

increasing dependency, has been repeatedly represented as ‘the only hope’ for abandoned children from the Global South.⁴⁷ The way in which intercountry adoption is framed has changed since, as it has increasingly become an accepted part of family planning in Western countries.⁴⁸ With the acceptance, the narrative also shifted in the Western world from ‘every child’s right to have a family’, to a similarly important claim of ‘every couple’s right to a child’.⁴⁹ The period reflected a generation of prospective parents that was willing to fight for their right to found a family, as there was supposedly an abundance of children in need according to the campaigns.⁵⁰ Thereby, these actors underestimated their direct ability to influence the incentives for abuse through financial means and the creation of a “demand” of intercountry adoption.⁵¹ As seen in historical instances such as the baby farms or so-called “paper orphans”, a “supply” of children was made ‘available’ for adoption in economically developing countries.⁵² The year 2004 was historically an overall peak of intercountry adoptions, with over forty-five thousand children that were adopted transnationally on a global scale.⁵³ The marketisation is an inherent phenomenon that ruled the power balance between the countries of origin and receiving countries. In 2010 there was another increase in international adoption due the earthquake in Haiti, a humanitarian catastrophe which resulted in many orphans.⁵⁴ Despite existing legal safeguards prohibiting intercountry adoptions during humanitarian crises, several countries perceived an urgent moral responsibility to rescue children by facilitating their immediate adoption abroad.⁵⁵ The vulnerability created by the crisis was misused through bypassing the established adoption safeguards. Critics recalled the 2004 tsunami in Sri Lanka, when many children were wrongly adopted abroad, assuming they were orphans, despite having living parents or relatives.⁵⁶ In response to the lessons learned from that disaster, the United Nations Inter-Agency Working Group developed the Inter-Agency Guiding Principles on Unaccompanied and Separated Children to improve safeguards

⁴⁷ Loibl (n 21) 261.

⁴⁸ Perovic (n 37) 930.

⁴⁹ Loibl (n 21) 239.

⁵⁰ Selman, ‘Intercountry adoption in Europe 1998-2007: Patterns, Trends and Issues’ (n 17) 14.

⁵¹ Hoksbergen and Laak (n 9).

⁵² 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.

⁵³ Peter Selman, ‘The Rise and Fall of Intercountry adoption in the 21st Century’ (2009) 52 *International Social Work* 575, 576.

⁵⁴ Peter Selman, ‘Global Statistics for Intercountry adoption: Receiving States and States of Origin 2004–2022’ (Hague Conference on Private International Law 2022).

⁵⁵ Loibl (n 21) 234.

⁵⁶ 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.

also within intercountry adoption in humanitarian emergencies.⁵⁷ Nevertheless, intercountry adoption is still presented as an ultimate “win-win” for all parties involved.⁵⁸ This is granted through love and gratitude from all parties 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.⁵⁹ Notably, the discourse of rescue can only extend in one direction, and true mutual exchange is de facto impossible. This concept of the win-win situation may have overlooked the fact that conflicts are also part of the triad.⁶⁰

2.1.2.1 The Adoption Triad

The adoption triad or also adoption triangle is used in various adoption literature to describe the major stakeholders involved in the adoption project.⁶¹ 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.⁶² This framework represents the dynamics of this relationship and portrays adoption not only as a legal transaction and an ultimate win-win situation, but as a complex social process of negotiation.⁶³ The representation of adoption as an act of unconditional love, which is the case in many adoption agency folders, is contested, as it depends on the central figure of the “humanitarian saviour” and the passive “waif” which, as mentioned above, constitutes an inherently unequal relationship.⁶⁴

What is widely missing in the real picture is the birth mother/parents. This invisibility during the process is also the reason why there is almost no research or academic debate on birth

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ Loibl (n 21) 259.

⁶⁰ Maria Masłowiec and Michał Kowalski, ‘Adoption and the European Convention on Human Rights Law - Mapping Problems and Challenges’ [2024] *Forum Prawnicze* 17.

⁶¹ Margaret Purvine, ‘The Adoption Triangle: Sealed or Opened Records: How They Affect Adoptees, Birth Parents, and Adoptive Parents’ (1978) 24 *Social Work* 174.

⁶² 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.

⁶³ Purvine (n 61).

⁶⁴ Loibl (n 21) 264.

mothers.⁶⁵ Due to her silence in the discussion, as she selflessly gave up her children, this position within the adoption triad is without greater political agency. Although mothers are continuously portrayed as voluntarily and selflessly relinquishing their children, Cawayu and Sacré argue that such arguments must be viewed in light of the structural realities of poverty, inequality, power imbalance and most importantly, the question of choice.⁶⁶

While the adoption triad reflects a more complex reality it still misses the other major stakeholders which are involved in the adoption project: the orphanage, and the administrative and state bodies. As acknowledged, adoption is part of the wider global politics and subject to foreign policies. 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 is too simplistic for reconstructing what eventually influences the assessment of the best interests of the child that legitimises intercountry adoption.

In this thesis the parties of the adoption stakeholder play a crucial role in reconstructing the bigger picture and narratives that evolve around intercountry adoption today. Thus, the adoption triad will not be applied, as it does not provide a suitable framework.

The question arises, against the background of the historical developments that lead to the marketisation and relinquishment of children, to what extent the institution of international adoption is “selfless” and what national impetus informs 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.⁶⁷ The national investment of providing “humanness” through adoption is one explanation why adopted children have been vastly distinguished from other categories of immigrants, like asylum seekers and labour migrants or unaccompanied minors.⁶⁸ While immigrants from non-Western countries are often presented as a threat to Western values, the benevolence with which adopted children are welcomed could be seen as paradoxical.⁶⁹

⁶⁵ Van Wichelen (n 19) 698.

⁶⁶ 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.

⁶⁷ Loibl (n 21) 262.

⁶⁸ Richey Wyver, *Exploring Swedish International Adoption Desire: Transracial Bodies and Nation-Building in the ‘Goodest’ Country* (Springer International Publishing 2023) 97–100.

⁶⁹ *ibid* 116.

A selective politics of compassion can imagine itself as generous and hospitable to others.⁷⁰ In intercountry adoption, due to its racialized component, practises of concealment and secrecy are of the past, and the cultural background is widely celebrated today.⁷¹ In the same instance, 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".⁷² However, assimilation of adoptees into the culture despite their "cultural difference" is seen as the most successful factor of any intercountry adoption and is in direct contradiction with the previous national narrative.⁷³ This constitutes an inherent conflict of values. 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.⁷⁴ 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.⁷⁵ One of the main differences between immigrants living in Western society and internationally adopted children is, that adopted children are made 'white' within their adoptive family, by which they automatically shall assimilate into the culture, without the state's responsibility.⁷⁶ The family also functions as granting them the status of "one of us" which is subjected to the culturally 'blank' adoptee.⁷⁷ 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' and 'one-of-us'.

A national identity that transports compassion is in itself not problematic. Often, this motivation stems from real issues revolving around limited resources to support children locally, especially children with health issues and disabilities. The narrative, however, of the generosity of the humanitarian aid through international adoption, implies having 'forgotten' the prior unequal exchange that established a system where a mother gives up their child in the first place. It erases the political and historical conditions that led to the poverty and relinquishment of those children in those particular communities, predominantly from the Global South.⁷⁸

⁷⁰ Loibl (n 21) 263.

⁷¹ *ibid* 265.

⁷² Yngvesson, 'Transnational Adoption and European Immigration Politics: Producing the National Body in Sweden' (2012) 19 *Indiana Journal of Global Legal Studies* 327
<<https://doi.org/10.2979/indjglolegstu.19.1.327>> accessed 20 May 2026.

⁷³ H David Kirk, *Shared Fate; a Theory of Adoption and Mental Health*. (Free Press of Glencoe 1964).

⁷⁴ b hooks, 'Eating the Other: Desire and Resistance'.

⁷⁵ Loibl (n 21) 265.

⁷⁶ *ibid* 107.

⁷⁷ 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.

⁷⁸ Loibl (n 21) 266.

2.2 The turning point in the history of intercountry adoption

After the establishment of the Hague Convention in 1993, the number of intercountry adoptions increased tremendously until 2004, by around 42% in receiving countries⁷⁹, but steadily decreased after 2004 over time.⁸⁰ China is a symbolic example of this trend, where the intercountry adoptions amounted to around 13400 in 2004, and only 3500 in 2015.⁸¹ One reason is that the two-child policy in 2015 led to a decrease in children being relinquished and more children being adopted domestically.⁸² This also meant that fewer children were adopted abroad. Consequently, since the 21st century, more cross-border adoptions are taking place between European countries.⁸³

With these developments, new discourse emerged, that shifted from a saving children-narrative to children for children's sake.⁸⁴ Intercountry adoption became less glorified, and the adoptive communities themselves brought the topic to the forefront of public debates.⁸⁵ Through investigating their own adoption histories, adoptees uncovered evidence of irregularities, previously thinking that adoption abuses were incidental and restricted to individual cases.⁸⁶ To realise that they themselves had been victims of systematic failures within the system often caused dissonance in their own belief system.⁸⁷ Intercountry adoption is increasingly questioned as a child-protective measure and may even, in some cases, undermine rather than fulfil children's rights.⁸⁸ Past individual and systemic cases that surfaced through investigative reports were marked by irregularities, loss of identity, cultural connection, and coercive practises, despite the implementation of the Hague Convention.⁸⁹ Scholars argue that the Hague Convention is, as it operates under current conditions, not only a countermovement to abuse in

⁷⁹ Peter Selman, 'Trends in Intercountry adoption: Analysis of Data from 20 Receiving Countries, 1998–2004' (2006) 23 *Journal of Population Research* 183, 183.

⁸⁰ 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.

⁸¹ Peter Selman, 'Global Statistics for Intercountry adoption: Receiving States and States of Origin 2004–2022' (Hague Conference on Private International Law 2022) 3.

⁸² Loibl (n 21) 27.

⁸³ Chateauneuf, Piché and Lavallée (n 11) 2.

⁸⁴ Loibl (n 21) 251.

⁸⁵ 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.

⁸⁶ De Vries, De Vos and Cheney (n 85) 7.

⁸⁷ 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.

⁸⁸ Wouter Vandenhole, 'Triangulating Children's Rights Law: Which Future for Intercountry adoptions in Europe?' [2020] *European Yearbook on Human Rights* 2020 161.

⁸⁹ Loibl (n 21) 47.

child trafficking but also a double movement. By controlling the market, it has been accepted and justified by its governing rules.⁹⁰

New emergency situations following natural catastrophes or armed conflicts, as in Ukraine, Palestine, Sudan and other regions, intensified debates about emergency evacuations and stricter safeguards against illegal adoption practises during states of emergencies.⁹¹ 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, without the same safeguards in place.⁹²

Since 2010 until today, many inquiries have been published and appointed through governments, both in receiving countries and countries of origin.⁹³ The investigative focus has been the widespread problems of corruption, criminality, child theft and human trafficking within the transnational adoption field.⁹⁴ Commissions of inquiry have been set up to assess what has gone wrong in intercountry adoptions, what the role and responsibility of the state were and how the situation can be remedied. Many countries have therefore suspended or stopped ICA under international pressure or domestic investigations, such as in Guatemala, Ethiopia, China, Vietnam, Romania or Bangladesh.⁹⁵ Some receiving countries are phasing out intercountry adoption, such as the Netherlands and Switzerland.⁹⁶ Chile released a report in 2018 and another one in 2025. Released in 2020, Switzerland did an inquiry report on past illicit practises⁹⁷ and Belgium in 2021.⁹⁸ South Korea's investigation began in 2024 and eventually established a *Truth and Reconciliation Commission* as a result.⁹⁹ The most well-known investigation was the *Joustra Committee* in the Netherlands in 2021.¹⁰⁰ Sweden released its results from the Adoption Commission in 2025.¹⁰¹ Both will be analysed in depth in *Chapter*

⁹⁰ Van Wichelen (n 19) 29.

⁹¹ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 80).

⁹² *ibid* 7.

⁹³ Loibl (n 21) 254.

⁹⁴ *ibid* 294.

⁹⁵ *ibid* 288.

⁹⁶ Tobias Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (2025) 9 *Genealogy* 77, 2.

⁹⁷ Loibl (n 21) 120–124.

⁹⁸ *ibid* 201.

⁹⁹ International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 80) 7.

¹⁰⁰ Commissie Onderzoek Interlandelijke Adoptie, 'Report of the Committee Investigating Intercountry adoption (Unofficial Translation)' (2021) 45.

¹⁰¹ Hübinette, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (n 96) 2.

4. In 2022, a UN Joint Statement on 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.¹⁰²

These developments of reckoning with the past re-evaluate the role of intercountry adoption within the broader system of child protection, placing greater emphasis on family preservation, subsidiarity, and, eventually, maybe strengthening domestic solutions.¹⁰³ 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.

However, all the inquiries were initiated by individual court cases or media revelations, following cases of illicit or illegal adoption and were brought forward predominantly through the active involvement of adoptees. Several inquiries have also led to systematic changes or the end of the system of intercountry adoption, as in the Dutch and Swiss cases. The shift is indicative as states are increasingly taking full responsibility for intercountry adoption rather than private agencies.¹⁰⁴

The central question is whether intercountry adoption remains compatible with the best interests of the child and what explains the divergent responses adopted by governments. Ultimately, the thesis asks whether intercountry adoption can retain its legitimacy in light of contemporary Human Rights standards.

2.3 Conclusion

The historical developments of intercountry adoption demonstrate that was never a static or private child welfare measure as intended, but was rather connected to the wider geopolitical landscape. Intercountry adoption was established after World War II between the Global North as predominantly receiving countries, and the Global South as countries of origin. Intercountry adoption resulted and institutionalised itself as a humanitarian response and as a direct reaction to the visibility of poverty in the regions of the Global South through media coverage. These 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

¹⁰² International Social Service – International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) (n 80) 7.

¹⁰³ *ibid* 10.

¹⁰⁴ Tobias Hübinette, ‘The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption’ (2025) 9 *Genealogy* 77, 3.

as largely incapable of adequately caring for and meeting the child's needs.¹⁰⁵ While this chapter reconstructed how the idea of rescuing children resulted in instances of abuse of that system through the very imbalance that foregrounds intercountry adoption and thereby the establishment of a marketization created through financial incentives, the next chapter examines how orphan rescue has historically not only incidentally but systemically reshaped the system of intercountry adoption. For countries of origin, foreign adoption has provided practical and instant solutions for states of origin to 'outsource' or alleviate burdens of state care.¹⁰⁶ 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 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. These principles surrounding international adoption are then examined within the European Human Rights framework, which governs intercountry adoption, focusing on the larger context of the Council of Europe instead of the European Union. It introduces systems of protection and the role of PACE within the European discourse on ICA. The chapter continues by assessing the best interests of the child and its position in the European Court of Human Rights assessment, through its jurisprudence on intercountry adoption under Article 8 ECHR.

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 illegal adoption practices as part of a mass

¹⁰⁵ Laura Briggs, *Somebody's Children: The Politics of Transracial and Transnational Adoption* (Duke University Press 2012).

¹⁰⁶ Vandenhoe (n 88) 722.

movement.¹⁰⁷ 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.¹⁰⁸ Secretary of the Permanent Bureau in The Hague, 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.¹⁰⁹ The growing demand for intercountry adoption after the 1960's led also to an emergence of numerous organisations and networks that facilitated adoptions, in the absence of clear guidelines or effective oversight.¹¹⁰ Also, private intermediaries started to organise adoption mediation for the manifold reasons mentioned above.¹¹¹ This created a new environment that gave rise to abuses of the system of intercountry adoptions, such as falsified documentation, financial gains or improper parental consent.¹¹² 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. That meant that the lack of legal uniform rules, which consequently also created legal uncertainty in various forms such as the status of the child or the procedural requirements.¹¹³ 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 Right of the Child of 1959.¹¹⁴ The Hague Permanent Bureau acknowledged the insufficiency of existing rules that governed intercountry adoption at that time and formed the Hague Convention on Respect of Intercountry adoption (HCIA) which was concluded in

¹⁰⁷ Gonda AH Van Steen, 'The Face of Forced Consent in Postwar Adoptions from Greece: What Does It Look Like?' (2025) 9 Genealogy 126, 2.

¹⁰⁸ Van Loon (n 52).

¹⁰⁹ 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.

¹¹⁰ *ibid* 541–543.

¹¹¹ *ibid* 77.

¹¹² David M Smolin, 'Intercountry adoption and Poverty: A Human Rights Analysis' (2007) 36 Capital University Law Review 413.

¹¹³ Van Loon (n 52) 117.

¹¹⁴ 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.

1993 and entered into force in May 1995.¹¹⁵ Today 107 states have ratified the convention.¹¹⁶ In the drafting process, representatives from over 50 states, both sending and receiving countries, had the chance to advocate for their interest.¹¹⁷

The preparatory works identifies four main needs for the establishment of the Convention:

1. The establishment of a legally binding standard in Intercountry adoption and thus recognition of the different legal systems.
2. 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 reward or duress.
3. Establish communication and coordinating channels between authorities in sending and receiving states
4. Promote confidence for cooperation between sending and receiving countries.

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. 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. Thus 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.*” In Article 4 the requirement for adoptions is set, including that (b) it has been determined the possibilities for a placement within the state of origin have been given due consideration that an intercountry adoption is in the child's best interests. 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 the standard response to abandoned

¹¹⁵ Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption 1993 (1870 UNTS 167).

¹¹⁶ ‘HCCH | #33 - Status Table’ (*Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption*) <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>> accessed 9 July 2026.

¹¹⁷ Bunn (n 25) 695.

children in many societies and by governments, was to institutionalize them. 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 to the solution within a permanent family, rather than an institution, as in the best interests of the child. This assumption, however could be seen as in contrast to the principle of subsidiarity, which will be discussed in the next sub-chapter.

The Hague Convention is also instrument of private international law, meaning that its main function is to facilitate and enable the cooperation between states, rather than discipline.¹¹⁸ 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.¹¹⁹ The placement between individuals is considered a matter of private law or civil law. The solution of Intercountry adoption is a measure however of “social” protection where state parties are intervening and thereby it is also a matter of public law.¹²⁰ The distinction between the public and private parties are not always strictly clear, which will be more exemplified in *Chapter 4* within the case studies.¹²¹ 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.¹²² This may open a gate-way to address certain questions around legal remedies, which is however a topic outside of the scope of this thesis. The agreement also contains various protocol such as the Guides on Good Practise, that were published in 2008 and 2013, which ultimately form the principles and implementation of the Convention.

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.¹²³ Through Article 16 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,*

¹¹⁸ S. van Wichelen (2019) , ‘ Moving Children through Private International Law ’ , page 677.

¹¹⁹ Purvine (n 61) 15.

¹²⁰ 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.

¹²¹ *ibid* 8,9.

¹²² Sarah Sargent, ‘Suspended Animation: The Implementation of the Hague Convention on Inter-country adoption in the United States and Romania’ (2004) 10 Tex Wesleyan L Rev 351, 353–354.

¹²³ Momoh (n 114) 52.

religious and cultural background. 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.¹²⁴ 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, as in most adoption cases? What if the child was relinquished and there is no formal consent of the birth mother? What are the *best interests* weighted against alternatives? These questions form central parts of the legal analysis in the process, that have to be taken into consideration in justifying adopting a child internationally, removing it from its former environment. While the principle is generally recognized within this framework, it is challenging to assess it in real life in individual cases. This principle is thereby highly debated and thus form a central part of the discourse in this thesis. The explanatory report emphasizes, that the best interests of the child means, it entails the existence of other interests therein too, that need to be taken into consideration, but not as decisive factors, as for example the interest of biological parents or prospective adoptive parents.¹²⁵

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*”. “Subsidiarity” as a term is however, not mentioned in neither CRC or HCIA but describe the preferential order of placement for a child.¹²⁶ 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

¹²⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3(1)

¹²⁵ 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.

¹²⁶ Sarah-Vaughan Brakman, ‘The Principle of Subsidiarity in the Hague Convention on Intercountry adoption: A Philosophical Analysis’ (2019) 33 *Ethics int aff* 207, 209.

*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.*¹²⁷

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, 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*” Thereby the article acknowledges that *continuity* in a child’s upbringing is an important factor which is not the same as the wording “permanent” within the Hauge convention that gives preferential status to the upbringing within a family. This dimension of continuity within the CRC contains the aspect of a preservation of cultural identity as a primary consideration.

Some argued during the drafting process to implement a “*community of origin*” as a wording to strengthen the subsidiarity principle, meaning giving preference to a community as a larger concept than family, first.¹²⁸ This was however rejected later. What is important here, is that subsidiarity in the convention emphasizes that institutional care should be considered as a last resort for a child in *need of a family*.¹²⁹ In short, if a child cannot be placed in domestic adoption, intercountry adoption can be considered, to prevent institutionalization of a child, which would be the least preferred solution as read in the Hague Convention.¹³⁰ A critical question arises in this context is, if national solutions are widely rejected, whose needs are primarily met through Intercountry adoption?¹³¹

¹²⁷ 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.

¹²⁸ Van Loon (n 52).

¹²⁹ 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).

¹³⁰ 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.

¹³¹ Van Wichelen (n 19) 701.

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.¹³² The first step is to designate a central authority to fulfil its obligations.¹³³ The central authority can then authorize “accredited bodies” (Art. 10-12), which is 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 adoption*”. This means the Hague Convention permits private bodies or agencies to facilitate intercountry adoptions.¹³⁴ These accredited bodies may only pursue “non-profit objectives” as said in Article 11. Article 32 repeats the underlying ethical principle of the convention that (1) “*no one shall derive improper financial or other gain from an activity related to intercountry adoption*”. The exceptions are, only costs and “reasonable” professional fees that are involved in the adoption and that the directors, administrator or employee *bodies* (3) “*shall not receive remuneration which is ‘unreasonably’ high*” but are allowed to receive financial compensation. The Hague Convention fails to give insights as to what could be a “reasonable fee” and which fees are “unreasonably high”.¹³⁵ This leaves considerable discretion to the Contracting States and the accredited bodies, making it difficult to distinguish legitimate costs, from financial incentives, that may contribute to irregularities in practice. What is also high for one agency might be relatively “reasonable” for another, as in the case, for example, with bigger agencies as Holt America.¹³⁶ The convention however does acknowledge the difference in resources between receiving and sending states.¹³⁷ The administrative burden lies, nonetheless often in the sending countries with less governmental infrastructure to carry out the tasks of the convention.¹³⁸ The convention also explicitly allows to “*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*

¹³² Hague Adoption Convention, arts 1(b) and 7.

¹³³ *ibid* art. 6.

¹³⁴ Bunn (n 25) 696.

¹³⁵ *ibid* 711.

¹³⁶ Sébastien Roux, ‘In Their Best interests: Diplomacy, Ethics, and Competition in the French World of Adoption’ (2020) 38 French Politics, Culture & Society 64, 81.

¹³⁷ Hague Conference on Private International Law (HCCH), ‘Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2’ (n 130) 42.

¹³⁸ Bunn (n 25) 696.

requirements of a State”.¹³⁹ Therefore it allows States to limit or suspend intercountry adoption, recognising that receiving states have a considerable influence in determine 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 provide such cooperation with the aim of facilitating the implementation of children’s rights in the recipient State.*”

3.2 European Normative Framework on Intercountry adoption

Historically, Europe occupied a dual position within the system of Intercountry adoption, as both receiving and sending States.¹⁴⁰ During the turn of the century several Easter 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 to accede to the EU.¹⁴¹ All European states ratified the Hauge Adoption Convention.¹⁴² Today, Europe is predominantly a region of receiving states, while a limited number such as Bulgaria, Hungary and Ukraine continue to be countries of origin in international adoption.¹⁴³ Over the last years, there has been a very steep decline about 90% in intercountry adoptions to Europe.¹⁴⁴ 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). This framework applies to adoption both domestically and across the board and thereby does not

¹³⁹ Hague Conference on Private International Law (HCCH), ‘The Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry adoption – Information Brochure’ (Hague Conference on Private International Law) 11.

¹⁴⁰ Selman, ‘The Rise and Fall of Intercountry adoption in the 21st Century’ (n 53).

¹⁴¹ *ibid* 590.

¹⁴² ‘HCCH | #33 - Status Table’ (n 116).

¹⁴³ Peter Selman, ‘Global Statistics for Intercountry adoption: Receiving States and States of Origin 2004–2022’ (Hague Conference on Private International Law 2022) 3.

¹⁴⁴ Selman, ‘Global Statistics for Intercountry Adoption: Receiving States and States of Origin 2004–2022’ (n 54).

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 parties¹⁴⁵. In addition to provision that are similar to the CRC, such as adoption can only be granted by competent authorise in 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, as well as the minimum age difference between adopted person and the adopter in Article 9.¹⁴⁶ Sweden for example, withdrew from the Convention in 2003 due to allowing same-sex couples do adopt. The Netherlands is a party today of the revised Convention as well.¹⁴⁷ In 2008 the Convention was amended and the new provisions for example required, in all cases, the consent of the father and tries to strike a better balance between the children's right to know their origin and the right of the biological parents to stay anonymous through Article 22. The 1967 Convention largely protected secrecy in adoptions.¹⁴⁸ The development that was majorly influenced by the ECtHR judgment *Odièvre v France* (2003).¹⁴⁹

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 to harmonise approaches.¹⁵⁰ Over the years it gradually aligned with the CRC and the Hague Convention and especially the ECHR. The European Adoption Convention prioritises also the care by a family instead of institutionalization and its aim is also to prevent the sale of children. However, the European Convention has only been ratified by ten out of 46 Member states of the Council of Europe.¹⁵¹ 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".¹⁵² The European Adoption Convention similarly as the Hague Convention, requires the *competent authority* to be satisfied that an adoption serves the best interests of the child (Article 4(1)) . Annulment and revoking the adoption is possible under the framework of

¹⁴⁵ European Convention on the Adoption of Children (Revised) 2008 (CETS No 202).

¹⁴⁶ *ibid.*

¹⁴⁷ 'Full List - Treaty Office - Wwww.Coe.Int' (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 6 July 2026.

¹⁴⁸ 'European Convention on the Adoption of Children (Revised) (CETS No.202) – European Sources Online'.

¹⁴⁹ Maśłowiec and Kowalski (n 60) 8–9.

¹⁵⁰ Council of Europe, 'Explanatory Report to the European Convention on the Adoption of Children (Revised)' (2008) CETS No. 202.

¹⁵¹ 'Full List - Treaty Office - Wwww.Coe.Int' (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 4 July 2026.

¹⁵² Nigel Cantwell, 'Adoption and Children: A Human Rights Perspective' (Council of Europe Commissioner for Human Rights 2011) CommDH/IssuePaper(2011)2 5.

the European Adoption Convention, but not the Hague convention.¹⁵³ 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.¹⁵⁴ Assumingly, the reason why only a few countries ratified the European Conventions, is that States are more reluctant to ratify a treaty that concerns a political sensitive and private area, unlike the Hauge Convention that deals mainly with the cooperation aspect.

Particularly outspoken on matters of international adoption is the Parliamentary Assembly of the Council of Europe (PACE) which adopted a recommendation in 2000 and a resolution in 2012 on Intercountry adoption. PACE is especially highlighting the cooperation among member states to ensure that subsidiarity principle and children's rights are respected.¹⁵⁵ A core motivation for the recommendation in the year 2000 constituted the growing marketisation of intercountry adoption, where it was emphasised that there is no "right to a child".¹⁵⁶

3.2.1.2 The Position of the Parliamentary Assembly on Intercountry adoption

In the 2012 Resolution PACE acknowledged the situation of trafficking within the adoption system and suggested to consider moratoria on ICA to ensure procedures are safe. It started by stating that Intercountry adoption is only "one" of several possible care option for children without parental care.¹⁵⁷ On the other hand, the resolution finds that intercountry adoption in the view of the recent trends, continues to be a possible and interesting (emphasis added) care option for many children¹⁵⁸. Even though this resolution mainly focuses on strengthening the formal frameworks it also highlights that it is important to handle adoption with "utmost" care as it concerns children who are coming from traumatising experiences and that child laundering practises are a recurring phenomenon within.¹⁵⁹

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, previously warning about the very commodification of the Intercountry adoption system,

¹⁵³ European Convention on the Adoption of Children (Revised) 14.

¹⁵⁴ Masłowiec and Kowalski (n 53) 21.

¹⁵⁵ Pace report, page 7.

¹⁵⁶ 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).

¹⁵⁷ Resolution 1909 (2012): Intercountry adoption: Ensuring that the Best Interests of the Child Are Upheld para 1.

¹⁵⁸ *ibid* 6.

¹⁵⁹ *ibid* 2.

assumingly now encourage to respond to such a “demand”.¹⁶⁰ The use of this language reveals the very tension within the objective of facilitating adoption and safeguard child protection. The word indicates in my opinion, a shift away from the child’s interests towards European society’s interests at large. The best way to assess how adoption is safeguarded is by looking at a case-by-case approach. This framing portrays parenthood as an aspiration that ought to be fulfilled, implicitly suggestion that this demand needs to be met. Yet it raises a fundamental normative question: does a right to adopt exist under Human Rights Law and does such language risks that interests of prospective parents are elevated above the best interests of the child? The best way to answer this question is by a case-to-case assessment of the ECtHR jurisprudence on Adoption under the Right to Family and Private Life Article 8.

3.2.2 Is there a Right to Adopt under the ECHR?

The European Convention on Human Rights that acts as a vital regional Human Rights mechanism and that is of growing importance for establishing adequate safeguards in Inter-country adoption. 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 their interpretation of the best interests of the child within the context of Inter-country adoption. Elements such as continuity of a child’s upbringing or cultural identity may reveal how the concept of the best interests of the child is operationalised.

First and foremost, the ECHR does not contain specific language on inter-country adoptions in the articles themselves but address key issues in adoption cases regarding consent, identity rights or procedural obligation under the Article 8, the Right to respect of private and family life, which amounts to consideration if exercising the “right to adopt” is also protected under this article.¹⁶¹ The notion of ‘family life’ on the one hand entails biological or de jure relationships but also de-facto relationship which includes emotional bonds. ‘Family life’ may thus also exist between couples and unrelated children who have existing bonds. Thereby the provision protects family member who are biologically unrelated like in adoption.¹⁶² The positive obligation of states lay in protecting children from harm, not in introducing adoption legislation per se, but by intervening when there is evidence of child abuse.¹⁶³ But also, if there

¹⁶⁰ *ibid* 19.

¹⁶¹ 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.

¹⁶² 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).

¹⁶³ *E and Others v the United Kingdom* [2002] ECtHR [31].

is a risk of such harm through the child's best interests's lens, that establishes both a substantive and procedural obligation.¹⁶⁴ However, 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.¹⁶⁵ The analysis will be following the evolutive interpretation of the ECtHR as a living instrument for Human Rights protection.

3.2.2.1 Jurisprudential Assessment

The first widely establishment case concerning adoption in connection with Article 8 was *Frette v. France* in 2002 and assessed if national authorities were legitimate and reasonable in their consideration, whether the applicant has been entitled to the adoption of the child. It stated that adoption relies on statutory rules, created by states and does not constitute a fundamental right on which the applicant had relied on.

*“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 [..]”*¹⁶⁶

However, a decision to refuse adoption based on sexual orientation (applicant alleged Article 8 in conjunction with Article 14) would amount to a “serious” violation of his rights to private and family life.¹⁶⁷ The ECtHR stated in this case that the “the rights of the child set the limits of the right to have children”¹⁶⁸ and that “adoption means “providing a child with a family, not a family with a child”¹⁶⁹. It eventually concluded that national authorities had been legitimate in refusing an adoption and afforded the state a wide margin of appreciation.

One of the most important cases discussing the “right to adopt” is also *Pini and Others v. Romania* from 2004. An Italian couple invoked their rights under Article 8 as they complaint that the Romanian authorities had refused to execute adoption orders by transferring custody of the children. The court held that ‘family life’ can be extended to potential relationships, hence during the process of forming relationships under adoption as mentioned above.¹⁷⁰

The court, however, attached a significant weight to the desire of the children. While the adoption proceeding had begun when they were only three years, by the time of the judgement

¹⁶⁴ *Masłowiec and Kowalski* (n 60) 27.

¹⁶⁵ *Masłowiec and Kowalski* (n 60).

¹⁶⁶ *Frette v France* [2002] ECtHR 60168/09 [32].

¹⁶⁷ *ibid* 28.

¹⁶⁸ *ibid* 36.

¹⁶⁹ *ibid* 42.

¹⁷⁰ *Pini and Others v Romania [extracts]* [2004] ECtHR 78028/01, 78030/01 [107].

they were eight and nine and clearly expressed their wish to stay in Romania. 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 due to the fact that they also had never meet the adoptive parents¹⁷¹. The Court held that their interests lays in not having imposed upon them, against their own will, to establish emotional ties whom they perceived as strangers.¹⁷² 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”.¹⁷³ 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.¹⁷⁴

The judgment ruled that the right to prospective parents to develop legal ties with their adopted children is overruled by the children’s interests as established by international law instruments such as the Hauge Convention and the European Adoption Convention in §100 under the best interests of the child principle.¹⁷⁵

This case was also referenced in connection to the Report on Intercountry adoption in 2012 by the PACE as a leading case-law for the application of the best interests of the child in the context of Intercountry adoption¹⁷⁶

In the 2014 judgement *Chbihi Loudoudi v. Belgium* the court examined whether Belgium has violated the applicants’ rights under Article 8 by refusing to adopt her niece. The court concluded that the refusal for a full adoption was in accordance with the law under *kefala* (Islamic law) and did not interfere with the child’s residence status. By maintaining a single legal identity, the child’s best interests was best ensured. Alternative forms of legal protection such as guardianship would nonetheless remain available for them. This case strongly reinforces the safeguards for Intercountry adoption set in the Hague Adoption Convention and therefore demonstrates not only the integrity of such a framework but also the preservation of

¹⁷¹ *ibid* 82.

¹⁷² *ibid* 153.

¹⁷³ *ibid* 144.

¹⁷⁴ *ibid* 130.

¹⁷⁵ *ibid* 165.

¹⁷⁶ Committee on Social Affairs, Health and Sustainable Development, ‘Intercountry adoption: Ensuring That the Best interests of the Child Are Upheld’ (Parliamentary Assembly of the Council of Europe 2012) Doc. 13059.

identity and thereby moving away from an only relationship-based understanding of the best interests of the child principle.¹⁷⁷

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 the judgment *Paradiso and Campanelli v. Italy*. It is of specific importance due to the way that a de facto family relationship is understood and the general scope of Article 8 regarding alternative ways to parenthood.

The applicant filed a complaint that they were refused the recognition of a legal-parent child relationship, with a Russian child under surrogacy arrangement, in Italy after as the child was permanent removed by them. This case, first concluded in 2015 reached another decision by the grand chamber in 2017.

While in the first judgement the court concluded a sufficient link between the applicant and the child to be protected under the notion of "family life" Article 8, the grand chamber found that given the missing biological ties and the fraudulent circumstances under which the child was registered in Russia, it considered that this was not an interference under the notion of 'family life' but only '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 35.¹⁷⁸

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 documentation of the parents as biological parents under Italian law (even though correct under Russian law) and the financial aspect for the surrogacy arrangement which both amounted for the court as circumventing procedural obligations for Intercountry adoption.

In *Paradiso v. Italy*, the best interests of the child were first examined from a future intended parental care. However, the child was already placed in foster care in another family at that time of the judgement permanently.¹⁷⁹ For the grand chamber the decisive factor in determining

¹⁷⁷ 'Chbihi Loudoudi and Others v. Belgium' <[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-10404%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-10404%22]})> accessed 10 July 2026.

¹⁷⁸ *Paradiso and Campanelli v Italy* [2017] ECtHR [GC] 25358/12 [202].

¹⁷⁹ '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.

the best interests of the child, was eventually to protect, in the ‘public interest’, children against human trafficking and illicit practises by restricting the rights of adoptive parents and thereby it no longer amounted to a violation of Article 8.¹⁸⁰

The handling of the case differentiates from previous cases in fundamental ways, by not solely focusing on the family bonds, but the case also reflects the broader tendency of the ECtHR, to afford a wide margin of appreciation to the state in such private matters. As mentioned above the court does not establish adoption rules, since there is no “right” to found a family¹⁸¹ the refusal of a legal acknowledgment of a parent-child relationship where there is no valid legal ground, may have been a strong factor in affording this margin.

3.2.2.1.1 State Obligations in the Context of 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 more often phrased as a negative obligation on states, which means that article 8 may be invoked if adoption is denied, for example on discriminatory grounds in connection with Article 14 or by an interference into the process. An interference or refusal of recognising a “family life” in adoption must be justified “[...] in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”¹⁸²

The ECtHR has clearly accepted that children must have a strong say in it 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

¹⁸⁰ *Paradiso and Campanelli v. Italy* (n 178) para 202.

¹⁸¹ *ibid* 141.

¹⁸² Article 8, 2 ECHR

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.¹⁸³

The ECtHR has also been very outspoken on the subsidiary nature of placement into care to living with the birth family (*H.K. v Finland*)¹⁸⁴ and on the prohibition of justifying placement in care on the grounds of material poverty alone (*Soares de Melo v. Portugal*)¹⁸⁵.

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.¹⁸⁶ The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and national measures preventing such an enjoyment amount to an interference with the right to private and family life.¹⁸⁷

3.3 Conclusion

In conclusion, the international and European legal framework does not adopt a definitive position, but legitimises the institution by the ratification of the Hague Convention and the facilitation through the European Adoption Convention. While these instruments recognise intercountry adoption as a legitimate form of alternative care, they also emphasise that it should be a subsidiary measure, pursued only where suitable domestic solutions cannot be found and where appropriate procedural guarantees are respected. 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. By contrast, the Convention on the Rights of the Child adopts a broader child-rights perspective. 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

¹⁸³ Hirvelä and Heikkilä (n 162).

¹⁸⁴ *H.k v Finland* [2006] ECtHR 76987/01 [108].

¹⁸⁵ See also 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).

¹⁸⁶ *H.k. v. Finland* (n 184) para 155.

¹⁸⁷ *Strand Lobben and Others v Norway* [2019] ECtHR [GC] 37283/13 [202].

hierarchy of care by a family or institution, are not necessarily clear and the court affords a wide margin of appreciation to states. Article 8 ECHR however, does not create a right to adopt per se, which is continuously stated. 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 that seek to protect the best interests of the child, safeguards simultaneously legitimise the institution of international adoption. However, the instruments reflect different understandings of what constitutes the child's best interests. While the Convention on the Rights of the Child places greater emphasis on preserving the child's cultural identity and heritage, the Hague Adoption Convention gives preference to permanent family care over long-term institutional care, even where this involves placement outside the country. As discussed in the *Chapter 2*, this reflects a particular understanding of child welfare that prioritises family-based care and has been criticised for a predominantly Western conception of care and of what is considered to be in the child's best interests. The balance between these competing understandings is ultimately left to national implementation, allowing States operating under the same international framework to reach different conclusions regarding the legitimacy and future of intercountry adoption.

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 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 provided gives conclusion about how these countries reassessed the past and insights into what the national specific challenges and debates were. 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 its future legitimacy of intercountry adoption. 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.¹⁸⁸ This analysis may give answers, as to what aspects lead to a position on the continuation, thereby legitimization or discontinuation, as a form of delegitimization of Intercountry adoption as a child welfare measurement.

4.1 Sweden: Negotiating the Future of an Adoption Nation

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. The discourse analysis draws on the final report together with articles retrieved from the national news outlet *Dagens Nyheter* using the search term "adoption", in order to examine how the best interests of the child are constructed and invoked within the Swedish discourse. This newspaper published a wide-range of article on the topic of Intercountry Adoption and is one of the largest newspaper 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 decades.¹⁸⁹ 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

¹⁸⁸ Eva Erman, *Human Rights and Democracy : Discourse Theory and Global Rights Institutions*. (Ashgate, cop 2005).

¹⁸⁹ HübINETTE, 'The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption' (n 96) 2.

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 across Sweden.¹⁹⁰ As a direct response to these developments, the Swedish government adopted a proposal to investigate intercountry adoption activities that occurred in Sweden too, led by Prime Minister Stefan Löfven (a national adoptee himself).¹⁹¹ It was the first proposal unanimously decided between very different political parties in Sweden.¹⁹² After the latest election, the right-center 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 2025.¹⁹³ The Prime Minister of Sweden has also been a former chairman of the adoption 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 behind American Holt worldwide.¹⁹⁴ Other major mediating organisations in Sweden are Children’s Friends (“Barnens vänner” BV) or Children Above All (“Barnen framför allt” BFA). Researcher and adoptee advocate Tobias Hübinette thereby says that he does not expect the Commission Report to go beyond what is already known given the political circumstances.¹⁹⁵

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 not any irregularities in connection to foreign adoptions to Sweden.¹⁹⁶

The Commission uses the term irregularities, meaning “illegal” or “unethical” adoption, that include procedures, that provide no basis for assessing the principle of the best interests of the

¹⁹⁰Tobias Hübinette, ‘The Swedish Adoption World and the Process of Coming to Terms with Transnational Adoption’ (2025) 9 *Genealogy* 77, 2.

¹⁹¹ 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>>.

¹⁹²Tobias Hübinette, ‘Sweden at a Crossroads: The Struggle for Finding the Truth about Transnational Adoption in the World’s Leading Adopting Nation’ (2024) 158, 159.

¹⁹³Adoptionskommissionen, *Sveriges internationella adoptionsverksamhet – lärdomar och vägen framåt*, vol 1, SOU 2025:61 (Regeringskansliet 2025) 123.

¹⁹⁴Hübinette (n 2) 159f.

¹⁹⁵ *ibid* 172.

¹⁹⁶ Adoptionskommissionen, ‘Sveriges Internationella Adoptionsverksamhet: Lärdomar Och Vägen Framåt’ (2025) SOU 2025:61 vol 1, 92–93.

child, which is paramount to each transnational adoption.¹⁹⁷ “Illegal” adoptions are adoption, that is the result of abuse, such as abduction, sale, human trafficking and other illegal activities,¹⁹⁸ The Commission understands irregularities as encompassing various forms of unethical and inappropriate conducts by actors involved.¹⁹⁹ It 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, as well as the prevailing social norms, that existed at that time.²⁰⁰

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 organizations, based on their role and responsibilities.²⁰¹ This shall ultimately inform guidance for the future international adoptions to Sweden.²⁰² The investigation consisted of many legal experts and different government ministries, but was also accompanied by a reference group. The report does not assess the best interests of the child in individual cases, but for children as a *group*.²⁰³ 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 several times approached by people who argue that the inquiry may be unnecessary, given that these cases are already in the past and that most adoptees have turned out to be well anyways.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶

¹⁹⁷ *ibid* 63.

¹⁹⁸ *ibid*.

¹⁹⁹ *ibid*.

²⁰⁰ Adoptionskommissionen (n 20) 93-94.

²⁰¹ *ibid* 93.

²⁰² *ibid*.

²⁰³ *ibid* 51.

²⁰⁴ *ibid* 3-4.

²⁰⁵ *ibid* 4.

²⁰⁶ *ibid* 140.

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 adoption, there are no uniform numbers 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, the first countries that facilitated intercountry adoption after the World War II. This time constituted, as elsewhere, a decline in national numbers due 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.²⁰⁷ 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.²⁰⁸ As a response, the Swedish parliament (“Riksdag”) argued that this argument lacked factual basis and only provides grounds for discrimination.²⁰⁹ The proponents of international adoption to Sweden argued, that due to the poverty in the third world at that time, it may even be moral obligation to adopt children than have one's biological ones.²¹⁰ Critiques at that time, already argued that it is questionable to move children abroad

²⁰⁷ ibid 142–150.

²⁰⁸ ibid 142.

²⁰⁹ ibid.

²¹⁰ ibid 143.

from other countries as a child welfare measurement, as they might have family members in their country of origin and that it might be a better solution to support the countries themselves.²¹¹ The inquiry concluded eventually to establishing intercountry adoption in Sweden and that adoption shall not be restricted based on race.²¹² Society shall support those who seek to adopt, but it may not be the governments' duty to facilitate international adoptions in "large numbers" as it is a private project with a certain amount of support by the state.²¹³ The inquiry stated positively that children were offered in Sweden things that they will not get in their home country such as family, education and a safe growing up. Childless swedes on the other hand could have children and an increasing understanding of other cultures and countries. However, it may be necessary to create campaigns for tolerance of foreign children.²¹⁴

Several countries whom Sweden should cooperate in the future were sceptical in the beginning and for example Ethiopian officials expressed their concern that children with dark skin colour may probably not be accepted in the same way as other children.²¹⁵

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.²¹⁶ 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.²¹⁷ People who lived abroad helped other families with contacts and tips and the activity became almost uncontrollable.²¹⁸ People who worked at the National Board for Intercountry adoption so called NIA ("Statens nämnd för internationella adoptionsfrågor"), the AC and people in social service said, that swedes who lived abroad came to Sweden with children without any kind of preparation in Sweden nor papers.²¹⁹ It became normalised that people travelled abroad just to pick up children and handed them over to other families when they got home.²²⁰

²¹¹ *ibid* 142.

²¹² *ibid* 141–144.

²¹³ *ibid* 142.

²¹⁴ *ibid* 142–150.

²¹⁵ *ibid* 144.

²¹⁶ *ibid*.

²¹⁷ *ibid*.

²¹⁸ *ibid* 144–145.

²¹⁹ *ibid*.

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). The plane tickets were usual paid by Sweden.²²¹

4.1.2.1 Adoption beyond State Control?

During the 1973-1979, around 9.000 children were mediated while only 5.400 of them through organizations, the rest was privately arranged.²²² The prospective parents have stated, that they felt frustrated, due to the long processes and felt the selection was also not transparent and unfair, thus choose to adopt privately.²²³ 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 board (NIA).²²⁴ When NIA was confronted with this question, they stated that mediation of adoptions would be a sensitive task and that society [*authorized agencies*] must be responsible for connecting children and parents, in order to guarantee the best interests of the child.²²⁵ In 1977 a working group was appointed by the government due to the lack of control and overview over the private adoptions.²²⁶ Despite neighbouring countries' warnings about the potential abuse in private adoption, NIA did eventually not counteract private adoptions and accepted them due to the given situation of high demands and long waiting lists.²²⁷ In the early years it is documented that NIA and AC provided application forms where prospective parents could tick besides gender and age also the skin colour of the child. The reactions were mixed about the existences of such a form, but most people took the option for skin colour.²²⁸ Most children coming to Sweden were and still are transracial.²²⁹

While in the beginning of the 1990's there has been a small decline in adoptions to Sweden it increased again in the year 2000 again and campaigns can be found in many areas, advertising international adoption as part of family formation saying: "*Are you trying to have children? We are trying to have parents*"²³⁰ Many applicants choose to demand children that were under six months, and it became difficult to place older children for the agency. This was among other due, to the social workers that urged families to have smaller children in order to have less

²²¹ '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.

²²² Adoptionskommissionen (n 196) 231.

²²³ *ibid* 147.

²²⁴ {Citation}

²²⁵ Adoptionskommissionen (n 196) 149.

²²⁶ *ibid* 148.

²²⁷ *ibid* 147.

²²⁸ *ibid* 148.

²²⁹ Wyver (n 68) 3.

²³⁰ Adoptionskommissionen (n 196) 160.

problems.²³¹ When NIA confronted the social workers about this issues, they said that older children might be better suited in the country and the respective culture instead of adoptions abroad.²³² 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.²³³ This study provoked strong reactions from adoptive parents but also adoptees, as they may become stigmatized and highlighted only their worst fears.²³⁴ The director of the NIA was interviewed about the role of the authority when it came to support for adoptees at that time. She replied that the NIA had no such responsibility, the authority's mission was mainly to facilitate the adoption of foreign children to Sweden.²³⁵ What is assumed in the early years is, that safeguarding intercountry adoptions was only an addition to facilitating adoption and not necessarily a prerequisite.

4.1.2.2 Uncovering Irregularities in Swedish Intercountry Adoption

In the decade beginning of 2000, the perception changed within Sweden on international adoption. 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. In 2002 a documentary was released that showed irregularities in adoptions from Thailand within private but also mediated adoption through NIA.²³⁶ AC apologised to have contributed to such adoptions and NIA received public money to help Thai adoptees to remedy their illegal adoptions.²³⁷ Increasingly irregularities were also found in other countries such as Chilean and Chinese adoptions.

4.1.2.2.1 The Erosion of Trust

In 2004 the Chinese Embassy of Sweden contacted AC that children were made available through criminal conducts.²³⁸ In regard to China, one indicator for irregularities that was assessed, was that 35 children were registered to come from the same village.²³⁹ Another indicator was that 90% of all babies were girls and most of them only a few weeks or days old, when they were “found” as stated in the official documents.²⁴⁰ For Chinese adoption it was

²³¹ *ibid* 159.

²³² *ibid* 159–160.

²³³ 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.

²³⁴ Adoptionskommissionen (n 196) 160–161.

²³⁵ *ibid* 162.

²³⁶ *ibid*.

²³⁷ *ibid* 163–65.

²³⁸ *ibid* 420ff.

²³⁹ *ibid* 343–344.

²⁴⁰ *ibid*.

mandatory for prospective parents to donate a high amount of money to the orphanage, but it was unclear for which purpose it was used.²⁴¹ Kristersson's who was chairman at AC that time, that mediated many adoptions from China, claims that he never knew of such donations in those years.²⁴² On the other hand, Brian Stuy, who led the research in Chinese adoptions believed that AC should have asked more questions back then, as their professional business relied on livelihoods and adoptions.²⁴³ An investigation was conducted into the specific case of China, but did not lead to the end of the 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 AC continued to campaign for adoption from China.²⁴⁴

The Swedish government authorized an inquiry in 2001 led by Annika Nilsson, to investigate issues in intercountry adoption due to the many irregularities.²⁴⁵ In June 2003 the 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.²⁴⁶ The reactions for stricter requirements were strong from parents, as it was expected that this investigation may reduce the numbers of adoptable children significantly if new rules would be implemented.²⁴⁷ Stronger regulations were seen as a horrible for the children in institutions and the waiting parents and not at least may break with Hague's convention spirit of mutual trust.²⁴⁸ 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 MIA ("Myndigheten för internationella adoptionsfrågor") with clearer supervision role.²⁴⁹

In 2015, adoptees from South Korea demanded that Sweden stops adoptions from South Korea because several investigations showed that the country was violating the Convention on the

²⁴¹ *ibid* 430.

²⁴² '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.

²⁴³ '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.

²⁴⁴ 'Kristersson Försvaret Donationer till Barnhem' *DN.se* (11 June 2025) <<https://www.dn.se/sverige/kristersson-forsvarar-donationer-till-barnhem/>> accessed 10 July 2026..

²⁴⁵ Adoptionskommissionen (n 196) 160.

²⁴⁶ 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.

²⁴⁷ Adoptionskommissionen (n 196) 163.

²⁴⁸ *ibid*.

²⁴⁹ *ibid* 164.

Rights of the Child.²⁵⁰ 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, that she is not aware of.²⁵¹ South Korea has been one of the countries where irregularities have been the most systematic, due to the report and it is found that adoptions were made administratively possible, despite missing information, through a system of parallel documentation.²⁵² This means that children had been systematically registered as orphans, so called “paper orphans”, even though they had known parents and registered in a separate family registry.²⁵³ 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.²⁵⁴ Missing information and inaccuracies in information violate the child’s right to know and thereby the child’s right to their original identity.²⁵⁵ A right which is as discussed in the previous chapter established in the ECtHR under Article 8.²⁵⁶

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.²⁵⁷ However, this framing made it very difficult to recognise over the years, that even a project presented as benevolent and well intentioned could produce and also perpetuate serious violations. This also illustrates the difficulty of recognising that a system that was created to protect children may simultaneously contribute to violating Children’s Rights. 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, due to the report.²⁵⁸ As mentioned above NIA was not against private adoption as it is also legal under the Hague Convention. However, NIA at that time was a concerned that private adoptions would

²⁵⁰ *ibid* 166.

²⁵¹ ‘Adoptionscentrum: ”Kan Ha Blivit Utnyttjade”’ *DN.se* (1 June 2025) <<https://www.dn.se/sverige/adoptionscentrum-kan-ha-blivit-utnyttjade/>> accessed 10 July 2026.

²⁵² Adoptionskommissionen (n 196) 374–375.

²⁵³ *ibid* 327–328; Hjern, Lindblad and Vinnerljung (n 233).

²⁵⁴ Adoptionskommissionen (n 196) 351–365.

²⁵⁵ *ibid* 366.

²⁵⁶ *Odievre v France* (ECtHR [GC]).

²⁵⁷ Richey Wyver, *Exploring Swedish International Adoption Desire: Transracial Bodies and Nation-Building in the “Goodest” Country* (Palgrave Macmillan 2023) 45.

²⁵⁸ Adoptionskommissionen (n 196) 225.

damage Sweden's reputation as an adoption country.²⁵⁹ Sweden was the country that adopted the most children from Sri Lanka, mostly through private adoption, around 3,400 children.²⁶⁰ Although the NIA handbook had already established safeguarding principles in 1983, Sweden continued to facilitate adoptions from Sri Lanka after serious irregularities, including child trafficking and the sale of children for adoption, became widely documented in the mid-1980s.²⁶¹

Sweden also continued authorizing adoption from countries that have neither signed or legislated the Convention such as Guatemala, China, South Korea and Vietnam.²⁶² An adoptee argued that it may have been because they had a good deal [*as the adoption field becomes highly competitive*].²⁶³ This shows that despite regulatory framework 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.²⁶⁴ 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, were considered before adopting abroad to Sweden.²⁶⁵ The rapid procedure in many cases, especially to South Korea, indicates that the principle of subsidiarity is unlikely fulfilled. The investigators assessment is that the Swedish actors have deviated in various ways from a legally secure adoption, to fasten the process, thereby bypassing protective measures that were established in adoption processes to respect the child's fundamental rights.²⁶⁶

The report states that those who worked in adoption agencies in Sweden have been convinced that regulation have been followed and that they saved children from an uncertain future.²⁶⁷ It is however noted that the spirit of the time was, that the system of adoption mediation was generally based on great trust in countries of origin or in the next chain of administrative

²⁵⁹ *ibid* 211.

²⁶⁰ Adoptionskommissionen (n 6) 219–232, 340.

²⁶¹ *ibid* 269.

²⁶² ‘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.

²⁶³ *ibid*.

²⁶⁴ Adoptionskommissionen (n 196) 21.

²⁶⁵ *ibid* 391.

²⁶⁶ *ibid* 3.

²⁶⁷ *ibid* 165–170.

procedures and in supervisory authorities.²⁶⁸ The Swedish supervisory authority on the other hand trusted the agencies.²⁶⁹ The measures that were taken in the past, to prevent the irregularities from continuing have often proven to be insufficient.²⁷⁰ Anna Singer states in an interview that there has been no additional question as there has been a lot of pressure on agencies to convey children.²⁷¹ Everyone may have trusted that the next step in the chain went well and she sees now that the agency presented itself as having an unreasonable trust in the authorities of countries of origin as well.²⁷² According to agencies, there was a lack of regulations and guidelines both in Sweden and in the countries of origin regarding which documents for example should be included.²⁷³ The supervisory authority as well has not had adequate tools and conditions to effective supervision. These are reasons that complicate the process heavily as the Hague framework does also not give a clear guidance on these aspects.²⁷⁴

4.1.4 The Aftermath of the Swedish Adoption Inquiry

The number of international adoptions is sharply declining in Sweden too today too. In 2024 there were only 54 children adopted to Sweden.²⁷⁵ New safeguarding measurements have been taken by the MFoF to ensure increased legal certainty. According to new regulation by MFoF in 2021 adoption mediations also include a risk report in connection with the adoption. However, in the reports assessment, such documents are still missing in about one in three files from the recent intercountry adoption cases.²⁷⁶ According to the MFoF, most children who are adopted internationally today have special needs (“särskilda behov”).²⁷⁷ But the official review for 2024 shows that almost a third of the children were not even assessed if they have special needs.²⁷⁸

²⁶⁸ *ibid* 406.

²⁶⁹ *ibid*.

²⁷⁰ *ibid*.

²⁷¹ ‘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.

²⁷² ‘Utredaren: Staten Bör Förbjuda Internationella Adoptioner’ *DN.se* (2 June 2025)

<<https://www.dn.se/sverige/utredaren-staten-bor-forbjuda-internationella-adoptioner/>> accessed 10 July 2026.

²⁷³ Adoptionskommissionen (n 196) 224–225.

²⁷⁴ *ibid*.

²⁷⁵ *ibid* 523–538.

²⁷⁶ *ibid* 329.

²⁷⁷ *ibid* 372.

²⁷⁸ *ibid* 512f.

4.1.4.1 Intercountry Adoption at a Crossroads

The report concluded by recommending to phasing out all mediation activities until 2028.²⁷⁹ Under this proposal intercountry adoption shall no longer exist in the current form. While the language of phasing out is used, it is not a complete halt. International adoption in regard to the recommendations made, shall be reformed to a state-based solution.²⁸⁰ This is reducing the risks of irregularities through the private nature of mediations agencies but is also a suitable solution given the declining numbers.²⁸¹ The Commission clearly indicates that intercountry adoption should be possible under special circumstances. These are for example close personal relationship. The inquiry also recommends a resource centre for adoptee's support.²⁸²

The proposal to phase out intercountry adoption is primarily based on systemic rather than individual concerns.²⁸³ 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.²⁸⁴ 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 laid down in the report the consequences of irregularities in adoptions can be catastrophic for the child and for the child's parents as well as the adoptive family project in itself. As Hübinette poses in a study from 2001, international adoption to Sweden has come with multiple burdens and to be saved from an uncertain life may thus have not been enough.²⁸⁵ 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 better serves the rights of the children as group.²⁸⁶

Barnen Framför Allt (BFA) as the second adoption organisation that is left today, besides AC, decided to eventually phase out its adoption practise on its own, as there are only a few adoption per year expected and would not be economically feasible as anymore as a private agency.²⁸⁷ The question then arises what is feared to be lost for AC and Sweden in general when international adoption is discontinued officially?

²⁷⁹ *ibid* 676.

²⁸⁰ *ibid* 677–684.

²⁸¹ Adoptionskommissionen (n 196) 677–684.

²⁸² *ibid*.

²⁸³ *ibid* 677.

²⁸⁴ *ibid*.

²⁸⁵ Tobias Hübinette, 'The International Adoptees of Sweden and the Theory of Multiple Burdens'.

²⁸⁶ Adoptionskommissionen (n 196) 677–680.

²⁸⁷ Page 685

4.1.4.2 Societal Responses to the Adoption Inquiry

As predicted by the commission the inquiry led to various reactions within the Swedish society. This section explores how different actors within Swedish society responded to the recommendations of the Swedish Adoption Inquiry and the proposed phase-out of intercountry adoption. To the question how to best respond to the inquiry's findings and the connected feelings, a psychotherapist tells DN that the state that has sanctioned, approved and enabled international adoption so it may be their main responsibility to establish adequate support.²⁸⁸ But if the state does not take responsibility, it is the adoptive parent's responsibility as well to provide as much accurate information as possible.²⁸⁹ 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 1 or 40 individuals per year and wishes adoption to continue.²⁹⁰ In a debate in DN, Anna Singer writes that by examining closely, one can see that the regulation and standards and guidelines which are currently applied in adoption have already existed for a long time.²⁹¹

An adoptee states that since Sweden has had knowledge about these issues long ago it is a reasonable to demand to ask for compensation from the Swedish state for redress as well.²⁹² Otherwise, it may only be a recognition for her irregular adoption on paper.²⁹³ However, Singer says she is not tasked to consider financial redress for individuals affected by irregularities in intercountry adoptions but recommends financial remedies as well.²⁹⁴

One recommendation from the report was also to make a public apology to adoptees and families, for the shortcomings in international adoptions to Sweden.²⁹⁵ This has not been decided until now. Social Democratic Leader Lena Hallengren sees an apology as the bare minimum but is not opposed to allow international adoption to continue.²⁹⁶ Another possibility

²⁸⁸ '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.

²⁸⁹ *ibid.*

²⁹⁰ 'Adoptivmamman Fanny: "Stoppa Inte Adoptionerna"' *DN.se* (26 June 2025) <<https://www.dn.se/sverige/adoptivmamman-fanny-stoppa-inte-adoptionerna/>> accessed 10 July 2026.

²⁹¹ '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.

²⁹² 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.

²⁹³ *ibid.*

²⁹⁴ Adoptionskommissionen (n 196) 479.

²⁹⁵ *ibid.*

²⁹⁶ '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.

for redress, may be opened through Sweden's ratification of the International Convention on Protection of all persons from enforced disappearance (CPPED).²⁹⁷ This has been emphasised in the inquiry, but also by the Human Rights Institute Sweden ("Institutet för mänskliga rättigheter"), as an important instrument for rights recognition for adoptees, as well as possible remedies in cases of illegal adoptions that fall under 'enforced disappearances'.²⁹⁸ One major step is that the government has recently concluded to establish a national resource centre for adoptees by the January 2027, a proposal that already existed after the 2003 inquiry.²⁹⁹

In conclusion it is stated, that is clear from the commissioner's point of view, that Intercountry adoption has often been conducted without a real understanding of what it means for those affected. Arrangement of adoption activities through non-profit organisation and especially Christian missionaries have largely contributed to uncritical approaches in international adoption and provided, through the religious motif, incentives to mediate as many children as possible.³⁰⁰

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.³⁰¹ It is even suspected that the upcoming election in fall 2026 is influencing today's slow process in decisions-makings and delaying official apologies since a year, and withholds the government from taking a concrete step in either direction.³⁰² However, the investigation was seen as an important step to rectify what has already been known by several actors within the society. The inquiry thereby follows also a wider global trend in Europe. For many, Sweden's identity as a humanitarian welfare state carries a particular responsibility to lead efforts in order to prevent child trafficking and other adoption-related abuses and should have had a pioneering role.³⁰³

²⁹⁷ 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.

²⁹⁸ 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.

²⁹⁹ '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.

³⁰⁰ Adoptionskommissionen (n 6), 46, 317.

³⁰¹ *ibid* 549ff.

³⁰² 'Efter Adoptionsutredningen – Tyst Från Regeringen' *DN.se* (25 April 2026) <<https://www.dn.se/sverige/efter-adoptionsutredningen-tyst-fran-regeringen/>> accessed 10 July 2026.

³⁰³ '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.

There are different views on whether and how intercountry should continue, however Anna Singer recommends phasing out the practice of placing children for adoption in Sweden.³⁰⁴ This has been also a pressing demand by many adoption networks in Sweden and outside as well.³⁰⁵ The review of the report showed that there are systemic shortcoming in almost all adoption regarding the child's origin.³⁰⁶ Singer plays a great emphasis on the parameter of "legal certainty" as a dimension that ensures the best interests of the child.³⁰⁷ The question remains is "legal certainty" in the child's best interests? In the Swedish case, the best interests of the child, are ultimately interpreted through a state-based solution. Sweden thereby does not fully reject intercountry adoption as a legitimate measure for some children.³⁰⁸ But the Inquiry argues that stronger public control, legal certainty and direct state responsibility could reduce the risks created by private mediation and ensure that any remaining adoptions are carried out solely in line with the child's best interests.

This fact is overlooked by many media responses to the proposal to phase-out Intercountry adoption is, that according to the inquiry it is not recommended to abolish the system altogether. The recommendation states to discontinue the current adoption system that is based on *mediation* of adoption.³⁰⁹ It is assumed that the underlying problem is that applicants who apply for adoption create a demand that may be against the governing factor of the child's best interests, but if a child's country of origin requests a family in Sweden it may look different.³¹⁰ It is assumed that in a globalised world there will always be a need for intercountry adoption in exceptional situations and thus this is the most realistic solution for Sweden.

4.2 The Netherlands' Reckoning with Intercountry Adoption

This chapter examines the main findings of the Joustra Committee and investigates what 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 in the Netherlands. This newspaper outlet has devoted a continuous and extensive

³⁰⁴ Adoptionskommissionen (n 196) 559.

³⁰⁵ *ibid* 538.

³⁰⁶ *ibid* 366.

³⁰⁷ *ibid* 224–225.

³⁰⁸ *ibid* 677–682.

³⁰⁹ *ibid* 49.

³¹⁰ *ibid* 554.

coverage on the topic of intercountry adoption, including interviews with various stakeholders 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

The Netherlands became the first European receiving country which decided to permanently phase out intercountry adoption.³¹¹ Due to a case that had been filed within the Ministry of Justice and Security it was revealed that the Dutch state have been involved in illegal adoptions from Brazil.³¹² This case ultimately triggered several more cases such as the Sri Lankan case by a women named Dilani Butink, which is still pending.³¹³ As a result the government (“Riksdag”) appointed an inquiry in 2019. This committee shall examine intercountry adoption activities and the involvement of the Dutch state.³¹⁴ Alread in 2016 the Council for Criminal Justice Application and Youth Protection (RSJ) advice the government to completely stop intercountry adoption, but the Dutch government ignored it 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.³¹⁵

The report from the so-called Joustra Committee, identified systematic irregularities and urged the Netherlands to a suspend all new adoption from abroad.³¹⁶ 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 harms the child’s best interests.³¹⁷ According to professor D. Smolin this was a pivotal moment in history as it would recognize the systemic nature of abuse in Intercountry adoption.³¹⁸

³¹¹ 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.

³¹² 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.

³¹³ ‘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.

³¹⁴ Commissie Onderzoek Interlandelijke Adoptie (n 100).

³¹⁵ 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.

³¹⁶ Commissie Onderzoek Interlandelijke Adoptie (n 100) 134–140.

³¹⁷ *ibid* 140–141.

³¹⁸ Loibl (n 21) 43.

Minister Dekker who received the report 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.³¹⁹

Several stakeholders strongly criticised the decision as unfounded and started a petition opposing the suspension of Intercountry adoption by Minister Dekker.³²⁰ A group of adoptive parents argued that adoption shall remain possible from certain countries with more strict procedures.³²¹ 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. They argued that adoption practices and oversight have changed and thus it is an extreme measurement to suspend adoptions.³²²

A year later, the government under Minister Franc Weerwind decided to resume adoption but in a reformed way and with fewer countries, Hungary among others.³²³ The European Centre for Roma Rights which conducted year-long research, reported that mainly Roma children were given up for adoption in Hungary.³²⁴ According to several reports children were taken away by the state from parents due to poverty, a measurement that violates not only the Hungarian Child Protection Act but also the Childs Rights Convention.³²⁵ The idea was that the new adoption system was more state controlled by establishing the Intercountry Adoption Mediation Netherlands Foundation ("Stichting Interlandelijke adoptiebemiddeling Nederland") that shall be fully financed, thereby reducing "uncertainty".³²⁶ Similar to the Swedish Commission legal certainty shall be a prevalent factor for the child's best interest's assessment in intercountry adoptions. A parliamentary member Van Nispen called in a motion in on the 16th of April 2024 to phase-out Intercountry adoption. In this motion ("motie") he proposed to phase-out intercountry adoption, as it was recommended by the Committee on the Research on International Adoption and thereby criticised that the government has fallen seriously short in

³¹⁹ 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.

³²⁰ *ibid.*

³²¹ *ibid.*

³²² 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.

³²³ 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.

³²⁴ *ibid.*

³²⁵ *ibid.*

³²⁶ '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.

countering abuses in international adoptions.³²⁷ Furthermore, Van Nispen raised serious doubts of whether there is a realistic design of new legal system that could prevent abuses. He argued that the best interests of the child is served, when he or she can be safely taken care of domestically, in his culture or region.³²⁸ The decision to phase-out intercountry adoption eventually received broad support in the parliament, the government decided to permanently end intercountry adoption and proposed a phase out period of six years.³²⁹ This has gained broad support by the parliamentary members. 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."³³⁰ This letter acknowledged the concerns that were raised in the parliamentary and Weerwind eventually enacted to suspend intercountry adoption. Adoption organisation, the four that were remaining, were given the chance to mediate children until the 1st of May 2030.³³¹

The decision was now definitive and ended a long period of a tradition in intercountry adoption in the Netherlands, as the first receiving country in the western world.³³² Minister Weerwind was aware that the public debate was both led by adoptees experiencing trauma and by those people who valued their adoption and thus the reactions to this decision might also become polarizing. It is thereby important to him to ensure that care is established during the phase-out process.³³³

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, with a focus on Brazil,

³²⁷ 'Personen- En Familierecht' (10 April 2024) <<https://www.tweedekamer.nl/kamerstukken/moties/detail>> accessed 6 July 2026.

³²⁸ 'Personen- En Familierecht' (10 April 2024) <<https://www.tweedekamer.nl/kamerstukken/moties/detail>> accessed 4 July 2026.

³²⁹ 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.

³³⁰ Minister voor Rechtsbescherming, 'Intrekken voorhang oprichting Stichting Interlandelijke Adoptiebemiddeling Nederland' (Ministerie van Justitie en Veiligheid 2024). (translated by deepL.ai)

³³¹ 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.

³³² 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 10 July 2026.

³³³ 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 6 July 2026.

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 these as explicitly stated.³³⁴ The main objectives were the existence of abuses and the awareness of the Dutch government and their potential involvement, as well as in which ways abuses may have been structural in nature.³³⁵ 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”*³³⁶

The Dutch report uses explicitly the word abuse instead of irregularities (“oegentligheter”) that is commonly found in the Swedish report which is a more implicit expression.

These acts of abuse may have been more straightforward when it comes to actual procedural requirements or laws, but less when it comes to explicit prohibition of relinquishing children or missing files in the adoption procedure.³³⁷ As in the Swedish case, the focus of the commission is not on individual cases but the broader historical incidences. The recommendations are thereby generalised.³³⁸

4.2.2 Revisiting the History of Intercountry Adoption in the Netherlands

The first foreign adoption-wave was mainly children from Greece, Austria and Germany. 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.³³⁹ With the introduction of the Dutch Social Assistance Act in 1963 (“Bijstandswet”) it was finally possible for single mothers to independently care for children in the Netherlands. During the following decades the official numbers increased and superseded the numbers of domestic adoption in 1975.³⁴⁰

³³⁴ Commissie Onderzoek Interlandelijke Adoptie (n 100) 13.

³³⁵ Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NL’ (n 329) 11.

³³⁶ *ibid* 14.

³³⁷ *ibid*.

³³⁸ *ibid* 13.

³³⁹ *ibid* 16.

³⁴⁰ Commissie Onderzoek Interlandelijke Adoptie (n 100) 17.

The first wave was characterised by the idea to improve the world by saving orphans from dire or poor circumstances, to enable a better future in the Netherlands. Many also felt that it is their moral duty to adopt a child as well.³⁴¹ This generation is described as generally more idealistic and naive towards Intercountry adoption.³⁴² In 1989 the Act on the Placement of Foreign Children for Adoption (“Wet opneming buitenlandse kinderen ter adoptie (Wobka)”) was introduced because foreign adoption grew rapidly.³⁴³ About 1500-1700 children were adopted per year and Wobka regulated the system of intercountry adoption for the first time more comprehensible. This act was later in year 1993, amended to the regulation of the Hague Convention.³⁴⁴

4.2.3 Landing in a better Future? Children in Transit

In the 1970’s as elsewhere in Europe the views on sexuality and family institution changed and with the introduction of the Dutch Social Assistance Act of 1963 (“(Bijstandswet)”) it was finally possible for single mothers to independently care for children in the Netherlands.³⁴⁵

During the 1980’s babies would arrive in Schiphol airport, from orphanages around the world, Bangladesh, Colombia, South Korea as humanitarian response.³⁴⁶ In the case of south Korea media frequently referred to the social exclusion of mixed race (Amerasian) children born to Korean women and U.S. soldiers after the Korean War.³⁴⁷ These children were presented as not being accepted in Korean society and thus in need for adoption abroad.³⁴⁸ At that time, people in the Dutch society argued that they can provide a more accepting environment for these children from South Korea.³⁴⁹ Professor Hoksbergen who initially considered to adopt as well, but later refrained said that looking back, they never really asked whether adoption within Korea was possible. They were only driven by youthful enthusiasm and the belief that with adoptions they were helping children.³⁵⁰ Due to the pressing humanitarian situation around the

³⁴¹ *ibid.*

³⁴² 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.

³⁴³ Commissie Onderzoek Interlandelijke Adoptie (n 100) 19.

³⁴⁴ Veiligheid, ‘No New Inter-Country Adoptions Effective Immediately | Government.NL’ (n 329) 16–19.

³⁴⁵ *ibid* 17.

³⁴⁶ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 342).

³⁴⁷ Bergquist (n 32) 622.

³⁴⁸ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 342).

³⁴⁹ *ibid.*

³⁵⁰ 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.

world and the portrayed need of adoption by western parents, several interest groups put pressure at that time on the Dutch government to speed up adoption procedures.³⁵¹ The idea that Europe should rescue children to help the rest of the world move forward, has become part of the national identity in the Netherlands.³⁵² The “rescue-narrative” was interchangeably portrayed as a “win-win situation” for everyone involved in the Netherlands too.³⁵³

4.2.3.1 DIY Adoptions

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.³⁵⁴ These intermediaries were for example Flash, which was founded by adoptive parents.³⁵⁵ The adoption was then set up locally. These were referred to as “DIY adoptions” in the report, describing cases in which prospective adoptive parents identified a child themselves instead through an authorised adoption agency.³⁵⁶ This differs somewhat from cases of private adoptions in Sweden, where legal and administrative procedures were bypassed.³⁵⁷

Until 1989 there was also no specific information or any mandatory sessions pre-adoption required for prospective adoptive parents.³⁵⁸ An adoptive parent said that only when she came back from America where adoptions were much more prominent, did she read literature about what could go wrong with adoptions. Beforehand she believed that adoption was beneficial for the baby.³⁵⁹

4.2.3.2 From Idealism to Realism

The peak of intercountry adoption to the Netherlands were in the 1980’s, where annually around 1500-1700 children were adopted.³⁶⁰ This period also marked a time where large-scale abuses made newspaper headlines. One incidence which was especially triggering the public, was when a mother in Indonesia was found with 18 babies in her attic, which would be adopted

³⁵¹ 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.

³⁵² 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.

³⁵³ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 342).

³⁵⁴ Commissie Onderzoek Interlandelijke Adoptie (n 100) 22.

³⁵⁵ *ibid* 97.

³⁵⁶ *ibid* 22.

³⁵⁷ Adoptionskommissionen (n 196) 132.

³⁵⁸ Commissie Onderzoek Interlandelijke Adoptie (n 100) 22.

³⁵⁹ Oosterom, ‘Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?’ (n 342).

³⁶⁰ Commissie Onderzoek Interlandelijke Adoptie (n 100) 26.

to the Netherlands.³⁶¹ In the 1980's first studies were published showing that international adoption comes with many different challenges such as adjustment problems, behaviours problems and identity formation.³⁶² The increased awareness led not only to the implementation of the Hague Convention in 1993 but constituted a more realistic generation of prospective parents. Now prospective parents had to meet requirements and were referred to the state of origin, which only then proposed a matching. For this procedure the Central Authority was Adoption Services Foundation ("Stichting Adoptievoorzieningen") and the Child Care and Protection Board ("Raad voor de Kinderbescherming, RvdK") in accordance with Article 5 HCCH.³⁶³

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.³⁶⁴ An adoptive couples 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 right, with goodwill and ethical awareness at that time.³⁶⁵ They were childless and orphanages were 'bulging', so many children were to be adopted as they saw on TV.³⁶⁶

A second record highest number was recorded in 2004 when 1300 children were adopted into the Netherlands, where 800 alone were from China. After these years the numbers declined sharply except from 2010 when children were adopted from Haiti after the earthquake. In 2019 only 145 children were adopted to the Netherlands. The total number were estimated to be 40.000 children from 1957-2019. Historically, the largest numbers originated from China, Colombia, South Korea, and Sri Lanka. In more recent years, the principal countries of origin have been China, the United States, South Africa, and Taiwan.³⁶⁷

³⁶¹ *ibid* 88.

³⁶² 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>>.

³⁶³ Commissie Onderzoek Interlandelijke Adoptie (n 100) 22.

³⁶⁴ *ibid* 130-131.

³⁶⁵ Isabel Baneke, 'Snoei hard 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~bb2bdbee/>> accessed 8 July 2026.

³⁶⁶ *ibid*.

³⁶⁷ Commissie Onderzoek Interlandelijke Adoptie (n 100) 26.

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

One of the coordinators of the Joustra committee said that he was surprised to see that even amidst the peaks on intercountry adoptions to the Netherlands there were always critical voices on the system of intercountry adoption such as Miek de Langen a professor in juvenile law.³⁶⁸

Many abuses of the system were currently identified in African countries. In 2012 has been a temporary suspension of Adoptions from Uganda due to irregularities.³⁶⁹ In 2013 the Congolese government decided to temporarily stop all adopted children from exiting and formally closed intercountry adoption in the year 2016.³⁷⁰ Increasingly from 2007, several questions were raised also during parliamentary sessions about adoption abuse in countries such as India, China and Ethiopia.³⁷¹ These incidences were also followed by the media and investigative journalists.³⁷² However, usually questions to the Dutch officials were answered by referring to the authorities in the origin and their investigations.³⁷³ In a working visit in 2010 (before the end of the one-child policy), the Chinese central authority strongly urged Dutch adoptees to not look for biological parents, as it may reveal that birth parents have broken the law in China. This was accepted and understood by the Dutch authorities.³⁷⁴ A statement that in the commissioner's assessment, inherently broke with spirit of the CRC and Article 30 of the Hauge Convention that shall ensures the right to know one's origin.³⁷⁵ The reasoning was that cooperation is sometimes difficult and in order to keep the possibility up, the Dutch authorities must be careful with states of origin and finding a balance which demands are realistic.³⁷⁶ One Chinese adoptee said that Chinese couples had to meet much stricter requirement as foreign couples at those times.³⁷⁷ Until the year 1993 approximately 200.000 children were adopted to Chinese couples before foreign adoption was even possible,

³⁶⁸ Oosterom, 'Adoptie Leek Heel Lang Een Win-Winsituatie. Waarom Had Nederland Geen Oog Voor de Misstanden?' (n 342).

³⁶⁹ Commissie Onderzoek Interlandelijke Adoptie (n 100) 114.

³⁷⁰ *ibid.*

³⁷¹ *ibid.*

³⁷² *ibid.*

³⁷³ *ibid* 121.

³⁷⁴ *ibid* 117-118.

³⁷⁵ *ibid.*

³⁷⁶ *ibid.*

³⁷⁷ 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.³⁷⁸

The following section discusses selected historical examples, organised by country of origin, in order to trace the roots of the deficiencies identified in the contemporary intercountry adoption system by the Joustra Committee.

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.³⁷⁹ Adoption and abortion were inherently against the Islamic Laws of Bangladesh, but were seen a necessary measurement at that time for abandoned children.³⁸⁰ Due to many issues and rising irregularities, foreign adoption was eventually stopped by an Act in 1982 again.³⁸¹

One controversial Dutch Citizen in Bangladesh was Eva den Hartog, named the “Dutch mother Teresa” by the media.³⁸² The commission’s findings have found evidence that several adoption files were altered, where she was involved as an intermediary in Bangladesh.³⁸³ She started a dispute with 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.³⁸⁴ Eva den Hartog started her mission in 1974 and ended her mission in 1975, due to issues with the waiting lists for prospective parents and Bangladeshi authorities. During this short amount of time, she mediated more than 100 adoptions from Bangladesh to the Netherlands.³⁸⁵

One Dutch board member said that these people [Eva den Hartog and others] never where for profits but really involved with the children. He said it is a disgrace to accuse those who showed so much courage and selflessness at that time.³⁸⁶

³⁷⁸ *ibid.*

³⁷⁹ Commissie Onderzoek Interlandelijke Adoptie (n 100) 42.

³⁸⁰ *ibid.*

³⁸¹ *ibid* 43.

³⁸² *ibid* 45.

³⁸³ *ibid.*

³⁸⁴ *ibid* 46.

³⁸⁵ Commissie Onderzoek Interlandelijke Adoptie (n 100).

³⁸⁶ *ibid*; *ibid.*

A reported issue in Bangladesh was that employees of foreign run children's organisation convinced children to go to the children's home where they might receive food and education.³⁸⁷ It is said that mother who wanted to visit their children then, did not find their children anymore as they were adopted abroad.³⁸⁸ One explanation given is that the birth mothers did not understand the concept of adoption as known to the receiving countries.³⁸⁹

4.2.4.2 Brazil

Wereldkinder was the biggest Dutch adoption organisation and mediated about 30 adoption per year from Brazil only.³⁹⁰ 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.³⁹¹ Many adoptions for example took place in states where Dutch emigrants lived, who organised adoption themselves.³⁹² Brazilian society and politics increasingly became aware of the abuses.³⁹³ Due to reported case of a couple registering a child as their own, the Dutch Public Prosecution Service eventually started to investigate into illegal adoption in South America.³⁹⁴ The result verified 43 cases of abuses, which however were then dismissed, even though the officials of the Dutch embassy were actively involved.³⁹⁵ The reason was that the parents acted in "good faith" and thereby were not deliberately committing a crime.³⁹⁶

The first case that, inter alia, triggered the inquiry, is the case Patrick Noordoven, who was illegally adopted from Brazil by a couple who registered him as their own to avoid waiting lists.³⁹⁷ The investigation also revealed, that his parents were one of those, who were also investigated by the Dutch National Police and their adoption was also filed as illegal back then.³⁹⁸ The family adopted another child through official channels in Brazil later again.³⁹⁹ Noordoven filed a lawsuit against and the Dutch state which became a landmark proceeding. However, while the state acknowledged the violation especially in connection to his right to identity, the state could not be found viable for the parents' actions which is why in the end

³⁸⁷ Commissie Onderzoek Interlandelijke Adoptie (n 100) 47.

³⁸⁸ *ibid.*

³⁸⁹ *ibid* 138.

³⁹⁰ *ibid* 54.

³⁹¹ *ibid* 55.

³⁹² *ibid* 57–58.

³⁹³ *ibid* 57.

³⁹⁴ *ibid* 58.

³⁹⁵ *ibid* 60–61, 68.

³⁹⁶ *ibid* 57–61.

³⁹⁷ *ibid* 65–66.

³⁹⁸ *ibid* 67.

³⁹⁹ *ibid* 66.

there was no monetary compensation.⁴⁰⁰ The ruling did not exclude an obligation of the state to help citizens to get to know their origin.⁴⁰¹

4.2.4.3 Indonesia

The first officially registered Indonesian adoptee arrived in the Netherlands in 1973. 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.⁴⁰² A prominent case investigated by the Joustra Committee is the case about a child named Kurniawati (her Indonesian name), was deliberately taken from her hometown and brought to an orphanage, where she would be sold to a Dutch couple.⁴⁰³ This case received a lot of media attention as the birth father himself filed a lawsuit in 1981 against the adoption in Indonesia.⁴⁰⁴ The child was about 6 years at that time of the lawsuit. 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 and sent back.⁴⁰⁵ Parallel the court also declared the adoption was illegal at that time.⁴⁰⁶ The Indonesian government suspended temporarily adoption to the Netherlands as a direct reaction.⁴⁰⁷ The orphanage Kasih Bundi, where the Indonesian adoptee was from, was blacklisted but renamed and established itself under a new name again.⁴⁰⁸ BIA thereby ended Intercountry adoption to Indonesia in 1981 while Flash and Kind en Toekomst (intermediaries) continued until Indonesia permanently stopped foreign adoptions in the year 1984.⁴⁰⁹

4.2.4.4 Sri Lanka

In 1979 Intercountry adoption was allowed to a limited extend also in Sri Lanka. Already from 1973 children were adopted to the Netherlands ever year.⁴¹⁰ The documented “babyfarms” led the government to restrict the rules in 1992 prohibiting mother to give birth in unregistered

⁴⁰⁰ *ibid* 65–67.

⁴⁰¹ 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.

⁴⁰² Commissie Onderzoek Interlandelijke Adoptie (n 100) 82.

⁴⁰³ *ibid* 89–90.

⁴⁰⁴ *ibid* 89.

⁴⁰⁵ 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 44).

⁴⁰⁶ Commissie Onderzoek Interlandelijke Adoptie (n 100) 89.

⁴⁰⁷ *ibid* 82.

⁴⁰⁸ *ibid* 90.

⁴⁰⁹ *ibid* 89–93.

⁴¹⁰ *ibid* 94.

homes or the retention of pregnant women or children.⁴¹¹ In 1978 the organisation Wereldkinderen accused its competitor Flash, for malpractices in Sri Lanka. Flash responded by saying that they had nothing to do with it and the ‘babyfarm’ was a made up story.⁴¹² Babyfarms were places where women gave birth with/against their consent, for a fee to give them up for international adoption.⁴¹³ Due to the Joustra Committee it is clear now that the Ministry of Foreign Affairs was informed about the phenomenon by Sri Lankan officials.⁴¹⁴ The conclusion by the Joustra inquiry is that the documented abuses were in violation of Dutch and Sri Lankan regulation at that time, but were unable to be prevented nevertheless.⁴¹⁵ The aftermath of the scandals led to tighter national legislation to prevent abuses. In 1993 Sri Lanka was also one of the first countries to sign the Hague Convention.⁴¹⁶ 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 adoptions⁴¹⁷.

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.⁴¹⁸ Already in 2002 the intermediary *Flash* was suspended by the Dutch government due to falsified and incorrect documents of children’s background of the adoptions they mediated.⁴¹⁹ In 2010, the Dutch Adoption Foundation (NAS) and the organisation World children who operated in Haiti and organised to airlifted 109 children from Haiti immediately after the earthquake in 2010.⁴²⁰ These children were then placed for adoption in the Netherlands, including some whose adoption procedures had not been completed because of the state of emergency.⁴²¹ After other countries such as the US, Germany and Switzerland would have resumed adoptions from Haiti

⁴¹¹ *ibid* 94–96.

⁴¹² *ibid* 100.

⁴¹³ *ibid*.

⁴¹⁴ *ibid*.

⁴¹⁵ *ibid* 106–107.

⁴¹⁶ *ibid* 105.

⁴¹⁷ *ibid* 95.

⁴¹⁸ *ibid* 120.

⁴¹⁹ 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.

⁴²⁰ Pronk (n 400).

⁴²¹ Commissie Onderzoek Interlandelijke Adoptie (n 100) 120.

again, it was not understandable for NAS representatives why the Netherlands would not be able to resume now as well.⁴²²

Professor Hoksbergen believes, that many parents were not even prepared to deal with such traumatized children and admires their patience, but thinks they ultimately don't understand what a 'large backpack' these children carry.⁴²³ In 2019 the Dutch state secretary suspended adoption again as it may not be in the best interests of the child.⁴²⁴ NAS ensured that the parents voluntarily waive their children and that there is informed consent and understanding of the concept of adoption. The adoption resumed in 2020 again.⁴²⁵ 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.⁴²⁶ 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 the orphanages are the best place for the child. 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.⁴²⁷

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.⁴²⁸ 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

⁴²² 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.

⁴²³ Iris Pronk, 'Adoptievlucht Is 'zwakgebod'' *Trouw* (27 August 2016) <<https://www.trouw.nl/nieuws/adoptievlucht-is-zwakgebod~b2f9b4e8/>> accessed 3 July 2026.

⁴²⁴ Commissie Onderzoek Interlandelijke Adoptie (n 100) 120.

⁴²⁵ Pronk (n 400).

⁴²⁶ Commissie Onderzoek Interlandelijke Adoptie (n 100) 120.

⁴²⁷ 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.

⁴²⁸ Commissie Onderzoek Interlandelijke Adoptie (n 100) 131.

the desire to found a family has been paramount in many cases.⁴²⁹ Some adoptive parents in the Dutch case intentionally pushed the limits of the regulatory framework and sometimes acted unlawful.⁴³⁰ The findings indicate that irregularities and abuses were the rule instead of the exception in Intercountry adoption.⁴³¹ 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.⁴³² This was done partly to prevent disruption of the adoption process and to preserve diplomatic relations with the countries of origin.⁴³³ 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 the Dutch state is liable for the misconducts in adoptions and responsible for illegal adoptions.⁴³⁴

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.⁴³⁵ Thus, rules were in many cases not enforced.⁴³⁶ This eventually means that stricter regulations have not led to the elimination of abuses present in the system of supply and demand that persist until today but enabled them to go “underground”.⁴³⁷ In its conclusion the Committee recommended to suspend Intercountry adoption altogether as it is doubting that a redesign of the system, where no abuse can appear, may not be realistic or possible under public law and the risk is too high.⁴³⁸

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 Commission’s Report with shock and accused the Commissioner to have portrayed a false picture and to suspend the system is an extreme decision in regard to the unfounded evidence.⁴³⁹ As declared in the statement, the decision may have far reaching consequences for children, adoptees and their families as well as international cooperation and

⁴²⁹ *ibid* 132.

⁴³⁰ *ibid*.

⁴³¹ *ibid* 96.

⁴³² *ibid* 144.

⁴³³ *ibid*.

⁴³⁴ 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.

⁴³⁵ Commissie Onderzoek Interlandelijke Adoptie (n 100) 129.

⁴³⁶ *ibid* 144.

⁴³⁷ *page*

⁴³⁸ Commissie Onderzoek Interlandelijke Adoptie (n 100) 140.

⁴³⁹ TRES- *tres.nl*, ‘Opschorting Interlandelijke Adoptie Ongefundeerd – Persbericht Vergunninghouders’ (*Wereldkinderen*) <<https://www.wereldkinderen.nl/nieuws/opschorting-interlandelijke-adoptie-ongefundeerd-persbericht-vergunninghouders>> accessed 7 July 2026.

all the organisations.⁴⁴⁰ A mother argued that only because a small number may have suffered from traumas does not mean that this shall be projected on all adoptions.⁴⁴¹ 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.⁴⁴²

Karen Gregory, is one of the initiators of the petition that was started by parents against the suspension.⁴⁴³ 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.⁴⁴⁴ On the contrary an adoptee stated that it has been a historic and long-awaited moment for many adoptees. He mentions that we [*adoptees*] never dared to believe it would ever really happen, especially by the same ministry who wanted to resume adoptions again.⁴⁴⁵

In another interview, Minister Weerwind recalled an incident during the COVID-19 pandemic involving an adoptee of Asian descent, who had been subjected to racism.⁴⁴⁶ He remembers, that she described how she was unable to explain these experiences to her white adoptive parents. Weerwind thought to himself, that he himself could explain experiences of racism to his parents because his parents are both of colour.⁴⁴⁷

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 2021.⁴⁴⁸ This document gathered 60

⁴⁴⁰ 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.

⁴⁴¹ Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties’ (n 322).

⁴⁴² Marinus van IJendoorn, ‘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.

⁴⁴³ Oosterom, ‘Adoptieouders Starten Petitie Tegen Volledige Stop Op Adopties’ (n 322).

⁴⁴⁴ 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.

⁴⁴⁵ 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.

⁴⁴⁶ 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.

⁴⁴⁷ *ibid.*

⁴⁴⁸ 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).

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. The recommendation to suspend intercountry adoption is thus not based on individual proven cases but on systematic risks and failures.⁴⁴⁹ Some shared the commission's view to believe, that as long as the system is not watertight it is better to stop it altogether.⁴⁵⁰ 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 personal considerations and judgments, a truly just system also offers the space to make exceptions.⁴⁵¹ One adoptee stated that the experience of being adopted is not sufficiently understood as she was never provided with space to grief and deal for her loss and that files erased that she ever had a past or origin. She said that nobody asks her how it feels to have been given up.⁴⁵²

After the first prominent Case of Dilani Butink from Sri Lanka, more adoptees advocated for justice and some decided for a collective lawsuit.⁴⁵³ The main demand by adoptees are compensations and redress for past mistakes.⁴⁵⁴ Similarly, as in Sweden, the issue is framed as one of state negligence.⁴⁵⁵ 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 light of known abuses.⁴⁵⁶ This was already celebrated as a major step forward by adoptees.⁴⁵⁷ Under international law, victims of Human Rights violations have the right to effective remedies even though the Hauge Convention itself does not give provide a standard for such a procedure. The investigators final reflection on serves, that by the imminent believe over the past decades to do something “good” made it possible for abuses to rise and persist.⁴⁵⁸ There has been no room for unwelcoming judgements which may have only distort the picture of the inherent good nature of adoptions.⁴⁵⁹

⁴⁴⁹ *ibid.*

⁴⁵⁰ Ditmars (n 446).

⁴⁵¹ *ibid.*

⁴⁵² 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-afgestaan-te-zijn-heeft-nog-nooit-iemand-gevraagd~b4f3b3e2/>> accessed 8 July 2026.

⁴⁵³ Heerde (n 434).

⁴⁵⁴ *ibid.*

⁴⁵⁵ Adoptionskommissionen (n 196) 480.

⁴⁵⁶ 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

⁴⁵⁷ Heerde (n 434).

⁴⁵⁸ Commissie Onderzoek Interlandelijke Adoptie (n 100) 127.

⁴⁵⁹ *ibid.*

This follows the same argument that was made in the previous report from Sweden, as Professor Anna Singer emphasized that violations are violation, despite their original intentions.⁴⁶⁰

4.4 Saving Children or Safeguarding Rights?

Analysis & Reflections

This concluding chapter summarises the central findings of the comparative 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 interview conducted during this research to 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 case 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 as an expression of international solidarity and compassion.⁴⁶¹ Similar humanitarian narratives emerged in the Netherlands, although they were shaped by different historical experiences, including colonial 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.⁴⁶² As demand for intercountry adoption increased, however, both systems

⁴⁶⁰ *ibid* 121.

⁴⁶¹ Hübinette, Lundström and Wikström (n 77).

⁴⁶² See (2.1.)

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, often facilitated by private intermediaries. Gradually these parallel systems became increasingly intransparent and difficult to supervise from the receiving states. 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.⁴⁶³ 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 therefore, 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 adoptee. Researcher and adoptee, Tobias Hübinette, mentioned, that he had been demanding such an inquiry in Sweden for over 20 years.⁴⁶⁴

4.4.1.1 Power Asymmetries Between Sending and Receiving States

While both commissions were established with broadly comparable mandates, and resulted also in comparative conclusions, they ultimately reached different state practice on how to resume, regarding 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" emerged, is illustrative for this development.⁴⁶⁵ 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

⁴⁶³ Commissie Onderzoek Interlandelijke Adoptie (n 100) 115.

⁴⁶⁴ Interview with Tobias Hübinette (ICAV) conducted via [Microsoft Teams] (June 19, 2026) 5-6.

⁴⁶⁵ See (4.2.4.4.).

have had more criteria to fulfil, or are not given priority over international adoptions.⁴⁶⁶ The landmark decision *Pandey v. India* has reinforced the principle of subsidiarity within intercountry adoption significantly.⁴⁶⁷ From the perspective of sending states intercountry adoption and the best interests of the child assessment, may also risk of being subjected as to what constitutes “material welfare” and leaves out the dimension of states obligations and even “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 central question in both reports is therefore not whether individual adoptions may have benefited individual children, but whether the system itself can reliably guarantee the best interests of the child.⁴⁶⁸

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 the child, to have fulfilled the obligations of the best interests of the child, because it does not provide legal certainty.⁴⁶⁹ The question ultimately arises, can legal certainty be the determining factor for the assessment of the best interests of the child? Does legal certainty extends 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 example. The birthmother can hardly be described as a free agent, as she is sometimes even unaware of what an international adoption means.⁴⁷⁰

⁴⁶⁶ See (4.1.2.2.1.)

⁴⁶⁷ *Lakshmi Kant Pandey v Union of India* (1984) 2 SCC 244 (SC) para 15.

⁴⁶⁸ See (4.1.1.1.) & (4.2.1.2).

⁴⁶⁹ Adoptionskommissionen (n 196) 224–225.

⁴⁷⁰ See (4.2.4.1.)

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 demand that may conflict with the child's best interests.⁴⁷¹ 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 through private intermediaries.⁴⁷² 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 mediation.⁴⁷³

In the Dutch case it is more clearly demonstrated, that governmental oversight and reporting mechanisms had failed over several decades, despite recurring indications of abuse, which is why the Netherlands are completely phasing-out intercountry adoptions.⁴⁷⁴ Moreover, it has been emphasised by both cases, that even after the implementation of the Hague Convention irregularities occurred. The Hague Convention provides a minimum standard to make cooperation possible and does not function as an instrument, that primarily safeguards adoption, as it misses important instruments for oversight.⁴⁷⁵ 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.⁴⁷⁶ The resulting decision to phase out intercountry adoption in the Netherlands reflects that there are no alternatives as there might be no design of law that reflects a just system in intercountry adoption, rather than merely the societal disinterests.

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.⁴⁷⁷ 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,

⁴⁷¹ Adoptionskommissionen (n 196) 677–680.

⁴⁷² See (4.1.3).

⁴⁷³ Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026), 35-39.

⁴⁷⁴ Commissie Onderzoek Interlandelijke Adoptie (n 448) 136.

⁴⁷⁵ Interview with Lynelle Long (ICAV) conducted via [Zoom] (June 11, 2026).

⁴⁷⁶ See (3.1.)

⁴⁷⁷ See (4.1.4.2.)

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 the adoption as unlawful, yet the child was never returned to the biological parents.⁴⁷⁸

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.⁴⁷⁹ The recommendations, such as the resources centre, may also help adoptive or prospective parents, as the analysis showed that they were relatively little informed 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.⁴⁸⁰ An issue for many adoptees is that their experiences as transracial adoptee is vastly different from domestic adoptees.⁴⁸¹ Thereby the resource centre may considerably help to redress one's one adoption history. 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.⁴⁸²

For adoptees, the inquiries were long awaited by many but also critically assessed for other adoptees. Adoptees themselves are not a homogenous group in the discourse.⁴⁸³ This is due to the multitude of experiences that entails adoptions.⁴⁸⁴ This is also acknowledged by psychologists in this debate. 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.⁴⁸⁵ In the Netherlands there has been a public apology immediately after the release of the report. In Sweden this recommendation from the inquiry was not addressed properly by the Swedish government. This may be due to the fact that, the Prime Minister in Sweden currently, himself is an adoptive father who was actively downplaying corrupt adoptions in Sweden.⁴⁸⁶

⁴⁷⁸ See (4.2.4.3)

⁴⁷⁹ Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026)

⁴⁸⁰ Interview with Tobias Hübinette conducted via [Microsoft Teams] (June 19, 2026), 45-54.

⁴⁸¹ Interview with Lynelle Long (ICAV) conducted via [Zoom] (June 11, 2026), 41-45.

⁴⁸² Hübinette interview (n 1) 63-65.

⁴⁸³ Commissie Onderzoek Interlandelijke Adoptie (n 100) 138.

⁴⁸⁴ Adoptieskommissionen (n 196) 8-11.

⁴⁸⁵ *ibid* 81.

⁴⁸⁶ Hübinette interview (n 2), 66-73.

4.5 The Author's Assessment

From this broader assessment, I conclude that intercountry adoption is illegitimate from a broader Human Rights perspective, taking also into account the vilification of the birth mother in the discourse and her absence of choice, given the alternatives available for her. 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.

At the same time, I do not believe that all forms of cross-border child protection should be abandoned, but maybe reimagined or even renamed. This may be important, so that it is clear, that there is a differentiation from the system and ideas of international adoption. In a global world, it will be necessary to facilitate such a system 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. Alternative to international adoption would be limited by completely abolishing 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 reported on a systematic basis. 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 todays' world.

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.

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 increasingly 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 particular 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.

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. 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
89. can apply for that allows adoptees to build our own community and create projects and do things to help our community
90. 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
91. are at, because of what ICAVs been doing, so in terms of that, I then what I've done with a lot of the adoptee leaders that I've
92. 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
93. countries, now because of my understanding of the Hague in the way that inter-country adoption is done, I actually also set a
94. 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
95. 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,
96. and to this day I'm still the only adoptee-led organization that continues to be consulted and involved in these Hague meetings
97. 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 Mariela 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 commit 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 understand 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.