



The Suspension of Intercountry Adoption by the Netherlands

Defence for Children - ECPAT Netherlands,
International Child Development Initiatives and
CoMensha

Submission

UN Day of General Discussion, June 2021

comensha
coördinatiecentrum tegen mensenhandel

 International Child
Development Initiatives

 Hart voor Kinderrechten

**DEFENCE for
CHILDREN** 


ecpat

INTRODUCTION

With this submission on the suspension of intercountry adoption in the Netherlands, Defence for Children - ECPAT Netherlands, International Child Development Initiatives (ICDI) and CoMensha wish to respond to the call for submission regarding the Day of General Discussion: 'Children's Rights and Alternative Care' on 16-17 September 2021. It is argued that the thorough research performed by the Netherlands' government regarding the systemic abuses in intercountry adoption is an example of good practice. It is also pointed out that, for the first time, the Dutch Minister for Legal Protection explicitly takes the best interests of children as the primary consideration in the discussions related to suspension of intercountry adoptions. **Defence for Children - ECPAT Netherlands, International Child Development Initiatives and CoMensha urge the Netherlands' government to take a definitive decision to abolish the system of intercountry adoption, to prevent violations of article 21 UN CRC.**

CONTACT DETAILS

Contributors:	Carrie van der Kroon (ed.), Sarah de Vos, Iara de Witte.
Contact persons:	Carrie van der Kroon c.vanderkroon@defenceforchildren-ecpat.nl Iara de Witte i.dewitte@defenceforchildren-ecpat.nl
Defence for Children – ECPAT Netherlands:	www.defenceforchildren.nl
ICDI:	www.icdi.nl
CoMensha:	www.comensha.nl/en/

THE SYSTEM OF INTERCOUNTRY ADOPTION IN THE NETHERLANDS

When it comes to intercountry adoption, The Netherlands is a *receiving country*. Children are being adopted from so called *sending countries*, that permit the system of intercountry adoption and allow that their children be adopted abroad. The Netherlands itself does not permit intercountry adoption as a form of alternative care for children that reside within the Netherlands. The Netherlands relies upon on kinship care, foster care and residential settings as forms of alternative care.

INVESTIGATIONS INTO THE ALLEGED ABUSES

Since the end of the 1960s, there have been reports of abuses in intercountry adoptions. In 2017-2018, signs of systemic abuses in the process of intercountry adoption and involvement of Dutch civil servants came to light as a result of a Freedom of Information Act-Requests by victims of illegal adoption and other adoptees. Following this, the Minister of Legal Protection (part of the Ministry of Justice and Security) announced an investigation on intercountry adoption processes by a special committee.

The Committee Investigating Intercountry Adoption was assigned on April 18, 2019 by the Minister of Legal Protection to investigate the state of affairs regarding (historical) adoptions from abroad and the role of the Dutch government in this. Initially, the Committee focused on Brazil, Colombia, Indonesia, Sri Lanka and Bangladesh for the period 1967-1998. However, during its investigation, the Committee did not consider it reasonable anymore to focus specifically/solely on the countries mentioned nor this particular period. The Committee therefore let go of this focus, reasoning that abuses concerning adoptions from other countries also existed and that the abuses in the system took place before and after this period, and even to date.

On February 8, 2021 the chair of the Committee presented the report with the results of the Committee's investigation to the Minister for Legal Protection.¹

The Committee concluded:

"[...] that, throughout the entire period of intercountry adoption and in all countries, there were serious structural abuses and that the government and intermediaries were aware of those abuses as early as the 1960s. In the light of the committee's assignment, the passiveness of the Dutch government and the Dutch political establishment's focus on the interests of adoptive parents are notable. The government neglected to intervene even though it had good reason to do so. They prioritised the interests of adoptive parents, and thereby failed to protect the interests of either the adoptees or their birth parents. The Committee recommends recognition of this by the government and to suspend adoptions. The system of intercountry adoption with private elements cannot be maintained in its current form. The Committee has serious doubts about whether it is possible to design a realistic system regulated by government under which the abuses identified would no longer occur. Pending the outcome of the decision-making process, the committee recommends suspending intercountry adoptions."¹

APOLOGIES AND SUSPENSION OF INTERCOUNTRY ADOPTION

As a result of the Committee's findings, on behalf of the government, the Minister for Legal Protection offered apologies to adoptees for failing to adequately tackle adoption abuses. Also, the Minister decided to suspend intercountry adoptions from February 8th 2021 until further notice. The Minister acknowledged the serious doubts of the Committee about the possibility to continue the system of intercountry adoption.

¹ Please find an English summary here: <https://www.government.nl/documents/reports/2021/02/08/summary-consideration-analysis-conclusions-recommendations>. The interview with the chair of the Committee can be found here, with English subtitles: <https://www.youtube.com/watch?v=lp3k4htCLgY&feature=youtu.be>.

POLITICAL SITUATION AND DEBATES

On 15 January 2021, the Netherlands government resigned. The government decided to step down following the Child Benefits Affair.² Elections were held 17 March 2021. In the meantime, until a new government is appointed, the current government will not be discharged from office by the King. It is currently therefore still in office, but only allowed to govern ongoing affairs, and not new or ‘controversial’ affairs. Once a new government (and cabinet of ministers and minister-president) is appointed, the government will have to decide on the future of (the system of) intercountry adoptions in The Netherlands.

At present, only prospective adoptive parents that already received permission to adopt from abroad are allowed to continue their procedure (about 400 cases). As procedures may take a long time, this can take up to another three years. Also, extra due diligence will be carried out in these adoption procedures, which in some cases could potentially lead to non-approval of an adoption. No new prospective adoptive parents can start a procedure in the meantime.

The Committee’s investigations, the apologies from the Minister and the decision to suspend intercountry adoption were subsequently heavily debated in The Netherlands. Adoption organisations, prospective parents, some scientists and some adoptees deem intercountry adoption a good solution for children in poverty from developing countries to offer them a future in the Netherlands. They also believe the system does function properly and has safeguards in place. Their stance is that the system should be improved, instead of abolished. Other adoptees say intercountry adoption should be ended permanently. Their arguments include that intercountry adoption is not in the best interests of the child and that the risk of abuse is too high. The negative consequences of intercountry adoption, including the permanent loss of original family ties, culture and language, and, in many cases, abuses and/or the inability to trace and/or reconnect to original family, are harmful for children. They, like Defence for Children - ECPAT Netherlands, ICDI and CoMensha, look at intercountry adoption from a more systemic perspective instead of focusing on individual experiences. Whether adoptees experienced their own adoption as positive or as negative or whether they experienced abuses or malpractices does not necessarily determine their stance. Several scientists and a number of (children’s rights) organisations, including **Defence for Children – ECPAT Netherlands, ICDI and CoMensha as well as other voices in society recognise the findings and recommendations of the Committee and state that the system of intercountry adoption should indeed be abolished.**

PROLONGMENT OF SUSPENSION OF INTERCOUNTRY ADOPTION

On 4 June 2021, the Minister for Legal Protection announced the continuation of the suspension on intercountry adoption, following an initial assessment by the government that took place after the presentation of the Committee’s report on the topic. Though the Committee and Minister do not believe a governmental system of intercountry adoption will be a satisfying improvement, this idea was assessed. It was also assessed whether this would lead to improvements compared to the current private system. Previously, in 2016 the Council for the Administration of Criminal Justice and Protection of Juveniles³ had also researched this, concluding that a governmental system for intercountry adoption would eliminate some, but not all issues that jeopardize fundamental rights of the child (and of their parents). Designing a system in which abuses, malpractices and unethical practices would no longer occur is impossible. In the assessment presented on June 4, 2021 three dilemmas were identified:

1. A public law system cannot ensure compliance with the UNCRC, according to which the child has the right to be raised by its own parents and family, and if necessary, to access alternative care in the country of origin, and specifically the subsidiarity principle of Article 21 UNCRC. The existence of a (demand-driven) system of intercountry adoption can be a pull factor for child relinquishment and supply of children in children’s homes or institutions. Intercountry adoption can become an attractive option – more lucrative than looking for a local alternative care option – while not being a last resort measure. This is also acknowledged by the Minister.
2. Countries that The Netherlands’ government can ascertain the capacity to properly assess the adoptability of the child, are countries with sufficient governmental capacity and rule of law. Yet,

² The affair involves ethnic profiling by the government of parents of color, and is unrelated to the discussions around the system of intercountry adoptions.

³ Raad voor Strafrechtstoepassing en Jeugdbescherming, RSJ.

of countries with governmental capacity and a strong rule of law, it may be assumed that these are also capable to, within their own jurisdiction, provide proper assistance to families and alternative care for children in need. This would render intercountry adoption unnecessary. For the countries that The Netherlands is unable to ascertain from whether children are adoptable, often a weak government system and little safeguards are in place, making the system of intercountry adoption inherently sensitive to abuses.⁴

3. Changing from a private to a governmental system is costly. In 2019, only 145 children were adopted in the Netherlands from other countries. The question is whether the costs of such a system change are legitimate.

Civil society, adoption organisations and adoptees were consulted in this assessment. These three dilemmas will be further elaborated in a second assessment. In Fall this year, the Minister will update Parliament again. Under a new government, a final decision will be taken to either continue the current system, to create a new governmental system for intercountry adoption, or to abolish the system of intercountry adoption. **Children's rights organizations Defence for Children – ECPAT Netherlands, ICDI and CoMensha are of the view that intercountry adoption should be abolished and have now and in the past provided evidence to the government in support of this stance.**

During a parliamentary debate on 9 June 2021, a majority of members of parliament argued for the importance of *continuing* intercountry adoption for special needs children, children from poverty and 'poor countries' as well as from foster care and institutions. In their view, intercountry adoption is a necessary possibility to save children. They are worried about children having to remain in children's homes or foster care (both they consider an inferior option) if they are not adopted in The Netherlands. Defence for Children – ECPAT Netherlands, ICDI and CoMensha would like to note that by adopting specific groups of children from homes in certain countries, the Netherlands government contributes towards (racial) discrimination of e.g. children of colour, of Roma descent and special needs children. **Also, Defence for Children - ECPAT Netherlands, ICDI and CoMensha do not deny that there are children in need everywhere in the world, including within The Netherlands, but governments should not rely on intercountry adoption as it is not a proper solution to address the root-causes. In fact, it is disempowering to local child protection systems.**

The Minister replied that there are fundamental obstacles in the system of intercountry adoption risking several children's rights. The Minister further stated that if it is not possible to offer the necessary protection against abuses, malpractices and unethical practices, it should be seriously considered to stop intercountry adoption. Also, the Minister invited Parliament to truly discuss the subsidiarity principle, especially regarding adoption from other EU countries and from the US. The Minister therefore decided that the current suspension on intercountry adoption is prolonged until further notice, at least until Fall when Parliament will be informed again. According to the Minister, during the discussions and assessments on intercountry adoption, continuation of intercountry adoption should not be an aim in and of itself.

⁴ <https://www.rijksoverheid.nl/actueel/nieuws/2021/06/04/dekker-bij-adoptie-uit-het-buitenland-blijft-er-altijd-kans-op-misstanden>

CONCLUSIONS AND RECOMMENDATIONS

Defence for Children – ECPAT Netherlands, International Child Development Initiatives and CoMensha observe that the system of intercountry adoption has been debated for decades in the Netherlands. The organizations welcome the **thorough research** commissioned by the Netherlands' government and recognize this as a **good practice**.

Defence for Children – ECPAT Netherlands, International Child Development Initiatives and CoMensha further perceive it as a **very positive sign** that the Netherlands' government, particularly Minister of Legal Protection Sander Dekker, for the first time explicitly takes **the best interests of the child as primary consideration** in this discussion.

Article 21 UNCRC clearly states that if countries permit the system of intercountry adoption, this can take place **only if it is in the best interests of the child** and **only 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**.

History and many attempts to improve the system of intercountry adoption have demonstrated that it is impossible, in practice, to comply with and monitor compliance with the subsidiarity principle of article 21 UNCRC. Defence for Children – ECPAT Netherlands, ICDI and CoMensha therefore urge the government to take a definitive decision to abolish the system of intercountry adoption.

Lastly, Defence for Children – ECPAT Netherlands, International Child Development Initiatives and CoMensha call upon governments themselves and the UN Committee on the Rights of the Child to encourage governments to investigate abuses in the intercountry adoption system and to (re-)consider the receiving and sending of children for intercountry adoption.