

Respecting the child's identity in intercountry adoption

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Question 1. What are enforced disappearances and what is the connection with illicit intercountry adoption?

International Convention for the Protection of All Persons from Enforced Disappearance

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be **the arrest, detention, abduction or any other form of deprivation of liberty** by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a **refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts** of the disappeared person, *which place such a person outside the protection of the law.*

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53. [...] the disappearances formed part of the counterinsurgency strategy developed by the State under the concept of destroying population groups associated with the guerrillas. Under that strategy, it was found useful to abduct children in order to separate them from the “enemy population” and “to educate them under the State’s ideology at that time.” The children were abducted during military operations after family members had been executed or forced to flee to save their lives, and they were frequently appropriated by military leaders, who included them within their immediate families as their children. [..]

Some former soldiers testified that, starting in 1982, they received orders to take any child found during an attack on enemy positions. In addition to the separation of children from their families as part of a counterinsurgency strategy, there were other reasons, including taking children to give them up for adoption.

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“(1) adoptions through a formal process within the judicial system, with the majority assigned *to foreign families, mainly in the United States, France and Italy.*”

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116. [...] that abducting a child from her family and cultural environment, holding her illegally, [...], registering her with a different name, changing her personal identification data with false information, [...], as well as in certain cases keeping her ignorant about all this, constitutes an aggravated violation of the prohibition of interference with an individual's privacy and family life, as well as the right to preserve name, identity, and family relationships, as a means of personal identification

Question 2. The legal framework applicable to enforced disappearances, in particular in relation to the right to identity

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Article 12

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

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Article 24

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

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Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

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Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

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Article 15

States Parties **shall cooperate with each other** and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

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Article 25

5. In all cases, and in particular in all matters relating to this article, **the best interests of the child shall be a primary consideration**, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

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International Convention for the Protection of All Persons from Enforced Disappearance

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The **wrongful removal of children** *who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;*

(b) The **falsification, concealment or destruction of documents** attesting to the true identity of the children referred to in subparagraph (a) above.

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2. Each State Party shall take the necessary measures **to search for and identify the children** referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.
3. States Parties shall **assist one another in searching** for, identifying and locating the children referred to in paragraph 1 (a) of this article.

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4. Given the need to protect the best interests of the children [...] and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children **shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement** of children that originated in an enforced disappearance »

Some recommendations

- Investigate cases of removal and/or irregular adoption
- Ensure that disappeared children are returned to their families of origin if they have been victims of identity substitution
- Ensure that victims of identity substitution are able to exercise their right to recover their identity
- Create a DNA database that includes genetic samples for all cases of wrongful removal, enforced disappearance or falsification of identity that have been reported
- Establish specific procedures for a review and, where appropriate, for the annulment of adoptions, placements or guardianships that originated in an enforced disappearance, and for re-establishing the true identity of the children concerned with retroactive effect
- Provide victims with the support that they need to establish their identity and parentage, and clarify in full the circumstances in which they were adopted;
- Guarantee the right to reparation to any person who has suffered direct harm as a result of an offence of enforced disappearance, irrespective of the date on which the act was committed, including when the harm originated in another State