



# A Request to the Korean Government: Stop Intercountry Adoptions

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From Korean Adoptees Worldwide

## Our Request

Based on the following analysis of the intercountry adoption business we, the undersigned Korean adoptees, request the Korean Government:

- Stop all intercountry adoptions and adhere to the UN Convention on the Rights of the Child, to which Korea is legally bound, and which describes the correct process for looking after children in need;
- Refrain from ratifying the Hague Adoption Convention, as it argues for a private business solution to a public challenge;
- Ensure that all special interest groups such as HOLT, ISS, CHIP, KSS, ESWS, SWS (now KWS), the domestic adoption agencies, the Permanent Bureau of the Hague Conference, as well as associated persons, are prevented from influencing government policy;
- Be aware that these special interest groups do not openly support intercountry adoptions (but neither do they explicitly demand its cessation);
- Set up a redress scheme under which adoptees can get individual compensation;
- Set up a genuinely independent state authority -- not one embedded in the adoption lobby like NCRC-- to assist adoptees with legal issues and family searches;
- Ensure that all files, documents and information pertaining to adoption, including all communication between stakeholders, be transferred to this authority.
- Set up a mechanism to reunite families which respects the rights of the adoptees and the Korean families, especially the mothers.

## The Current Opportunity to Do the Right Thing in South Korea

There is a current and unique opportunity to completely stop intercountry adoption from South Korea. Korea's government has a Truth and Reconciliation Commission which is now looking into past crimes in intercountry adoptions, including kidnapping, coercion, falsification of records, and financial transactions.

Korea allows intercountry adoption, even though under the UN Convention on the Rights of the Child it is considered a measure only to be used in extreme circumstances. Even in situations of war, natural disaster, and extreme poverty, the consensus is that intercountry adoption is not applicable, as public institutions tend to be at their weakest. It is absurd to claim that South Korea cannot organize suitable care for its children in need.

Advocates for the Hague Adoption Convention claim that intercountry adoption is in the best interest of children and trafficking can be prevented. But recognizing past mistakes won't reform a business practice that has no place in what should be a public sector responsibility.

When the the Joustra Committee, set up by the Netherlands' Ministry of Justice, carried out an in-depth study into intercountry adoption, one of their conclusions was:

"The current system of intercountry adoption with private elements cannot be maintained. The committee has serious doubts whether it is possible to design a realistic public law system in which the identified abuses no longer occur."

## How is Intercountry Adoption Child "Trafficking"?

While national child protection services are funded by the state, intercountry adoption is organised on the basis of financial transactions; the current "fees" for a Korean child is around \$60,000.

Over 250,000 South Koreans have been sent abroad for adoption, and all of these children have had their identities changed – setting the stage for personal identity crises and ensuring that finding the Korean families is extremely difficult.

Writing in AP News, Kim Tong Hyung explained that Korea's Truth and Reconciliation Commission decided to look into this issue "after it confirmed through records that the adoptees were sent to the West through manipulated records that falsely described them as orphans despite the existence of biological parents, or faked their identities by borrowing the details of a third person."

The United Nations Convention on the Rights of the Child (UNCRC), ratified by Korea in 1991, provides all the rights required for the protection of children in need. It's worth noting that no other highly developed nation allows for the adoption/sale of their children abroad. The Korean War ended over 70 years ago and Korean children should no longer be adopted/commodified.

## The United Nations Convention on the Rights of the Child

The UN Convention on the Rights of the Child (UNCRC) was ratified by Korea in 1991 and provides a broad range of rights for children and the responsibility of governments to support families in need.

The UNCRC has been ratified by every nation except the USA and is a valuable human rights treaty that provides the legal framework for the protection of children not only within his/her respective country but by his/her very own family. Each child has its own rights, and each signatory state is obliged to protect/support that child and his/her family when faced with difficulty.

If the Korean government had correctly implemented this binding international law and built up its own child protection system, there would be no need for intercountry adoption.

The following extracts from the UNCRC are worth quoting here:

## Article 7

*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

Editor's note: Many of the articles in the convention point to the same principle: Governments are obliged to assist families in difficulty. This is the best way of helping a child in need as it will take place within his/her culture and family.

## Article 8

*1. States 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.*

*2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing his or her identity.*

Editor's note: intercountry adoption has had a perverse effect on these rights as adoption changes the child's identity and birth certificate. The above described rights are thus violated and the Government of Korea has a responsibility to assist adoptees in re-establishing their original identities.

## Article 20

*1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

*2. States Parties shall in accordance with their national laws ensure alternative care for such a child.*

*3. 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.*

Editor's note: Art. 20.3 often gets misinterpreted: Adoption can be erroneously described as a child protection measure. However, it is not. In a rights-based system, the child is the rights holder. This means that the state must create suitable institutional and foster care systems for children in need of care.

Adoption is a very drastic measure that permanently cuts all legal family ties and alters the identity of a child. Intercountry adoption is even more extreme, as children lose their citizenship, religion, language, and culture.

## Art 21

*States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*

*b) Recognize that intercountry 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;*

Editor's Note: Article 21b of the UNCRC is also known as the subsidiarity principle. It is important to know how the UNCRC and the Hague Adoption Conventions versions of this differ:

- According to the Cambridge English Dictionary, subsidiarity is “the principle that decisions should always be taken at the lowest possible level or closest to where they will have their effect, for example in a local area rather than for a whole country.”
- The UNCRC, in article 21, stipulates that intercountry adoption can only be allowed if there is no way to raise the child in-country by foster care, residential care, local adoption, kinship, or any other suitable manner of care. In any functional nation, there are almost no circumstances when local solutions cannot be found.
- The Hague’s version of the subsidiarity principle is that the family must raise the child, with public support if necessary, but if this is not possible within a 6-12 month framework, the child can be declared available for adoption. The next step is to try to arrange domestic (in-country) adoption, but if this is not possible within a short amount of time, the child can be declared available for intercountry adoption. Residential/institutional care is described as a “temporary measure” and unsuitable. HAC advocates “permanent family-based solutions.” In other words, it promotes adoption and intercountry adoption as the only acceptable solutions. This results in the creation of a market for children rather than a search for local solutions. The problem is that adoption violates the child’s rights to its original identity, family, and (in cases of intercountry adoption) culture and language..
- Context: During the EU enlargement process this was one of the key points. After ratification of the UNCRC all the old EU member states stopped exporting children, and when Romania wanted to join the bloc, the EU insisted on the implementation of the UNCRC. However, Romania had also implemented the Hague Adoption Convention -- resulting in the adoption/sale of an estimated 30,000 children during the 1990s. Romania eventually chose to prioritize the UNCRC over the Hague Convention and, as a result, stopped intercountry adoption in 2004.

## The Hague Adoption Convention

The Republic of Korea has signed but not ratified the Hague Adoption Convention (HAC). The aim of the convention is “to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child...” However, this noble-sounding aim is undermined by the removal of children from public care by private adoption agencies and the changing of their identities.

In addition, the HAC claims intercountry adoption is a child protection measure to be integrated into child protection systems. It does not recognize foster or institutional care as suitable, only permanent family-based solutions, i.e. adoption.

This leads to the practice that if a child cannot be raised by his/her parents, parental rights can be terminated and the child becomes available for domestic and intercountry adoption.

Another reason why Korea should refrain from ratifying the Hague Adoption Convention is that it would result in the setting up of Post Adoption Services. In other countries, these have proven to offer no real benefit for adoptees searching for their families. Why? Because they are routinely set up under the auspices of the adoption agencies, which have numerous illegal activities to cover up. What is needed in Korea is a (properly funded) redress scheme that genuinely works to assist adoptees and their families -- and is independent of the adoption lobby.

## The influence of the intercountry adoption lobby on policymakers globally

Following a series of scandals involving intercountry adoptions in the last decades, there has been a massive (more than 90%) decrease in transactions.

But the lobby for intercountry adoption is powerful and relentless and will not give up easily. They have powerful organizations behind them, such as national governments (e.g. the USA) UNICEF, ISS, HOLT, CHIP, KSS and other vested interests. We demand that these organizations, as well as the Permanent Bureau of the Hague Convention, are excluded from all policy-making forums/meetings/consultations in the Republic of Korea -- as they all advocate for the Hague Adoption Convention, instead of advocating for implementation of the UNCRC.

## Signatories