



# Human Rights Advocates

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## **RIGHTS OF THE CHILD: SALE OF CHILDREN**

### **The Phenomenon of Illegal Adoptions**

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#### **I. INTRODUCTION**

While recognizing that the Convention on the Rights of the Child (“CRC”), its Optional Protocols, and mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography have all been critical steps in addressing the global needs of children, Human Rights Advocates (“HRA”) is concerned with the wide variety of illegal acts and illicit practices that have been, and continue to be, committed in the context of domestic and intercountry adoptions.

At the very core of children’s rights lies the inherent right to family and identify. The preamble of the CRC recognizes that for the full and harmonious development of personhood, children should grow up in a family environment. Article 7 establishes the need for children to be registered immediately after birth, and as far as possible, the right to know and be cared for by their parents. Moreover, Article 8 obliges State Parties undertake “to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

When those rights cannot be secured—either because the child has been temporarily or permanently deprived of their family environment, or if remaining in that environment has become contrary to the child’s best interests—Article 20 of the CRC recognizes adoption as one of many possible alternatives to provide a family environment for the displaced child.

Article 21 continues by emphasizing that in all matters relating to adoption, State Parties must ensure that the best interests of the child remain the paramount consideration. Particular attention is paid to the need for additional legislative and administrative constructs to facilitate

the determination of adoptability, including appropriate measures that guarantee the displacement of a child is neither motivated by improper financial gain, nor a product of flawed relinquishment procedures, such as uninformed or coerced parental consent.

## **II. THE PHENOMENON OF ILLEGAL ADOPTIONS**

It cannot be emphasized enough that the issue of illegal adoptions is not an isolated problem. It is not systemic only in certain regions, or a product of insulated cultural norms. It does not occur only in poor or developing countries. It is a worldwide phenomenon that necessarily intertwines a multitude of human rights issues. This report will focus on the myriad of ways in which this illegal practice corrodes the most essential rights of the child.

In her report at the thirty-fourth session of the Human Rights Council (“HRC”), the Special Rapporteur on the sale of children, child prostitution, and child pornography conducted a thematic study on illegal adoptions, wherein she reiterates and expands on the breadth of this troubling issue.<sup>1</sup> In reference to domestic adoptions specifically she recounts, “[a] large number of illegal adoptions committed at the national level at a given time reflect a pattern or modus operandi as well as the involvement of criminal networks” and “[s]uch cases can be found in all regions of the world[.]”<sup>2</sup> She further notes, “[w]hen illegal acts and illicit practices are of a systemic nature, States bear responsibility for them by either omission or complicity.”<sup>3</sup>

### **A. Lack of Clear Definition for “Illegal Adoption”**

A threshold issue that must be addressed in the framework of illegal adoptions is the imperative to establish a clear and universal definition of the term. Although the mandate covers “sale of children, child prostitution, and child pornography,” the specific issue of “sale of

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<sup>1</sup> *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography*, A/HRC/34/55 (March 2017).

<sup>2</sup> *Id.* at para. 35.

<sup>3</sup> *Id.* at para. 29.

children” is not necessarily related to sexual abuse and sexual or other forms of exploitation but can also occur, for instance, for purposes of illegal adoption and child marriage.<sup>4</sup> “Sale of children is thus a broader concept, within which elements of sexual abuse or sexual or other forms of exploitation can (and often do) exist/occur.”<sup>5</sup>

Beyond the title of the mandate, similarities and crossovers currently exist between the concepts of “sale of children,” “trafficking of children,” and “illegal adoption.” This confusion has led to disparate uses and interpretations of the terms, and as a result “they are often used in conjunction and without any clear distinction, including in existing international treaties (see e.g. the CRC and ILO C182).”<sup>6</sup>

The CRC sets forth, in its Article 35, that “States Parties shall take all appropriate national and bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form,” but does not provide a definition of these terms. Article 36 continues by calling on States to “protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare,” but again, does not define what is meant by “exploitation.”

The Commission on Human Rights adopted founding resolution 1990/68 in March 1990, by which it decided to appoint a rapporteur “to consider matters relating to the sale of children, child prostitution and child pornography, including the problem of the adoption of children for commercial purposes;”<sup>7</sup> yet here too, no definition of these concepts is provided.

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<sup>4</sup> Susanna Greijer & Jaap Doek, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, INTERAGENCY WORKING GROUP ON SEXUAL EXPLOITATION OF CHILDREN 58 (January 2016), <http://luxembourgguidelines.org>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Commission on Human Rights, *Sale of Children*, Res. 1990/68, para. 1 (March 1990), <http://www.ohchr.org/Documents/Issues/Children/SR/E-CN4-RES-1990-68.pdf>.

In a 1993 report, the first Special Rapporteur on the sale of children, child prostitution, and child pornography identified the following forms of sale of children: adoption for commercial purposes, exploitation of child labour, organ transplantation, and other forms of sale, including “disappearances, abductions and kidnappings of children[.]”<sup>8</sup>

In her 1999 report, then Special Rapporteur on the sale of children, child prostitution, and child pornography, highlighted that “[i]n most situations where there is sale there is also trafficking involved.”<sup>9</sup> Following a comparison of different definitions of sale and trafficking existing at the time, she concluded that, “as in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out.”<sup>10</sup>

Thus, although the sale and trafficking of children are inextricably linked, the “lack of concrete definitions makes it difficult to determine whether a particular transaction amounted to sale or trafficking.”<sup>11</sup> This issue is further complicated by the fact that illegal adoptions can, and often do occur as a result of sale, trafficking, or both.

The most detailed legal definition of “sale of children” can be found in Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (“OPSC”), which defines this notion as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

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<sup>8</sup> *Sale of Children: Report / Submitted by Vitit Muntarbhorn, Special Rapporteur Appointed in Accordance with Commission on Human Rights resolution 1992/76, E/CN.4/1993/67, para. 128 (December 1993).*

<sup>9</sup> *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ofelia Calcetas-Santos, E/CN.4/1999/71, para. 5 (January 1999).*

<sup>10</sup> *Id.* at para. 47.

<sup>11</sup> *Id.* at para. 48.

Moreover, Article 3 of the OPSC contains a request to criminalize the following acts: “(a) In the context of sale of children as defined in Article 2: (i) The offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour; (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption[.]”

In her 2017 report, the current Special Rapporteur on the sale of children, child prostitution and child pornography explains, “Article 3 of the Optional Protocol is understood as containing specific examples of illegal acts that lead to the sale of children in the form of illegal adoption.”<sup>12</sup> Nevertheless, confusion remains because although use of the term “sale of children” must always include some form of commercial transaction, it must *not* necessarily include the purpose of exploiting a child.

According to the Interagency Working Group on Sexual Exploitation of Children, an example of a sale occurring absent exploitation is “the sale of children for illegal adoption, whereby a child could be illegally sold to a couple wishing to adopt a baby and who has every intention to treat that child well and provide a good and caring living for her/him.”<sup>13</sup> This notion of illegal adoption occurring absent exploitation, however, is troubling. First, it must be underscored that “international norms and standards do not establish the right to adopt a child or the right to be adopted.”<sup>14</sup> Second, independent the intention of prospective adoptive parents, the act of illegally selling a child for the purpose of adoption in-and-of-itself constitutes exploitation of that child, and should be recognized as such. Thus, “the argument that in most cases of

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<sup>12</sup> *Supra* note 1, para. 24.

<sup>13</sup> Greijer & Doek, *supra* note 4.

<sup>14</sup> *Supra* note 1, para. 26.

adoption the children end up in much improved living conditions, would not in any way justify the trafficking of babies and children.”<sup>15</sup>

Further confounding is the inconsistent use and categorization of these terms and concepts in resolutions produced by different entities within the United Nations structure, such as the General Assembly and Human Rights Council. For example, in the General Assembly’s latest resolution on the Rights of the Child, the issue of illegal adoption is never mentioned within the context of “Prevention and eradication of the sale of children, child prostitution and child pornography.”<sup>16</sup> The issue only appears in the resolution’s language on “Registration, family relations, adoption and alternative care.”<sup>17</sup> To that end, *all* that is said on the subject is States should take “measures necessary to prevent and combat illegal adoptions and all adoptions that are not in the best interests of the child.”<sup>18</sup>

Furthermore, confusion surrounding the term “sale of children” has been observed at the State level as well. For example, parties to the OPSC are obliged to report on the Protocols implementation at the national level, and States “often report on the anti-trafficking legislation they have adopted also in the context of sale of children.”<sup>19</sup>

Lack of clear definitions and universal understanding creates major hurdles on the road to guaranteeing that all children are protected from any form of sale, trafficking, and exploitation. The issue of illegal adoption is particularly vulnerable to the effects of definitional gaps and inconsistent term usage because the word “adoption” itself elicits a deceptively optimistic inference—the notion that a needy child is being placed with loving parents. This assumption

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<sup>15</sup> *Supra* note 9, para. 47.

<sup>16</sup> General Assembly Resolution, *Rights of the Child*, A/RES/72/245, para. 13 (December 2017).

<sup>17</sup> *Id.* at para. 4-5.

<sup>18</sup> *Id.* at para. 5.

<sup>19</sup> Greijer & Doek, *supra* note 4.

fails to recognize the multitude of human rights violations implicated by illegal adoption, and as a result, child-victims are falling through the cracks.

In the context of the Special Rapporteur’s 2017 report, the definition of illegal adoption includes, “adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption.”<sup>20</sup> This list will encapsulate the scope of illegal adoptions addressed throughout the remainder of this report as well.

## **B. Forms of Illegal Adoption**

Among the most common methods used to facilitate illegal adoptions are the abduction of babies (through kidnappings or by falsely informing parents that their baby was stillborn or died shortly after birth), the improper inducement of consent (through misrepresentation, bribery or coercion), and improper financial gain (through payment for the child or the payment of bribes to intermediaries involved in the adoption process).<sup>21</sup> Inherent to these methods is the bypass of regulations and falsification of documents, including birth certificates, medical records, DNA test results, identification documents of the biological mother, and relinquishment or abandonment declarations.<sup>22</sup>

In her 2017 report, the Special Rapporteur on the sale of children notes that the above-mentioned methods, illegal acts, and illicit practices are generally “linked to deficiencies in the child protection system (such as inadequate procedures for providing counseling to biological parents and flawed relinquishment procedures), which are exploited by criminal networks driven

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<sup>20</sup> *Supra* note 1, para 25.

<sup>21</sup> *Id.* at para. 28.

<sup>22</sup> *Id.* at para. 29.



by the lucrative business of selling children and facilitating illegal adoption, often with the involvement of State officials.”<sup>23</sup>

In cases of both domestic and intercountry illegal adoptions, “vulnerable parents, in particular mothers, are often targeted (e.g. single mothers in situations of economic hardship, from rural areas, belonging to indigenous communities and/or without access to education).”<sup>24</sup> Thus, although the scope of this report is limited to the rights of the child, it is important to note that this ongoing criminal practice necessarily implicates and infringes on the rights of biological parents and their families, as well as prospective adoptive parents and their families.

In almost any adoption, the new parents tend to accept that their good fortune arises out of the hardship of the child’s first parents. The equation is usually tempered by the thought that the birth parents either are no longer alive or chose to give the child a better life than they could provide. Under this paradigm, adoption is envisioned as an instrument of good for all parties. In reality, when in the hands of the wrong actors, adoption is used as a mechanism for making money. As the following case studies highlight, under the latter moneymaking model, child-victims and their families are nothing more than collateral damage.

### ***1. Abduction of Babies***

As noted above, Article 35 of the CRC declares that State Parties must take all appropriate measures to prevent the abduction, sale, or traffic of children for any purpose and in any form. In the context of illegal adoptions, the abduction of babies occurs through kidnappings or by falsely informing parents that their baby was stillborn or died shortly after birth. Recent reports uncovering a major baby-trafficking racket in eastern India have brought the issue of Indian adoption into the spotlight, and according to experts, tough laws and long waits to adopt

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at para. 30.

often result in prospective parents turning to illegal trade without even realizing it, let alone contemplating its irreversible affects on the child.<sup>25</sup>

One heartbreaking example of illegal adoption expedited through the abduction of a newborn involves twenty-seven year old Kanon Sarkar, who gave birth to her second daughter in July 2014 at a nursing-home clinic in rural West Bengal, a state in eastern India.<sup>26</sup> Six hours after delivery, the doctor told Kanon and her husband, Ashish, that their baby had undergone unexplained heart problems and needed to be taken to Kolkata, the capital, for urgent treatment. Mother, father, and child all went to Kolkata as instructed, but the next day, without proper explanation, the baby was declared dead.

The staff at the hospital gave the Sakar's an infant corpse, wrapped in white with only the eyes visible, so the parents could—in accordance with Hindu tradition—submerge the body in a river that runs through their village. In reality, however, Kanon and Ashish's newborn daughter had not died of a heart condition; she was abducted at birth to be trafficked for adoption, and the body the Sakar's placed in the river was, tragically, that of an unknown child.<sup>27</sup>

## ***2. Uninformed or Coerced Parental Consent***

Article 21 of the CRC calls on State Parties to ensure that “the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and

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<sup>25</sup> *Black-Market Baby Trade Flourishes in India After Adoption Law Reform*, NEWSDEEPLY.COM (June 15, 2017), <https://www.newsdeeply.com/womenandgirls/articles/2017/06/15/black-market-baby-trade-flourishes-in-india-after-adoption-law-reform>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary[.]”

Nevertheless, the improper inducement of parental consent through misrepresentation, bribery, or coercion is another common method successfully manipulated to accelerate illegal adoptions. An investigation by CNN into an alleged trafficking scheme out of Uganda, for example, has found that children were being taken from their homes on the promise of better schooling, placed into orphanages long enough to appear abandoned, *only to then* be sold by way of illegal adoption to unsuspecting American families for as much as \$15,000 per child.<sup>28</sup> CNN’s research reveals that multiple families were deceived in this way, and their stories reflect the aftermath of such unlawful and unjustified displacement practices.

In the words of seven-year-old victim, Mata from Uganda, her “mom was tricked” by the scheme.<sup>29</sup> Mata’s biological mother “had been told that Mata would be given a great educational opportunity if she was sent away but that she would one day return.”<sup>30</sup> In reality, Mata was kidnapped by way of her mother’s coerced consent, forced to live in an orphanage, and later adopted by an American family, the Davises, who assumed they were welcoming a needy child into their loving home. In the months after Mata arrived in America, however, her command of English improved, and she began speaking glowingly about her mother in Uganda, questioning the Davises about when she would return home.<sup>31</sup>

The Davises had been told by an Ohio-based adoption agency, European Adoption Consultants, that Mata was predeceased by her father and neglected by her mother who couldn’t

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<sup>28</sup> Randi Kaye & Wayne Drash, *Kids for Sale*, CNN (October 13, 2017), <http://www.cnn.com/2017/10/12/health/uganda-adoptions-investigation-ac360/index.html>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

afford to feed her.<sup>32</sup> To their horror, the Davises ultimately learned Mata was never abandoned, but rather “pulled from her home and placed in the orphanage after the adoption agency found an American couple—buyers, in a sense—with money to adopt a child.”<sup>33</sup>

After a three-year saga, and a total of \$65,000 spent on the adoption, flights to Uganda, fees and other expenses, the Davises returned Mata to her biological family in Uganda.<sup>34</sup> But one can only imagine the emotional and psychological scars left on the personhood of child-victims, like Mata, as a result of such senseless displacement.

### ***3. Improper Financial Gain***

Article 21 of the CRC also calls on State Parties to take “appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved[.]” Not surprisingly, however, monetary incentives through the payment for children, or the payment of bribes to intermediaries involved in the adoption process are, of course, a significant motivating factor behind illegal adoptions. In particular, intercountry adoptions have been incentivized by a demand from prospective adoptive parents in higher-income countries for children from lower-income countries. That demand has put major pressure on countries of origin with weak child protection systems, creating a hotbed of opportunity for those inclined to cash in on the sale of children and illegal intercountry adoptions.<sup>35</sup>

For example, despite the economic crisis in Greece, the black market for baby trafficking is one business that seems to be thriving and seeing no signs of slowing down.<sup>36</sup> Adopting a child in Greece is a complicated process; by law, even if you are a Greek resident adoptions from

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Supra* note 1, para. 43.

<sup>36</sup> *Children for Sale: The Trafficking Ring Selling Babies from the Slums to Rich Couples*, VICE (June 30, 2017), <https://www.youtube.com/watch?v=BMnOrRf0Wug>.

state orphanages can take up to four years.<sup>37</sup> But the demand to adopt infants, opposed to older children, has lead some couples in the country to turn to an underground market of dealers who are selling babies from surrounding countries, like Bulgaria.<sup>38</sup>

In some cases, pregnant women are brought to Greece from Bulgaria to give birth and appear in court to sign private adoption papers.<sup>39</sup> In other cases, traffickers bring women to Greece by force, impregnate them, and then follow the same procedure in court. Sometimes, the trafficking network includes nurses and medical staff, who may testify in court to deny the existence of the biological mother altogether.<sup>40</sup>

Even for women who initially “consent” to adopt their child, they do so under the promise of payment.<sup>41</sup> This promise is rarely, if ever fulfilled, however, and mothers are left not only mourning the loss of a child, but in the same dire economic position that drove them to consider giving up their baby for adoption in the first place.

### **C. Factors Enabling Illegal Adoptions**

Deficiencies in the child protection system, as well as political, legal, socioeconomic, cultural and environmental factors all play a role in illegal adoptions. Perhaps most alarmingly, however, is the involvement of State officials and licensed professionals, combined with the pressure of demand.<sup>42</sup>

In some cases, this lucrative illegal baby trade is openly advertised on social media networks, whereon potential buyers can pick from a catalogue of pregnant women, customizing

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

child by gender, color, and race.<sup>43</sup> This practice is further carried out by a web of agents, including traffickers, doctors, lawyers, judges, and State officials.<sup>44</sup>

Underground sex trades have also reportedly become involved with illegal adoptions. Studies indicate that while women sex-workers used to avoid getting pregnant, a gainful market now exists to sell unwanted children for further profit, thus creating a trifecta of income for traffickers.<sup>45</sup>

In terms of demand, there is a sense that many parties involved, including mediators and adoptive parents themselves, believe they are ultimately helping the child by providing promise of what they deem a “better life.” This notion, however, replaces the child’s will with that of the adopter, and it must be emphasized that international norms and standards do not recognize the right to adopt.<sup>46</sup>

### **III. Effects of Illegal Adoptions on the Rights of the Child**

Illegal adoptions violate multiple child rights norms and principles, including the best interest of the child, the principle of subsidiarity, and the prohibition of improper financial gain. These principles are breached when the motivation behind an adoption is to find a child for adoptive parents rather than a family for a child in need.

Adopted children are not blank slates. They are people with genetic tendencies, predispositions, and talents uniquely their own, endowed with the promise to be “born free and

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<sup>43</sup> Lylia Aziz, *This Horrifying Video Exposes the Ugly Truth of Baby-Selling in Malaysia*, VULCAN POST (November 25, 2016), <https://vulcanpost.com/595236/documentary-babies-selling-malaysia-expose/>.

<sup>44</sup> *Children for Sale*, *supra* note 35.

<sup>45</sup> Lylia Aziz, *supra*. note 42.

<sup>46</sup> *Supra* note 1, para. 26.

equal in dignity and rights.”<sup>47</sup> This promise is obliterated by the practice of illegal adoptions, through which babies are bought and sold like stock-in-trade.

Beyond the obvious detriment to personhood and dignity, as well as denial of the right to family, the practice of falsifying documents poses additional practical concerns. Without a birth certificate, children are denied the right “to recognition everywhere as a person before the law.”<sup>48</sup>

Lack of proper documentation renders a child stateless. Without citizenship, illegally adopted children are denied the right to public education and healthcare. They cannot apply for a passport, open a bank account, or get married. Perhaps less fundamentally, but importantly, their trust of government is destroyed upon knowledge that doctors, lawyers, judges, and State officials are not only complicit, but in many cases active in the process. These illegally adopted children are denied proper standing in our world from the beginning of their own existence.

Bearing in mind HRC resolution 34/16—which calls for no child left behind, and that those furthest behind be reached first<sup>49</sup>—additional attention, concern, and resources must be dedicated to the issue of illegal adoptions and the myriad of ways in which the unlawful practice devastatingly corrodes a child’s most essential human rights.

#### **IV. Recommendations**

1. Human Rights Advocates (“HRA”) urges the HRC to hold an all-day panel on illegal adoptions. This issue necessarily involves multiple cross-sections of human rights violations, which are only further amplified and exploited in countries contending with severe poverty, humanitarian situations, and armed conflict, just to name a few. Beyond the children

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<sup>47</sup> *Universal Declaration of Human Rights*, A/811, art. 1 (December 1948).

<sup>48</sup> *Id.* at art. 6.

<sup>49</sup> *Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development*, A/HRC/RES/34/16, para. 7 (March 2017).

adversely affected, this issue further touches and concerns the rights of biological parents, adoptive parents, their subsequent families, communities, and thus, the threads of society at large.

2. Additionally, HRA respectfully requests the HRC to urge State Parties participating in the system of adoption to address pervasive problems inherent to the sale of children and illegal adoptions, including:

- Regulation and supervision of adoption processes, including initiatives addressing the issues of falsified documents and improperly induced consent. Current gaps in national child protection systems could potentially be addressed by implementing national registries for both biological mothers and children.
- Ensuring unlawful activity of every kind, committed at any stage in the adoption process is criminalized, for corruption of this nature necessarily feeds into the sale of children and illegal adoption practices.
- Procedures for victims to report violations, particularly in instances of systemic abuse at the hands of State officials and licensed professionals, including doctors, lawyers, and judges.