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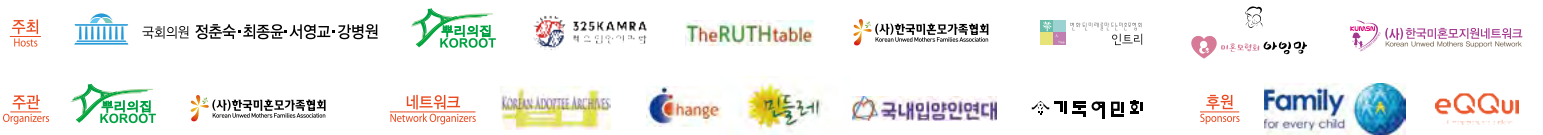


제1회 입양진실의날 국제 컨퍼런스
The 1st Adoption Truths Day International Conference

입양 정의를 말한다:
기록과 정체성

Adoption Justice:
Issues of Records and Identity

- 일시: 2020년 9월 9일 (수요일) 13:00-17:30
- 참여: 온라인 (Zoom 웨비나, 입양진실의날 유튜브)
- When: September 9, 2020 13:00-17:30 KST
- Join: Online (Zoom Webinar, Adoption Truths Day YouTube)



The 1st
Adoption Truths Day
International Conference

Adoption Justice:

Issues of Records and Identity

The conference proceedings consist of two versions in Korean and English.
본 자료집은 한글본과 영문본으로 구성되어있습니다.



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The Adoption Truths Day committee, which includes overseas and domestic adoptee organizations, natural families, and unwed mothers, gathered at KoRoot in Jongno-gu, Seoul, and declared May 11 as Adoption Truths Day.

Unwed mothers, single parents, overseas adoptees, and rights advocacy organizations celebrated Single Moms' Day for nine years starting in 2011 with the hope of correcting the deficiencies of the Adoption Day established by the government in 2006. The government eventually designated May 10 as Single-Parent Family Day in 2018, with the message that raising a child in their natural family takes precedence over adoption. Based on this achievement, we declared May 11 as Adoption Truths Day in 2020 in order to rectify the problems in overseas adoption practices that have not been sufficiently revealed. This was the start of the movement.

These efforts culminated in the 1st Adoption Truths Day International Conference on September 9, 2020. Although we had hoped to have the conference in person in May, we were forced to postpone it to September because of the coronavirus pandemic and ultimately moved it online.

The 1st Adoption Truths Day International Conference

- Title: "Adoption Justice: Issues of Records and Identity"
- When: September 9, 2020 13:00-17:30 KST
- Join: Online (Zoom Webinar, Adoption Truths Day YouTube channel)
- Program: Refer to the next page. (* Event held online and transmitted bt KOROOT)

Adoption Truths Day Campaign

- When: September 11-20, 2020
- Event: 2020 Women Marathon with Online Sports

- Hosts: National Assembly Rep. Choun-sook JUNG, Rep. Jong-yoon CHOI, Rep. Young-kyo SEO, Rep. Byung-won KANG, 325KAMRA (Korean Adoptees Making Reunions Attainable), TheRUTHtable, Korean Unwed Mothers' Families Association (KUMFA), InTree (Organization of Unwed Moms for Changing the Future), I'm Mom (Organization of Unwed Moms), Korean Unwed Mothers Support Network (KUMSN), KoRoot
- Organizers: KoRoot, Korean Unwed Mothers' Families Association (KUMFA)
- Network Organizations: KARMA (Korean Adoptee Researchers' Memory Archive), Change (a coalition for the human rights of adoptees), Domestic Adoptee Solidarity, Dandelions (Adoptees' Families of Origin), Korea Association of Christian Women for Minjung Women
- Sponsors: Family for Every Child, eQQui Korea

Adoption Truths Day YouTube Channel: <https://www.youtube.com/channel/UCXrN2xYsifkgz0GIMwJcXeg>

The 1st Adoption Truths Day International Conference

Adoption Justice:

Issues of Records and Identity

- When: September 9, 2020 13:00-17:30
- Join: Online (Zoom Webinar, Adoption Truths Day YouTube)

Opening		Event Emcee Hyung-sook CHOI (President, InTree)	
13:00-14:00	Registration		
13:30-14:00	Opening Remarks	Do-hyun KIM (President, KoRoot)	
	Welcome Speeches	Hyun-suk JEON (President, TheRUTHtable) Do-kyung KIM (President, KUMFA)	
	Congratulatory Messages	Amanda GRIFFITH (CEO, Family for Every Child) Choun-sook JUNG, Jong-yoon CHOI Young-kyo SEO, Byung-won KANG	
Keynote Speech			
14:00-14:20	To You Korea, Mother Nation kimura byol-nathalie lemoine (Artist, Activist, Archivist / Overseas Adoptee / Belgium & Canada)		
Session 1: Issues of Records and Identity			
14:20-15:30	1. "Life of Paper": From Record Keeping to Justice Rebecca Jo KINNEY (Professor / American Korean Adoptee living in Seoul)		
	2. Systematic Injustice: Switched Identities Robyn Joy PARK (Licensed Marriage and Family Therapist / Overseas Adoptee / USA)		
	3. Stolen Identity, Missing Roots Jae-hyong Kim STARZACHER (President, DONGARI - Association for Korean Adoptees in Switzerland / Overseas Adoptee / Switzerland)		
	4. They Lied to Our Mothers Matthew BLESSE (Chef / American Korean Adoptee living in Seoul)		
	5. The Impact of Missing Adoption Information on a Person's Life Young-chang MIN (Co-President, Domestic Adoptee Solidarity / Domestic Adoptee)		
15:30-15:40	Break		
Session 2: Role of the State in Adoption			
15:40-16:00	1. Identity: A (Human) Right to Ancestry and Genetic Origin? Alice DIVER (Senior Lecturer in Law, Liverpool John Moores University)		
16:00-16:20	2. Current State of the Adoption System and Working to Ensure the Best Interests of the Child Jung-eun KANG (Lawyer, DuRoo Association for Public Interest Law)		
Session 3: Panel Discussion			
16:20-17:20	Moderator	Pill-kyu HWANG (Lawyer, GongGam Human Rights Law Foundation)	
	Panel	Helle THAARUP Director of Korean Operations, 325KAMRA / Overseas Adoptee / Denmark Dave RIPP (Birth Family Search Mentor, G.O.A.'L. / Overseas Adoptee / USA) Hye-ryung JO (Administrative Officer, Ministry of Health and Welfare, Division of Child Welfare Policy) Ross OKE (General Manager, Human Rights Beyond Borders / Overseas Adoptee / USA) Ik-han KIM (Professor, Graduate School of Record Information at Myongji University) * Session 1 and Session 2 speakers will also participate.	
Closing			
17:20-17:30	Closing Remarks - Boon Young HAN (Assistant Professor, Hankuk University of Foreign Studies)		

Declaration on Adoption Truths Day

입양 진실의 날 선언문

Consistent with the mission, vision, accountability, sense of social responsibility, and with respect for dignity and personhood, we, the undersigned organizations supporting the adoptee community, call for an end to the historical practice of distorting adoption records and the long-prevailing culture of covering up these injustices.

Our declaration comes on May 11th, a day we recognize as Adoption Truths Day from 2020. May 11th was designated as the National Adoption Day in 2005. Since 2011, we have for the past 9 years been celebrating this day as Single Mom's Day in support of the unwed mothers who choose to keep and rear their children, as unwed mothers have been a particularly vulnerable group to losing their children to adoption. We regard family preservation services essential for both children's and parent's health.

After nine successful years, promoting the rights of women to be with their children and May 10th designated as the Single Parent Day from 2018; we turn our focus to the adoption experience, and the many untold and silenced stories within our community. As we move forward we will continue to promote adoption truths for all individuals impacted by adoption. This year, our focus will be on the inherent structural issues in the adoption program as it pertains to adoption records and identity.

South Korea has had an extraordinarily long and efficient adoption program, though wide-spread unofficial practice as well as state sanctioned practice. The adoption program has been, and continues to this day to be facilitated by a transfer of guardianship for a child to one of the numerous privately run adoption businesses or humanitarian agencies located in South Korea. As owners of the adoption records, these private entities have been able to withhold and distort information essential to individuals affected by adoption. In fact, multiple governments over the past decades have repeatedly declared to end adoption from South Korea, because the true circumstances of the cases strongly indicated that the children's welfare have not been safeguarded during the adoption process.

Without accurate official statistics, we estimate the number of Korean children placed with new families outside state borders at more than 200,000 over the past 67 years

from 1953. While assumptions have been made that such transfers and relocations were in the best interests of all relevant parties and - certainly in the best interest of the child - testimonies from impacted individuals reveal a much darker side to the adoption program.

Today, through collected testimonies and documents from adoptees and their original families who have either been reunited or engaged in search for each other, we know that 1) Abduction of children by family members, 2) Abduction of children for placement in orphanages, 3) Unclear methods of relinquishment, 4) Misrepresentation of personal documents, 5) Contradictory information in individual adoption records, 6) Falsification of the family register, 7) Intentional misrepresentation of citizenship status, and 8) Identity forgery have been integrated practices in the administration and facilitation of adoption.

The revision of the Adoption Law in 2011, enforced in 2012, was a significant victory in protecting the basic human rights of those impacted by adoption. It was indeed a historical attempt to correct the violation of the inalienable right of the child and its family; efforts to bring legal protection to those who have suffered origin deprivation.

While we were able to ensure some public oversight of the private adoption agencies, we must also address the historical injustices committed in the name of child welfare; injustices which continue to violate our most basic human rights to truly move forward, and for the community to heal past wounds. In our community we witness detrimental effects of adoptions such as: 1) the inhumane expulsion of adopted South Korean citizens from their adoptive countries, a clear violation of the right to nationality and trial, 2) the trauma that results in a higher suicide rate and mental health problems among adoptees when compared to our peers, 3) the loss of family health history and connections which are critical in treating diseases and defects, consequently leaving us even more vulnerable and disadvantaged, 4) adoption agencies facilitating reunions between adoptees and their family, then later proven not to be biologically related and 5) low number of reunions, due to of cooperation and support from adoption agencies and other relevant authorities.

Demands

1. We call for collective action by members of the Korean society and public authorities. Political decisions must be taken to ensure those impacted by adoption are guaranteed protection of their basic human rights.

2. We call for the government to establish a Truth and Reconciliation Commission on adoption practices to thoroughly investigate past wrongdoing and allow impacted individuals to provide statements about their experiences as part of this state inquiry.
3. We call for correction of the national historical record and establishment of the facts of State involvement.
4. We call for the government and adoption agencies to acknowledge past injustices and issue a public apology.
5. We call for a publicly controlled archiving system for adoption records and preservation of documents, including transcripts of oral testimonies.
6. We call for advancement for public education on adoption truths.
7. We call for the recognition of and support for the adoptee community in Korea, including adopted individuals and their original families.

Call for Social Action

We encourage adoption truths to be publicly articulated in order to give voice to those impacted by the South Korean adoption system. In doing so, we pursue the following objectives:

1. Increase the visibility of the adoption experience among the general public through personal and social interactions, seminars, and textbooks.
2. Legitimize the experiences of those who have been silenced and socially ostracized by the adoption system and the culture that enabled it.
3. Recognize aspects of neglect and abuse inherent in the adoption program.
4. Guarantee that individual adoption records are fully preserved and made accessible to impacted individuals, including people who were adopted, Korean families whose children were adopted, and others with standing.
5. Accept adoptees and their original families as full, participating members of contemporary society and a part of modern Korean history.
6. Protection of all South Korean citizens by the South Korean government and proactive efforts through all available channels to ensure impacted individuals' safety and well-being.

May 11, 2020

Signatories:

SPEAK, 325KAMRA, KARMA, 국내입양인연대, 입양인친생가족모임민들레, 진실의자리 (TheRUTHtable), 한국미혼모가족협회 (KUMFA), 변화된미래를만드는미혼모협회인트리 (InTree), 미혼모협회아임맘 (I'mMOM), 한국미혼모지원네트워크 (KUMSN), 뿌리의집 (KoRoot)

“We declare May 11th to be Adoption Truths Day”

Opening

Opening Remarks

Do-hyun KIM *President, KoRoot*

Welcome Speeches

Hyun-suk JEON *President, TheRUTHtable*

Do-kyung KIM *President, Korean Unwed Mothers' Families Association (KUMFA)*

Congratulatory Messages

Amanda GRIFFITH *CEO, Family for Every Child*

Rep. Choun-sook JUNG *Democratic Party Member*

Rep. Jong-yoon CHOI *Democratic Party Member*

Rep. Young-kyo SEO *Democratic Party Member*

Rep. Byung-won KANG *Democratic Party Member*



Opening Remarks



Do-Hyun KIM
President, KoRoot

I would like to offer my gratitude to everyone who is participating in The 1st Adoption Truths Day International Conference. Today's event is simultaneously being conducted in-person and online, and I sincerely thank everyone joining virtually as well.

The conference is a collective effort organized by overseas adoptees, natural families, unwed mothers, and civil organizations all working in solidarity. In addition, today's conference is being supported under the joint auspices of four National Assembly members of the Democratic Party of Korea: Choun-sook JUNG, Jong-yoon CHOI, Young-kyo SEO, and Byung-won KANG . On top of that, in attendance remotely are team and alliance members from Family for Every Child, an international nonprofit organization that sponsored the expense of hosting today's conference.

The conference was originally scheduled to be held on May 11 of this year; however, those plans were postponed as a result of the COVID-19 pandemic, and we are finally able to hold our conference today.

May 11 is designated by the government as Adoption Day. We thought this day should be preserved as one that thoroughly shines light on the lives of adoptees, adoptive parents, and natural parents. We believed that it should be not only a day to call attention to the separation and loss experienced by adoptees, unwed mothers, and natural families, but also a day to heal those pains and reform institutional flaws. However, for the past 15 years, Adoption Day has been celebrated by the government, adoption agencies, and adoptive parents mainly with the raising of a banner that promoted adoption; within such an "Adoption Day," there was regrettably no place for discourse regarding the advancement of the human rights agenda of adoptees and unwed mothers' families.

Thus, we resolved to commemorate and celebrate May 11 as Single Moms' Day for the

past nine years—from 2011 to last year. It was a campaign to create a social environment in which single moms, especially unwed moms, could build courage and raise their children. The government eventually established May 10, one day ahead of Adoption Day, as Single-Parent Family Day with the message that "raising a child in their original family takes precedence over adoption"; they began observing the day in 2018. In addition, the government's policies on the child-rearing conditions of unwed mothers and the perceptions of unwed mothers at various levels of society—including the media—have undergone significant positive changes, seeming to reach a point where this wave of change can be expected to progress further forward. With recognition of these results to be the achievements of our campaign for the past nine years and expressions of our gratitude and respect for the Korean society and government who listened to our voices, we ended our work of commemorating Single Moms' Day last year.

We decided to return to our starting point and prepare a forum for the discourse on the advancement of the human rights agenda of adoptees; starting this year, we resolved to keep May 11 as Adoption Truths Day. As I mentioned earlier, due to the COVID-19 pandemic, we decided to issue the Declaration on Adoption Truths Day on May 11 and invited you here today for the previously planned The 1st Adoption Truths Day International Conference.

The theme of today's conference is Adoption Justice: Issues of Records and Identity. Adoptees have the right to the truths of their birth and individual adoption records regarding their early life prior to being sent for adoption. Such truths are a part of one's existence and an essential component of self-integrity.

However, before the 2011 revisions to the Act on Special Cases Concerning Adoption (Special Adoption Law) mandated adoptions to be decided by the courts, adoptions were conducted entirely in the hands of adoption agencies. It would not be an exaggeration to say that for 60 years—until the 2011 Special Adoption Law was implemented in 2013—Korea's adoptions were a business or industry of private adoption agencies rather than a matter of public duty. The two key issues that arose were "creating orphans" and "de facto proxy adoption." While "creating orphans" was the sending country Korea's legal practice of adoption, "de facto proxy adoption" was the receiving country's legal practice. These two anti-human-rights adoption practices have resulted in the loss of adoptees' records and left a legacy of adoptees being thrown into great struggle in the process of identity-building. Such anti-human-rights adoption practices have even led to the senselessly absurd situation of adoptees being deported to Korea 30 or even 40 years after their adoption. We hope that the testimonies, presentations, and discussions given today at

this conference will help us refine our understanding of these matters.

People say our era is a post-truth era. We subjectively construct our truths through a combination of facts, and at times “non-facts,” that allow us to believe what we want to believe. We produce and consume “fake news” that comforts us. We live in an era where the whole nature of life and history can be dismantled or distorted with just one piece of a puzzle that contains biased “truths.” Through today’s conference, we aim to reveal aspects of adoption truths that have been hidden and undisclosed.

Appearing in the aftermath of World War II, the method of “rearing children through international adoption” is interpreted as a “narrative of love and salvation.” In light of the long-standing history of mankind, it is an ultra-modern event that began post-WWII and only began to take root in earnest after the Korean War. This method of child-rearing, which resolves childbirth and parenting through international collaboration, can hardly be said to have achieved universality and has not yet finished being verified. Nonetheless, the people’s excessive affection and support for the “narrative of love and salvation” has contrarily even become a force for hiding truths.

Overseas adoptees have another puzzle piece regarding truth that they become aware of through their life experiences. We do not deny that the “narrative of love and salvation,” which is deeply rooted in international adoption, is a piece of the puzzle. Many adoptees live their lives embracing the gifts from international adoption. However, we lived through an era during which it was difficult to deny that a surfeit of one narrative can lead to a distortion of the truth. We have turned a blind eye to the “narrative of adoption justice and human rights,” which should have been reviewed and asked about: the state’s responsibility regarding international adoption, the related legislation and legal system, the protection of the human rights of adoptees during the adoption process. No, we lived in a society that dismissed the dialogue that emerged from the “narrative of adoption justice and human rights.”

We are holding the Adoption Truths Day conference today not to deny the “narrative of love and salvation,” but to reveal that excessive support of it is another puzzle piece that caused the turning of a blind eye and suppressed the “narrative of adoption justice and human rights,” one which should have been considered a provision from the very beginning. In his lifetime, leading journalist and scholar Young-hee RHEE once stated, “The nation is not what I, at the risk of my own life, tried to protect. That is not patriotism. The truth is.” What we are attempting to accomplish through today’s conference may not be as heroic as what scholar Young-hee RHEE spoke of. Yet, regarding the “narrative of adoption justice and human rights,” we aim to reveal

another puzzle piece—truths that must not be denied within the discourse of international adoption, truths that might have been hidden, truths that might not have been previously realized. I believe this is the very reason we are holding this conference and why you are all in attendance today. Thank you for standing with us.

Lastly, I would like to thank everyone who worked tirelessly to make today’s conference possible. Foremost, I would like to especially express my respect and gratitude to adoptees for bringing to this space their personal stories, ones that they may need to guard closely and privately in respect to maintaining their dignity. I believe that the power of transforming history comes from the voices of the persons directly concerning it. I believe that the achievements of the Single Moms’ Day that has been held for the past decade were made possible by the unwed mothers who have not only courageously shared their personal stories in the public arena but also demanded changes in our society. Thank you.

We would like to thank all presenters who will be delivering their lectures remotely, due to COVID-19, as well as the presenters and panelists on-site joining us. To eQQui Korea, which has been with us for every Single Moms’ Day and is now working hard to provide simultaneous interpretation at today’s very first Adoption Truths Day international conference, we would like to express our special thanks. For joining us by being in support of our voices and by promising to open a new path in terms of legislation and policy together, we are grateful to Assembly Members Choun-sook JUNG, Jong-yoon CHOI, Young-kyo SEO, and Byung-won KANG. Thank you to Family for Every Child for offering their support and donation in making today’s conference possible. We appreciate the organizations in solidarity with us and the KoRoot staff members who have all been leading the work in preparing for this conference, as well as IEXCO, which is working hard to make today’s conference a real-time, live broadcast. I would also like to express my gratitude by calling out two names in particular. One is Boon Young HAN, assistant professor at Hankuk University of Foreign Studies, and the other is English editor Jenny NA. They are both activists and experts who have struggled with the overseas adoption agenda for a long time as adoptees. They are the ones who formed the core framework of this conference and led us all the time. I sincerely thank and applaud you both. Above all, to the guests and each and every participant in attendance, I bow my head in gratitude. I hope that today’s conference will be a valuable experience for everyone.

Welcome Speech

Hyun-suk JEON
President, TheRUTHtable



Growth of First Mothers: From “For Adoptees” to “With Adoptees”

Life always seems to give us variables, which makes me nervous and curious. Even now, when I thought I was going to have a normal life, I live with limitations on the things I wanted to do such as meeting people, touching things, going places, and talking to my heart’s content because of the coronavirus. To be honest, first mothers who sent their children for adoption have even greater feelings of regret. They wonder if their children are healthy, if they will lose their chance to meet them, if they will ever be able to say they’re sorry, and if the opportunity to hold them again will disappear.

However, on days like today, having a place with adoptees helps ease these worries and for that I am grateful. The first Adoption Truths Day this year is also an important day for first mothers because we can communicate and learn with adult adoptees and make something together.

People all want to grow. The same is true for first mothers. When I sent my child away I understood that staying together was not good for either one of us. Reminiscent of the experience of being a team with their unborn child for nine months, first mothers will grow just as their children grow up and became adults. It is surely necessary even if it hurts.

I am trying to confront this thing called “adoption,” which is a big variable in the lives of first mothers, without avoiding it. I no longer fear the hard gaze of society and will try to tell the truth. The starting points of each of the first mothers may not all be the same, but here, now, I will take a step forward because I believe that the courage of the first mother who starts will become the priming water for those who follow.

I am so honored to be here, and grateful to the adoptees who first reached out to the place of growth. It is with a mother’s heart that I would like to welcome all of you who have come to this event. Thank you.

Welcome Speech



Do-kyung KIM

President, Korean Unwed Mothers' Families Association

The Same History Should Not Be Repeated

I would like to thank all of you for coming to this conference and your interest in today's topic. For the past nine years, overseas adoptees, single mothers' organizations, and organizations that support their activities have hosted Single Moms' Day. It was an event that symbolized the creation of a society where single mothers can raise their children and ultimately stopping overseas adoption. In other words, it was an activity for the present and future of Korean society.

Starting this year, we would like to declare May 11 as Adoption Truths Day and start activities that focus on the stories of overseas adoptees. There are still issues regarding international adoptions that have not been settled and heartbreaking truths that must be uncovered. We cannot erase the past by saying: "Let's forget the past and only move forward!" On Adoption Truths Day, there will be countless stories of single mothers who had to send away their children without any protection from the state and their family. Also, there will be countless stories of overseas adoptees who were adopted with false documents that do not show where they were being sent or to whom. Now, it is time to mourn, apologize, and correct our past mistakes. The same history should no longer be repeated.

While Korea has certainly felt the effects of the coronavirus outbreak, it has also been enthusiastic about its superiority to other developed countries. However, we should question whether Korea is truly an advanced country when it cannot even protect women who want to raise their own children and the children they want to raise. Now it is time for Korea to show the kind of responsibility that is worthy of a country that has risen to meet the coronavirus situation.

I sincerely welcome all of you who have come together for this meaningful event.

Congratulatory Messages



Amanda GRIFFITH

CEO, Family for Every Child

Honored guests,

I am the CEO of Family for Every Child, Amanda Griffith. This is my pleasure to welcome you to this international conference. I am only sorry that I cannot be with you in person to listen to your discourse and support your actions. The topic of adoption justice, and the importance of accurate and public records, and for adoptees to know their own identity, are fundamental human rights.

Family for Every Child is an international alliance of 40 leading local civil society organizations and KoRoot is our member in South Korea. KoRoot brings a spotlight to the issues of the 160,000 children who have been internationally adopted [from] South Korea, and the need to focus on local responses, for example, supporting single parents and where necessary providing domestic adoption. Through our alliance, KoRoot are able to give this important topic international visibility and the impact on the lives of internationally adopted children globally.

Family for Every Child believes that investing in families has to take primacy in every government program of child welfare. We support the call for a truth and reconciliation commission on adoption practices and would emphasize that this commission should engage children as well as adults with lived experiences of adoption.

Family for Every Child is in solidarity with the adoptee community in South Korea including adopted individuals and their original families. We support the adoption of the Truths Day declaration.

I hope you have a productive and thought-provoking event. And I look forward to hearing the recommendations and actions that are agreed during this day.

I hope you all stay safe during these very difficult times.

Very best wishes,

Amanda

Congratulatory Messages

Choun-sook JUNG

National Assembly Member, Democratic Party of Korea
Member of the Health and Welfare Committee



Good afternoon.

I am Choun-sook JUNG, chairwoman of the National Assembly's Gender Equality and Family Committee representing Yongin City.

Congratulations on hosting The 1st Adoption Truths Day International Conference under the theme Adoption Justice: Issues of Records and Identity. And thank you to Do-hyun KIM, the president of KoRoot, and the other concerned parties directly working in the field to improve the human rights of adoptees.

Adoptees have named May 11 Adoption Truths Day for the first time this year. The day is also called Adoption Day and Single Moms' Day. Renaming the day shows how our society's perception of adoption is changing.

Adoption Truths Day is a new movement aimed at encouraging society to pay attention to adoptees, who have otherwise been ignored. According to official statistics from the Ministry of Health and Welfare, 170,000 Koreans were adopted overseas during a 60-year period from 1958 to 2016; this is an important human rights issue.

Not only is it a violation of human rights to send children on such a large scale out of the country through private organizations without protection from the State and their family; adoptees returning to Korea in search of their identity suffer further due to the insufficient record keeping of their original birth-related information.

American adoptee Robyn Joy PARK, who is presenting today, found her Korean mother, according to her adoption records, and established a close relationship with her. However, later through a DNA test Ms. PARK learned that this was not her mother and family. This is truly a tragedy.

With this conference, our society needs to give its utmost attention to how adoption records have been distorted and as a direct consequence of these actions how much adoptees' rights

have been violated.

In particular, from a standpoint of protecting adoptees' rights, I hope this conference will lead to discussions on various policies and systems regarding adoptees' records and identity. In particular, I call for the government to take responsibility and to establish measures to protect the right to access records.

I wish our presenters, discussants, and guests who took the time to attend the conference today health and happiness.

Congratulatory Messages

Jong-yoon CHOI

National Assembly Member, Democratic Party of Korea
Member of the Health and Welfare Committee



Good afternoon.

I am Jong-yoon CHOI, a member of the National Assembly's Health and Welfare Committee representing Hanam City.

First of all, I would like to express my gratitude to everyone who is attending The 1st Adoption Truths Day International Conference on the theme of adoption justice. I would also like to thank National Assembly Members Byung-won KANG, Young-kyo SEO, and Choun-sook JUNG for co-hosting this event together. In addition, I would like to express my sincere gratitude to all the employees of KoRoot, the NGO that organized today's event.

May 11 is Adoption Day as designated by the Korean government and Adoption Truths Day as designated by KoRoot. Today's conference declares Adoption Truths Day as May 11 and it aims to reveal the truth of individual adoption experiences and the structural problems in the Korean adoption process through records and identity issues.

Sociologists and demographers estimate the number of Korean adoptees abroad at around 200,000 since the Korean War. Moreover, with an estimated 500,000 overseas adoptions worldwide, Korea accounts for almost half of them. Adoption procedures have been established to some extent due to recent revisions of the Special Adoption Law, but before that time, there were many cases where there were no records. If we consider that birth registration for adoption was only mandated in 2012, it also becomes necessary to reflect on whether the state has played a role in ensuring the rights of children.

In recent years, the government has launched the National Center for the Rights of the Child to fully protect the rights of children and has established an integrated adoption information management system by digitizing records held by various private adoption agencies. However, the data is at times redundant and unclear because it was not well organized and was sourced from documents that were

handwritten by various institutions. Furthermore, the system is only used for around 2,000 cases per year. Going forward, the State will have to play a more active role in adoption and children's rights. I will also take the lead in the National Assembly to encourage the State to do its best to protect adoptees' rights and interests.

While preparing to co-host today's conference, I was impressed that adoptees who have stayed at KoRoot referred to it as a safe place that welcomes them without prejudice. I believe that changes in policies and systems should be accompanied by changes in our society's perceptions and perspectives. I hope today's conference will be able to contribute to a society free of prejudice, where the rights of all overseas adoptees who want to find their identity are protected and provided with correct information on adoption.

Once again, I would like to express my gratitude to all who attended this event today. Thank you.

Congratulatory Messages

Young-kyo SEO

National Assembly Member, Democratic Party of Korea
Chairman of the Public Administration and Security Committee



Good afternoon.

I'm Young-kyo SEO, congress member for the Democratic Party of Korea.

I'd like to offer my sincere congratulations on hosting the First International Conference on Adoption Truths Day, and thank you to all of the individuals and organizations involved during the planning process and to those attending today.

For the past nine years, since 2011, May 11 has been designated as Single Moms' Day, and the voices of organizations who stand in solidarity with the vision to create a society where single mothers can raise their children has been heard. Thus, your efforts have motivated the National Assembly and government to establish May 10 as Single Parent-Family Day. Thank you and congratulations to all individuals and organizations that have contributed to these changes.

You have conveyed to me how you have reconceptualized Single Moms' Day from this year, and renamed the day Adoption Truths Day to start focusing on more fundamental issues aiming to share with society the otherwise hidden truths of the overseas adoption system.

According to statistics from the Ministry of Health and Welfare, the total number of overseas adoptees between 1958 and 2016 was 170,000. Of the 170,000 people, 112,000 were adopted to the United States. Last year Korea recorded 707 adoption cases through the Special Adoption Law, of these 317 were overseas adoptions.

Under the theme Adoption Justice: Issues of Records and Identity, today's conference will facilitate discussions on how the State's failure to assume responsibility and guarantee adequate record-keeping has violated adoptees' human rights and impacted their identity formation, and alternatives to this. An adoptee's right to form their identity is the most basic among fundamental rights. It is now time for us to listen to the voices of the adoptees. Serious collective efforts are needed to support realistic legal and institutional mechanisms to protect the rights of adoptees.

I look forward to today's discussions on policies and institutional issues on adoptees' records and identities at The 1st Adoption Truths Day International Conference. I will also take initiatives to take the lead in legal and institutional improvements at the National Assembly, along with the adoptees, their natural families, single mothers' organizations, and other relevant NGOs.

Thank you.

Congratulatory Messages

Byung-won KANG

National Assembly Member, Democratic Party of Korea
Member of the Health and Welfare Committee



Welcome to the 1st Adoption Truths Day International Conference. I'm Byung-won KANG and I am a member of the Health and Welfare Committee representing the Democratic Party. It is an honor to participate in this conference Adoption Justice: Issues of Records and Identity.

What is the single most important thing in life? Some might answer money, power, or honor. Others might answer love, family, friends, or significant others. However, isn't the most important thing in life to know oneself?

It is very important to know who you are, where you come from, what your desires are and what your interests are. Knowledge about oneself is closely related to the way we understand the world. Furthermore, this self-investigation relates to institutions and customs, and adoption is at its core.

Over the past 60 years, 160,000 Korean children were adopted overseas. This is a historic tragedy and also an issue of the State's failure to adequately protect its citizens. A failure to protect children's rights. Moreover, it has been a recurring issue that when those adopted overseas inquire into their origins, even when they make efforts to learn about themselves, complete knowledge about their past is impossible due to missing or incomplete records.

Guided by the voices of adoptees and other professionals, today's conference marks an important starting point to begin establishing responsibility for adoption justice, consistency of record keeping, and accountability through systemic and legal measures. To achieve this, the National Assembly must carry out the duties with which it was entrusted.

Carefully listening to all your voices, I feel even stronger about working toward adoption justice.

Let me reiterate my appreciation to KoRoot and the other individuals and organizations making today's conference possible. Thank you.

Keynote Speech

To You Korea, Mother Nation

kimura byol-nathalie lemoine

Artist, Activist, Archivist / Overseas Adoptee / Belgium & Canada



To You Korea, Mother Nation¹

kimura byol-nathalie lemoine

Artist, Activist, Archivist
Overseas Adoptee / Belgium & Canada

To you Korea, mother nation,

The country of my birth has a proud 5,000-year history. It has survived many invasions and colonization, and is thinking now, in 2020, to maybe “give” some basic human rights to its “orphanalized”² children sent overseas to foreign families for more than 60 years.

When I say “my” country of birth, I am stating a fact; I’m not commenting on my *jeong*, or feeling. I have a sense of belonging to this land, and I am one of the consequences of a lack of social support for families.

Ironically, Koreans are proud of their family ties, of their bloodlines, and saving face, yet they seem unable to comprehend these questions: How would you feel if we erased your history as a proud Korean? Remember when the Japanese erased our culture when they colonized Korea? You felt helpless, angry,

and frustrated. Koreans would want justice and reparations.

Similarly, our bodies are colonized overseas. You did the same to us. We also want justice, reparations!

After 60 years of trading humans, what has Korea learned?

What went wrong?

What is wrong?

How we can make it better for children and not parents?

If we can’t ask for an official apology from the Korean government for its poor management and not taking responsibility for its “orphans,” can we at least request that they establish policies that would do less damage to adoptees, birth families, and adoptive parents concerning international adoption?

From my experience as an adoptee and

activist in searching for missing pieces of identities and backgrounds, I can say that it can be a war fighting against the adoption agencies that control all our information and therefore have all the power.

So, for nearly 30 years I’ve been helping adoptees search for their families. I review the thin adoption files, visit adoption agencies, go to orphanages, and request archives at city halls to help adoptees of different ages and of different countries. Many of them didn’t get their adoption files from their adoptive parents, either because they were lost or the adoptive parents didn’t want to share the information. I got the worst cases, the cases with lies after lies, forgotten notes, and unshared information that pained and distressed the adoptee.

I’ve met birth families, listened to their stories of begging the adoption agencies for information and being forced to give “white envelopes” with bits of information.

I’ve seen adoptees cry and get angry and frustrated when social workers lied to their face and refused to give information, claiming to protect birth families. Then they would get a different story from the birth family, who said the adoption agency claimed the adoptee didn’t want to see them, which they said was for the sake of the adoptee—oops, for the sake of the adoptive family.

And our adoptee journey doesn’t stop there. In 1997, we wanted access to the precious F4

visa that is given to Koreans from the diaspora after 1848. Adoptees were not included because the South Korean government didn’t consider us as part of the diaspora. I had been living in Korea from 1993, and I was tired of being on a tourist or student visa. I believed that, as adoptees, we deserved to be treated better. We were entitled not to money, but to rights. More and more adoptees were coming back that wanted to stay longer and wanted to reconnect with their roots; they were not simply tourists. So, when we heard that the bill was designed for overseas *dongpo*, we were very disappointed, but not surprised, that we were not included in the new law. In May 1999, we gathered over 1,000 signatures with the Korean Overseas Adoptees organization (K.O.A.), Dr. Park In-sun and Baik Yeon-ok of Haeseong Child Welfare, and Kate Hers-Rhee’s KimLeePark project to make sure that adoptees, using the word *ibyangin* (입양인), were included in the bill. We succeed in December 1999. But still, we need the adoption agencies’ approval and good will to get the documents to prove our status by providing us with an adoption certificate. I wish the NCRC (National Center for the Rights of the Child) could provide this paper instead.

As adoptees, will we always be at the mercy of the institution that sold us away? How would you feel about it if it were you?

Even though adoptees have better

experiences now than before, it doesn't mean that the main issue of secrets and lies in the social welfare system to push and ease overseas adoption has been rectified.

If you are here at this conference, hopefully you are here to listen and make some changes. Here are my proposals.

Before, there were two different copies of adoption files, one for the adoption agency and another for the adoptive parents. Now there are three versions: one for the adoption agency, another for the adoptive parents, and unfortunately a partial digitalized (without photo) document (not a micro-film) to a third for the NCRC in Korea.

Prior to the adoption, when a mother relinquishes her child, she should be told that she can request her child's information after s/he is 18 years old, but in the meantime, she should be able to send letters and photos to the government's international adoption affairs office rather than to the adoption agencies.

When prospective adoptive parents apply to adopt, they should be required to get mandatory anti-racism behavior training and education. They should have to pass an exam and if they fail they CANNOT adopt. If they pass, they need to be aware that the birth mother has the right to send news, photos, and letters that will be kept in the international adoption affairs office in Korea, and if the adoptee and the birth parents want to be in

touch, they should be FREE to connect without the consent of the adoptive parents.

I firmly believe that these control/retention of information problems could be solved by making four complete copies of the file: one each for the adoption agency, the Ministry of Health and Welfare, the adoptive parents, and the social welfare department in the adoptive country that the adoptee can access at age 18.

There should be a website for adoptees to request information in Korea and in the adoptive country. Every Korean embassy and consulate where there is a large adoptee population should organize an annual information session, which would be publicized by local adoptee organizations and on social media.

One last note, I am thankful that Korea reached out to so many Korean adoptees during the COVID-19 pandemic and provided us with masks. Why can't that same effort be made for adoptees' dignity!

Thank you.

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1. From the author's poem *To Korea, Mother Nation (1993, Seoul)*. Retrieved from <http://nathaliecho.blogspot.com/1992/08/to-korea-mother-nation-1993-seoul.html>. -Ed.

2. The author uses the word "orphanalized" to mean "making someone into a legal orphan." -Ed.

Session 1: Issues of Records and Identity

1. “Life of Paper”: From Record Keeping to Justice

Rebecca Jo KINNEY *Professor / American Korean Adoptee living in Seoul*

2. Systematic Injustice: Switched Identities

Robyn Joy PARK *Licensed Marriage and Family Therapist / Overseas Adoptee / USA*

3. Stolen Identity, Missing Roots

Jae-hyong Kim STARZACHER
*President, DONGARI - Association for Korean Adoptees in Switzerland /
Overseas Adoptee / Switzerland*

4. They Lied to Our Mothers

Matthew BLESSE *Chef / American Korean Adoptee living in Seoul*

5. The Impact of Missing Adoption Information on a Person's Life

Young-chang MIN *Co-President, Domestic Adoptee Solidarity / Domestic Adoptee*



“Life of Paper”: From Record Keeping to Justice

Rebecca Jo KINNEY

Professor
American Korean Adoptee living in Seoul

As an interdisciplinary scholar of race and ethnic studies I spend my daily life of research, writing, and teaching engaged in questions of both records and identity.

I often ask myself and my students, what can we learn about a record in the archive? What is its purpose? What is the context in which it was produced? For whom? Why? And, especially for communities of color, poor communities, and marginalized communities, what is missing from the archive?

As ethnic studies scholar Sharon Luk reminds us, there are those who have constructed their own “life of paper” outside of the “official” records. These words, written as letters, annotations on slips of paper or the back of photographs, reveal a self-fashioned production of life and identity. And here, in the form of the talks and presentations that

comprise the proceedings of this conference, I suggest we are in this spirit constructing a “life of paper,” articulating our own lives outside and as they intersect with the “record keeping.” I stand before you, humbled to be able to offer my “Life of Paper.”

Record Keeping

I begin here by examining my own record, two versions—one kept and maintained by Holt, the other kept and maintained by my mother in the U.S.—to begin to systematically examine how the records have tried to keep us and have tried to construct us as commodity objects.

The Holt File

The first page is a cover sheet, an intake form. At first glance it appears to state simple

facts meant to account for the movement of me, a baby, through a bureaucratic system of exchange. Upon further inspection, it reveals an entire set of lives bound and forever linked together.

Just below “ADMISSION DATE” there is one line that made me catch my breath the first time I read it. “FROM: Unmarried Father.” I was shaken by its simplicity, “FROM: Unmarried Father,” like I was a gift, to be received FROM, or a package to be delivered to.

My entire life people have been asking me “Where are you from?” At times this question was hurled with malice, sometimes it was offered as an opening, but always it is leveled with the implication that I am not FROM here. No matter what the intent of the questioner, I have always hated this question. Mostly because it is the one that haunts me, the one I ask again and again: Where am I from?

Last summer, at the age of 39, was the first time I contacted Holt to request my file. A few weeks later I received a 29-page PDF attachment, “my entire file,” including this cover sheet.

The social worker’s message that accompanied the file said that my father had left his identifying information at the time of intake and we could begin a search. And all this information seemed to mean that, as my older sister, also a Korean adoptee, said, “I was living the ‘adoptee dream.’”

“Living the adoptee dream” because the record was “complete,” because my Korean dad supplied his contact information. Because for so many of us, that information is either missing, or it wasn’t required, or, even if it is included, is never released to us.

Tellingly, this form doesn’t exist in my U.S. file. There is no record of FROM. Who I came from, who they are, who I am.

The U.S. File

My parents kept our adoption files in a bottom cabinet in our house. We always had access to them and sometimes I would page through mine, trying to make sense of this paperwork. I would read their home study, paying close attention to how the social workers captured them and my sister, and I would try and find clues to those six months before I became Rebecca Jo Kinney.

In my parents’ file in the U.S., I first appear in the record in my mom’s familiar handwriting as “Child #2” on a yellow half-sheet of paper. And on this yellow half-sheet, my identity is not as a beloved and wanted child, rather instead, a list of fees:

DSS² \$50 registration fee

DSS \$250 rest of fee

INS³ \$35 filing fee

Holt \$2240.00 fee to adopt

(\$1540.00 Holt, \$700.00 plane)

And on and on...

Because my family was working poor, my mom would often run numbers on sheets of scrap paper to figure out how to make two minimum wage paychecks stretch into the necessities for a family of four; and maybe, if that week was a good one, a little extra for something fun. I know the care with which she made this list. This summary of calculations was part of her meticulous budgeting process, her work of mothering.

Like I do most days, I wish she were still alive. And in the context of this talk, I wish she were alive so that I could ask her point blank, "What did it feel like to buy your children?" Did any of that give you pause?

And part of me thinks that perhaps it did give her pause. Because on that yellow half-sheet of numbers, nowhere does it state the final tally. Given her usual precision this feels like a telling omission. Perhaps it was too much to write:

"Child #2, total cost \$2644.00."

From Record Keeping to Truth

"FROM" is a preposition. In Korean or English it is used to connect, to show relationship.

*I was received by Holt FROM
unmarried father*

I was sent FROM Korea to the U.S.

I am FROM Detroit

I am FROM Korea

*FROM all sides this seems like a business
selling and buying children*

*Even in the "best cases" the whole story is
kept FROM us*

I will never know the truth of where I am FROM

My Korean dad has recounted the scene in my mother's hospital room where he arrived, the day I was born, at least three times. He complies, each and every time I ask him to tell me the story, no matter how I know that it hurts both of us to hear. He speaks, I listen, and our bodies turn in on ourselves. Neither of us can bear to make physical contact, let alone maintain eye contact, and he tells me once more:

"I arrived at the hospital and your grandmother had bound your mother's nipples so she could not nurse you. Your mother lay on the bed, did not speak, did not move, did not look at me. Your grandmother yelled and yelled and yelled. She screamed in a rage and told me to take responsibility. So the next day, I came back, and brought you to my goshiwon and I tried to care for you."

This is the scene I play over and over in my head, from my mother's hospital room to his rented room. FROM mother to father. FROM father to Holt. FROM Holt to foster

family. FROM foster family to the U.S.

Where am I from?

I will never learn the truth from my files. Both the one that Holt has and also the one that I inherited from my mother's file cabinet are filled with half-truths, partial truths, and lies by omission. Each version of my file recounts a particular history of the events that set my life course on its path. And in both, the line between fact and fiction, real and true, is blurred to the point where what I know to be false has become true and what I know to be true has become false.

These files, neither of them is really about me. They are about how I, as an entity, as the relinquished daughter of an unmarried father, and as Child #2, becomes first Jo Yoo Mee and then Rebecca Jo Kinney. They are about how Holt assures my adoptive parents that I'm a "healthy orphan." They are about how my adoptive parents assure the transnational bureaucracy of social workers and governments that they are a "happy family," mentally, physically, and emotionally fit to be parents.

There is no way to find my truth. The system from where these records emerged saw fit to that.

The failure is not at the level of record keeping.

In fact, I argue that the files are complete

for their purpose—to turn people into commodities. The failure exists at the level of record making. The failure of the record lies in the very systems that created, maintained, and continue to perpetuate the selling of children on a global market.

From Record Keeping to Justice

As my Korean father told me when we were driving around the neighborhood he lived in when I was born, trying in earnest to find my first "home" in his humble rented room, "Yumi, I'm sorry I can't find it, 40 years is a long time, everything has changed."

Forty years is a long time, everything has changed. And yet and still the processes of shame, secrecy, and the prioritization of the rights of everyone else above the adopted person have not changed.

*To move from Record Keeping to Justice,
I call on Holt, all the other agencies, and
the Korean government to give adoptees
complete access to their files.*

*To move from Record Keeping to Justice,
I call on all adoptees to continue crafting our
"lives of paper," writing to and beyond what
the record might say.*

*To move from Record Keeping to Justice,
I echo the repeated calls to the Korean*

government to hold a Truth and Reconciliation hearing for every person that has been impacted by the systemic process of turning people to commodity—adopted people, birth families, foster families, adoptive families.

And so I submit here, my “life of paper,” breaking free from the records that try to keep me. I am more than just the daughter from an unmarried father, sold to another father half a world away. When we can collectively testify our 200,000+ “lives of paper,” we can begin to move from Record Keeping to Truth, and only then will justice be possible.

1. Luk, Sharon. *The Life of Paper: Letters and a Poetics of Living Beyond Capacity*. Berkeley, CA: University of California Press, 2017.

2. Department of Social Services

3. Immigration and Naturalization Services

Systematic Injustice: Switched Identities

Robyn Joy PARK

Licensed Marriage and Family Therapist
Overseas Adoptee / USA

All That You Touch You Change

After living in Korea for two years, I returned to the U.S. in 2008 where I learned about cases such as Deann Borshay Liem, whose identity and information were switched. Her story is brought to light in the film *In the Matter of Cha Jung Hee*. I was outraged by the ways in which the systems had deliberately falsified her information. This raised the issue of “switched” adoptions and identities, revealing various ways in which adoptees are uncovering layers of deception in their adoption journey.

Through my own experience and publicly sharing my search and reunion story, I have been able to connect and form close relationships with other adoptees who have experienced painful deception and betrayal.

I have become aware of many other adoptees who have been incorrectly reunified, have had their paperwork switched, been sent in place of a different child, or have been provided false information about their identity. Switched adoptees have commonly discovered the information that was assigned to them in their file was either a “switch file” (i.e. the adoptee’s entire file and identity is exchanged with someone else’s information) or a “cover file” (i.e. was assigned someone else’s identity, an adoptee is given false information but not given another person’s identity, etc.).

To understand why switched identity cases happen, it is important to take into consideration some of the possibilities or reasons including: a child’s health issues, a child not being fit to travel, healthy children replacing

deceased children, caseworkers mixing up files, children being switched at various points of entry including within foster care, en route to agencies, or during the transportation to their adoptive country. Regardless of how switches happen, it's disheartening to see how agencies have not been focused on family preservation and instead narrowly focused on efficient child placement.

A friend who is also a switched adoptee introduced me to the metaphor of a palimpsest. As I explored what this is, I learned the word palimpsest derives from the Ancient Greek word palimpsestos, which is a compound word that literally means "scraped clean and ready to be used again." The nature of the palimpsest preserves the distinctness of individual texts, while exposing the contamination of one by the other. Thus, even though the process of layering that creates a palimpsest was born out of a need to erase and destroy previous texts, the re-emergence of those destroyed texts makes a structure that reveals new ones (The Chicago School of Media Theory).

Similar to a palimpsest, which is a "multi-layered" record, switched adoptee records and identities embody this concept. As I thought about the symbolism behind this for our records and identity, it's true that our identities have been scraped down and erased. Our identities are no longer

distinguishable amongst the thousands of files. Switched adoptees are discovering the ways in which their records have been "contaminated" and are exposing the ways they have been carelessly handled. After this traumatic realization, switched adoptees are left with needing to find the truth and dream of finding their own files and information to help make sense of their adoption.

I never imagined the information that accompanied me with my adoption to the United States would later reveal even more injustices within the Korean adoption system and the possibility of my own adoption information being intentionally or negligently switched, mishandled, and scraped down to nothing.

In 2012 the adoption narrative and identity that I'd always known suddenly changed. Throughout my reunion with my birth mother, a sensitive topic that was not talked about was the birth father. As I began to wonder more about him, I became curious to see what portion of my DNA he contributed. Conveniently, with my partner being a forensic scientist he was able to assist with DNA testing the birth family and me. Little did we both know what the DNA results would ultimately reveal. At this point, after having been reunited with my birth mother for almost five years, I was devastated to learn that we did not in fact share the same DNA. There are no words to fully describe

what it felt like to uncover this heartbreaking news. My coherent narrative that I thought to be true about myself based on my adoption paperwork suddenly vanished. All of the facts and figures that I grew up reading over and over again as a child, analyzing and imagining: "She hates to take a bath so she cries through bathing but feels refreshed after finishing it" and "She [Joo Young] was named by an intake worker wishing to grow up beautiful and pure as glass beads [Joo] and flowers [Young]." My glass beads shattered and I felt broken inside and not quite sure of how to piece everything back together again. No longer was my identity Park Joo Young, born on Aug. 22, 1982, transferred to Seoul on Aug. 27, 1982, at 2.6 kg. The relationship we had worked so hard to build across all barriers of culture and language appears to have been constructed around an incorrect set of information and documentation. The only truth was the new reality within a world that no longer linked us by blood.

Both my adoption agency in Minnesota and in Korea were "shocked" by this revelation and did everything they could to not assist me, refusing to take any ownership or responsibility. It was an isolating experience and I was left feeling heartbroken, confused, and struggling to make sense of things. Suddenly I was back to wondering who my birth family was, only this time not having

any information to start from.

Fortunately, G.O.A.'L. (Global Overseas Adoptees' Link) played a central role in assisting me and helping me navigate things. I will never forget the day in 2012 that we traveled down to Busan to share the news with the birth mother. I knew this was going to be quite possibly one of the most difficult conversations I may ever have. At this point in our relationship I was not only in reunion with her but also very close to a half sibling and also had formed relationships with the grandmother, an aunt and cousins. True to her character, the birth mother met the devastating news with grace and humility. Since then our relationship has only remained through limited contact with her son. I can only imagine the pain and sadness she must also be feeling through this traumatizing experience and ambiguous loss.

While it has taken some time to bounce back from this painful experience, I have continued to try and find my birth family. While I have been featured in different media outlets in Korea with the hope of finding them, so far the few leads that surfaced have not led to a successful DNA match.

All that You Change, Changes You

Aside from the personal impact DNA testing has had on my search and reunion

experiences by revealing different information about my identity and records, it has also shed light on even more complexities within the systems involved with adoption. I believe with the implementation of increased DNA testing in the adoptee community, additional switched files will come to light. Subsequently, this has raised many questions surrounding the values, principles, and standards practiced within the adoption agencies. I believe a larger discussion and increased accountability is needed with stakeholders to better meet the needs of our communities.

Adoption agencies facilitating reunions between adoptees and their family, then later proven not to be biologically related, can be and should be prevented. This could be as simple as including DNA testing in the process of family reunification to ensure a match before reuniting individuals. While I know this can be controversial, even the simple act of providing psychoeducation around the importance of DNA testing could help someone avoid being in the same uninformed position that I was in as I started my search and reunion. DNA testing has the power to reunite families as well as reveal information that would otherwise not have been known; therefore, we need to be prepared for anything. Additionally, we need to ensure agencies stop the practice of sending out photos and information to both

adoptees and birth family members, and only releasing such sensitive information when everything is confirmed.

Receiving pictures and other significant documents can have a huge emotional and psychological impact. Lastly, those who are currently in reunion, I strongly encourage you to consider taking a DNA test if you have not already. Yes, ignorance can be bliss. Some days I wonder how my life would be different if I didn't do a DNA test. As much as I would love to still be living my dream of being in relationship with my birth family, I also don't want to jeopardize someone else's dream of being with theirs. What if you are Park Joo Young? What if you are in reunion with another adoptee's birth family as a result of your file being switched? This may mean having very uncomfortable conversations, and trust me they aren't easy. I have come to realize the powerful ways DNA testing can impact our community, and we need to hold ourselves accountable since adoption agencies are not doing anything about it. These deliberate and emergent strategies can be life changing and can radically shape and shift our future.

The Only Lasting Truth is Change

Change is the constant force. How do we intentionally change in ways that

grow our capacity to embody the just and liberated worlds we long for? As adrienne maree brown (2017), drawing upon Octavia E. Butler's work, notes in her analysis of *The Parable of the Sower*, "I suspect that is what many of you are up to, practicing futures together, practicing justice together, living into new stories. It is our right and responsibility to create a new world" (p.15).

Here in America, our country is finally waking up and acknowledging the injustices that have systemically displaced Black, Indigenous, and People of Color, designating us as dispensable. At the same time, we are witnessing the powerful accountability of institutions that have caused incessant violence and abuse rooted in oppression. We are at a unique moment in history and I am inspired by the uprising happening through the Black Lives Matter (BLM) movement; shaping, shifting, and dismantling systems of oppression. We have a lot to learn from this movement and it is my hope that we can continue to reimagine things and create a new world.

Korean adoption is also a direct result of systemic, institutional, and societal oppression. As we uphold and uplift our community and focus our attention on the voices of Korean adoptees, I hope that we can be agents of change and transformation. It is incredibly empowering and affirming

to see the culmination of the Declaration on Adoption Truths Day. This year specifically being able to address the inherent structural issues in the adoption program and the historical practice of distorting adoption records and the long-prevailing culture of covering up these injustices. As we stand on the cusp of a possible future of change, we must not only address our communal and individual wounds, but promote adoption truths and imagine new structures.

I don't want the Korean government's masks, care packages, or loaded promises. I want restorative justice. This includes repairing the harm that has been done to people, relationships, and the community and an acknowledgement that the Korean adoption system has failed to support adoptees and birth families. This will require cooperative, inclusive conversations between stakeholders, and must include the individuals who have experienced the most harm being able to participate in finding resolutions. It is time we rise to this occasion to hold systems accountable. As I continue to think about what I need to change about my participation in these systems, I encourage you to do the same. We need to be willing to transform, evolve and change—that is the most radical thing we can do.

*All that you touch
You Change.
All that you Change
Changes you.
The only lasting truth is Change.
God
Is Change.*

- Octavia E. Butler, *Parable of the Sower*

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Stolen Identity, Missing Roots

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Introduction

It's a pleasure to share my story with you today. As incredible and unreal as it may sound, the story happened exactly the same way I'm about to tell it, and I did not invent anything.

My name is Jae-Hyong Kim Starzacher. Forty-eight years ago, when I was about 4 1/2 years old, I came to Switzerland by adoption to a family who had already adopted a girl from Korea. My sister, who is a year older, and I had a quite happy and carefree childhood, even if origin and Korean roots were not discussed and even though it was taboo. We were really inoculated with the idea that we were now real Swiss people, and the fact that we were of Korean origin (also visually apparent) was simply suppressed.

Even the way I was named shows that my adoptive parents had not dealt with Korea at

all. If they had, they would not have given me one of the most common Korean surnames, "KIM," as my given name. After my first trip to Korea in 2010, which I will talk about in more detail later, I decided to use Kim as my middle name and my Korean given name as my first name.

The Tiger Awakens

After I got married, and when my first two boys were about 5 and 7 years old, Korea became a frequent topic of discussion. The boys wanted to know where I originally came from, pestered me with questions, and developed pride in their Korean descent. I started to deal with my Korean identity for the first time and realized that an important part of my identity was missing because I had always hidden or ignored my Korean ancestry

so as not to provoke a confrontation with my adoptive parents. With my own children I suddenly had to deal with my Korean side and I realized that I knew almost nothing about myself, my origins, and my country of birth. To have to realize this was very painful.

In 2010, I decided to travel Korea with my family for the first time since my adoption. On my two-week trip, I had beautiful and moving encounters. I was always seen as Korean and I was also addressed in the Korean language. Since I didn't speak Korean, except for a few words, people were irritated that I didn't understand them, and after I was able to clarify that I am Korean but was adopted and grew up in Switzerland, they seemed very sad, sometimes guilty, often they apologized, but always they made me feel that I was very welcome. For example, the taxi driver who drove us from the airport to the KoRoot guesthouse spontaneously took me in his arms and, with tears in his eyes, said: "Welcome back home."

All these touching encounters gave me an incredible amount of strength and courage and I realized for the first time that an important part of me, my Korean identity, had been in complete darkness until now.

The Search for My Korean Roots

Newly invigorated and back in Switzerland, I decided to search for my Korean

roots and get in contact with my birth family. I went to Terre des Hommes, the organization that had arranged my adoption here in Switzerland, and asked for my file. Because the mother's name, her date of birth and address were available, I asked Terre des Hommes to contact KSS (Korea Social Service), the Korean counterpart, and look for my mother.

Over the next three years I was discouraged that KSS had not found my mother. In the end it was said that three women had been contacted, but all of them said that they had not given a boy up for adoption.

In 2013, I decided to travel to Korea again and take the search for my birth family into my own hands. At KSS I tried to get more information. The original dossier did not contain any additional documents or information that could have helped me in my search. The office manager of KSS confirmed once again that my search query had been unsuccessful. I was told that the information in my dossier must be incorrect. Often the mothers or the persons who put the children up for adoption had left false information about their identity.

The question today is why was this legally highly questionable practice tolerated? Why were the personal details not verified and correctly recorded? Was there no state supervision that could have ensured that

it was handled correctly? And what is the situation now?

I decided to travel to Busan with my life partner, and now second wife, to start my own search. Thanks to many very helpful people who supported me, an extremely friendly employee of the local district office in Busan was able to locate my alleged mother and contact her by telephone on the third day. I could hardly believe how relatively easy it was and that the search was successful after only three days.

Who Am I?

What a success! Unbelievable! Unfortunately, the story took a dramatic turn.

The mother told the employee that she was the "wrong mother" and that her son Jae-Hyong still lives in Busan. I immediately realized that I was not Jae-Hyong at all. But what happened? Who was I? On the same day, Jae-Hyong's elder uncle came to the district office and I showed him "my" Jae-Hyong dossier. He confirmed that all the information in the dossier was correct and repeated that Jae-Hyong lived in Korea.

The following day I received a phone call from Jae-Hyong's youngest uncle and he asked if he could meet me. He invited my wife and me for lunch and told me another incredible story.

Jae-Hyong's father and mother separated,

so the grandmother decided to give Jae-Hyong up for adoption. Being a single mother at that time in Korea was a great stigma (and apparently it is not much better today) and she would never have found a new husband. Since the grandparents knew that Jae-Hyong would go to a Swiss family, Jae-Hyong was "prepared" by giving him cheese to eat. Shortly before the adoption and departure from Korea, the grandfather decided to bring his grandchild back home from KSS. Jae-Hyong grew up with his youngest uncle at his grandparents' house, and he was told that his mother was dead. From that moment on, Jae-Hyong's mother pretended to be an aunt when she met her son. Isn't that crazy? And the whole family knew about the secret. Only Jae-Hyong and Jae-Hyong's mother's new husband knew nothing. And it gets even crazier: When Jae-Hyong's mother's husband died, which at the time was about 4-5 years earlier, it was revealed to Jae-Hyong that his "aunt" was not his aunt at all, but his mother. That must have been an incredible shock.

Realizing that I had lived with Jae-Hyong's identity for over 40 years, I wanted to meet Jae-Hyong and give his dossier back to him. But Jae-Hyong's uncle said it wasn't the right time. Jae-Hyong had had to deal with his first shock, and the fact that he could have been given up for adoption would probably have caused another one. Furthermore, the uncle argued

that we should wait until the grandmother had passed away, because the planned adoption was originally initiated by her.

After all that I had experienced in such a short time, I was also in a shock-like state. But I began to realize that KSS had not told me the truth for years. How was it that KSS could not find a person and I (not speaking Korean) could uncover the truth within days? Did they want to hide the fact that I was robbed of my Korean identity and given away for adoption with the identity of another boy?

There was one positive thing I got out of it. I had never been able to identify myself in the childhood photo of Jae-Hyong. When I said that I did not recognize myself in this photo, I was told: “No, no, this must be you. You maybe looked different when you were younger and your hair was just combed differently.” Now I had confirmed that the boy in the photo was not I, and my feeling had not been wrong.

With the absolute certainty that I am not Jae-Hyong, but with many open questions (“Who am I? What is my real identity”), I immediately travelled back to Seoul and confronted KSS with my research. Probably because the office manager was plagued by a guilty conscience, because she knew that she had withheld the truth from me, I was allowed to search my dossier in the archives for two days. According to Pastor Kim, it’s something

that has never been granted to anyone before. With only a few clues such as approximate age and gender, and a comparison of photos and the time period when I left Korea, the search was unsuccessful, to my great disappointment. In the end, when I had no more hope, the office manager of KSS came with three folders of files, where records of cancelled adoptions were obviously kept. And in these files I found the dossier of a boy named Hyun-Shik, which was a good match for me because of the photo, age, and description. In addition, the name Jae-Hyong was written in pencil in one place on the folder of one of the files. Obviously, there was a connection between the two dossiers. But no one has yet been able to plausibly explain why I left in 1972 with the identity of Jae-Hyong and not my own.

Was it a mix-up? Was it intentional? If yes, what were the considerations or intentions behind it? Is my case an isolated incident or is there a systemic failure? And last but not least: Who is responsible for this highly questionable practice?

Two years later I traveled to Korea again and tried to find my mother. Despite the great support of Professor NahYim (Yonsei University), whom I had met in Switzerland, our efforts remained without success. Obviously the information in Hyun-Shik’s dossier was not correct.

Conclusion

For myself, I am certain that the dossier of Hyun-Shik must be mine. For me my Korean identity is clear. However, my search is not yet complete. I would love to meet my mother, my father or a half-brother to find out what has become of their lives. Without wanting to reproach anyone, I would also be interested to know what the motives for my adoption were. Moreover, if a relationship should develop beyond getting to know each other, I would be overjoyed.

Therefore, I still have hope and there are some options that I have not yet exhausted. For example, I would like to start a search through DNA databases. Participation in a television program would also be an option. I would at least like to have the question of who is legally responsible for the “confusion” answered.

Last but not least, I would like to meet Jae-Hyong one day and give him back his file. With this step, and hopefully with the certainty that Hyun-Shik’s identity is my own, I would like to discard my false identity, my name and date of birth, and assume my true identity for the rest of my life.

They Lied to Our Mothers

Matthew Blesse

Chef

American Korean Adoptee living in Seoul

My adoption file reads:

The natural parents married each other for love in 1979. They were both college educated, they had one son. After their marriage, the natural father operated a construction business in cooperation with the natural mother's father. Unfortunately, their construction business operation was dishonored in the winter of 1985. Then, the father-in-law, its representative, concealed himself, and the natural parents squandered their fortune, at last, they were divorced from each other. Under the existing circumstances, severe financial difficulties particularly, they were not able to bring up this baby. They referred the baby to Holt for adoption in consideration of their baby's more desirable future and happiness.

My Korean mother was not college educated. She speaks the kind of English one knows from serving hands smoother than hers: "Hello" "How are you?" "How can I help you?" In the only photo I've seen of her as a young woman, she is head-to-toe denim, white heels, and '80s perm glorious, a look that says, "I know how to belt it out at norebang." She talked to my father about putting me up for adoption. He told her he would take me to a temporary place to care for me. My mother decided she would raise me by herself. He told her I had died, and she believed him for the next 31 years.

My American mother was told that my Korean mother was college educated. Is this how the adoption agencies tell their customers "the mothers knew what they were doing when they gave us their children"? She was told I had one sibling, was told that my Korean mother gave me up, like letting go of something you wished to see grow. My Korean mother didn't want a better life for me. She wanted me.

I thought I would never see my Korean mother. The adoption agency had sent a telegram, then gave up. Something about an empty storefront and an address with no occupants. A year later, the caseworker called me in the morning. I woke, annoyed to be awake, tired from last night's dinner-service shift. "Your mother wants to talk to you, can we give her your number?"

The first time I spoke to my Korean mother was over the phone. I don't remember what she said, I remember her crying. I remember sitting and listening to her breath sparking in and out. I felt like I should speak, but

couldn't. I felt like I should cry, but couldn't. I didn't know what she thought she had lost.

I found out later, she thought I was dead. For 31 years. My father told her I died, and so she thought I was dead. My father took me to an adoption agency. She decided she wanted to raise me by herself, and when she asked for me back, my father told her I had died. She raised a daughter, a son, and another son who was not of her blood, but she raised him anyway and thought I was dead. She worked behind fryers at chicken shops and cooked *jjigae* for her children at home, and thought I was dead. She spoke working-class English, and laughed with her sisters on holidays, and never told anyone about me, and thought I was dead.

I went to America and learned taekwondo and went to a camp for adoptees and had a crush on my counselor and wrote my name "Matthew" in Hangul, and she thought I was dead. I got pretty good grades in English, fought my American mother about a Mustang I wanted to buy even though we lived in a town that

snowed every winter,
and when it snowed in Korea too, my Korean
mother thought I was dead.

Is this why the agencies tell us these stories?
How would I have had time for girlfriends or
college parties if I knew she thought I was
dead?

I did everything a good adoptee was
supposed to.
Poems and thesis papers,
what do they mean if for 31 years my mother
thought I was dead?

Once, a year after we had reunited,
at my sister's house,
when the alcohol and soju allowed the stories
to spill out of my mother,
she told me how my father had given my
brother alcohol to quiet his crying
and how she found him in a puddle of his
own vomit,
how she held him tight,
and took him away from there.
I wonder if in that moment, if she thought
she had lost another son?

How do I tell her that I am not lost, even
when I am flesh before her?
How do I tell her that I am full, when all she
wants to do is feed me?

How do I eat enough
to give me back to her?

She's called me on every birthday since we
met,

The last time she was crying again,
she kept asking, "You are my son. Do you
know that? You are my son?"

I know now how to say, "I am."

But when I say it, it feels like I'm trying to
give her something
that can never be given back.

The Impact of Missing Adoption Information on a Person's Life

Young-chang MIN

Co-director, Domestic Korean Adoptee Association

Domestic Adoptee

Greetings. My name is Young-chang MIN. I am an activist working in solidarity with domestic and international adoptees, a computer programmer, and the father of three children. I live an ordinary and yet not so ordinary life. When I was 12 months old, I was secretly adopted by domestic adoptive parents. A "secret" adoption means that there are no public records or information about my birth.

First, I will briefly share the story of my adoption. I was adopted by a mother and father in their 40s who cherished me. I was the only son in three generations of my adoptive family. I grew up being told that I was a precocious child, and I was rarely punished by my parents. Before entering public school, I was privately tutored in hanja (traditional Chinese characters) by my father's friend who was the village schoolmaster. At annual family gatherings,

our relatives gave great deference to my father, calling him "the Godfather," and treated me with courtesy by extension. At the time, I took it for granted that relatives in their 40s would refer to a 10-year-old child as their "senior" in the family.

The neighborhood where I lived was a small rural village of around 20 households. The residents lived close together and knew much about one another. I suspect that most of the villagers, aside from myself, knew that I was adopted. When I was about 8 years old, a close older friend abruptly said something mean to me. I wondered, "Why is he suddenly saying such mean things?" I couldn't understand the situation, and I was left with a strange emotion. In retrospect, I believe this was the first time I noticed other people looking at me with the thought that I was adopted.

It was in my first year of middle school, when I was 13 years old, that I recognized the truth of my adoption for the first time. My friend's father said in passing, "Your mom and dad aren't your real parents. You should find your parents." I don't recall his exact words, but my life changed a great deal after that day. I felt confused and I spent much time in deep thought. I may have even felt suspicion and anger toward my parents.

To a child, parents are an absolute authority, and it is hard to question or think to verify the information they give. How would a child feel upon realizing that this figure of authority had given information containing a terrible untruth? The child must feel lied to or betrayed. The concept of childrearing might be hard or impossible for a child to comprehend. So perhaps it is natural for a child not to ask "Why am I not being raised by the parents who gave birth to me?" but to instead wonder "Why was I abandoned by my parents?" I remember that this was when I first experienced this inner turmoil, and it led to feelings of self-loathing. These feelings led to rebelliousness in close relationships including those with my own family.

If I look back on my choices at that time, there are many things that are hard to understand. Why did my foolish 17-year-old self make those foolish decisions? Maybe I wanted to show my wish not to have my

existence be denied. Of course, every adoptee has unique circumstances, so I can't make a generalization based on my own experience. Even so, the falsification of adoption records, and the damage and confusion that it causes to one's sense of identity, are undeniable truths.

I attended university late in life, and then entered a hectic period of life in the real world. I got married, had kids, and thought I was living a good life for a time. Perhaps I created this environment for myself intentionally. Then I was once more confronted with the problems of adoption and my own conflicted identity when I had children of my own.

It happened when my third child was 2 years old. My child looked at me and said the word "Daddy" and then "Really." That was when I wondered, "How did my birth mother feel when she sent me away?" According to her statement, my birth mother had her child taken away against her will, and she felt her life was also being taken away. Being forced into a path that was not of her choosing, what purpose or hope did she have? She said all that was left was a ruined life filled with scars.

To explain my feelings in more detail, I was doing my best to protect my children. So I wondered why my own birth parents failed to protect me. Who must I ask for accountability for the failure to protect my rights? These questions were accompanied by feelings of anger. At these times, I felt "a gaping hole in

the center of my heart." I wondered why I was abandoned, felt frustrated that there was no one I could ask, and wondered why my existence had never been properly documented. All these thoughts led to anger toward the society in which I was living. A historian had once said, "History that was never recorded does not exist in the world." By that token, am I part of a history that is nonexistent, or should never have existed in the first place? After I stopped torturing myself with these foolish questions, I resolved to find records about myself.

From the start, my search was fraught with uncertainty and hardship. I didn't know where to begin or how, and I didn't have enough courage. I used the few scraps of clues that my mother had given me to go about my search for a few months. I wandered around the area where I was born asking questions and feverishly searched online for other records and documents from that time. I was able to piece together a partial understanding of the circumstances, but I was unable to find my own records anywhere. Even so, discovering even these mere traces of myself was comforting to me. Finding my starting point, and the evidence of my existence, proved to be the best method of healing.

While looking for the place where I was born and had lived briefly, I realized that I am not a lone variable existing in solitude. Ultimately, a large part of my life depends on

the state system and society in which I live, and this cannot be viewed solely as a matter of my own personal experience.

How hard will it be to bring change to problematic practices and adoption systems maintained for over 50 years? What damage might this do to related organizations? I am always in support of providing a healthy environment for children to grow up in through adoption. And I also believe it is important that we adopt a sense of responsibility and pay heed to the struggles and identity crises that children needlessly suffer. These are healthy considerations that can foster healthy, independent members of society. It is my firm belief that having accurate information is where we can begin.

Session 2: Role of the State in Adoption

1. Identity: A (Human) Right to Ancestry and Genetic Origin?

Alice DIVER *Senior Lecturer in Law, Liverpool John Moores University*

2. Current State of the Adoption System and Working to Ensure the Best Interests of the Child

Jung-eun KANG *Lawyer, DuRoo Association for Public Interest Law*



Identity: A (Human) Right to Ancestry and Genetic Origin?¹

Dr. Alice Diver

School of Law, Liverpool John Moores University, Liverpool

1. Introduction

The absence of ‘ties meaningful’ (Ronen, 147) can easily curtail the realization of rights claims that are grounded ‘only’ in the need for authentic, genetic identity. Often, there is a need to evidence some form of ‘remembered relatedness,’ for example when seeking permission from jurists or government departments to access one’s original birth records or make some form of contact with estranged biological relatives. This paper will argue that a right to avoid origin deprivation—and access truths surrounding our genetic ancestry—can, in theory at least, be found or crafted from a number of relevant human rights provisions, not least those that have long served elsewhere to protect family life, familial contact, and child welfare paramountcy. The first half of the paper outlines how human rights frameworks might be used to underpin and argue the right to original identity (including persuasive Guidance in the form of UN Country Reports). The second half examines recent relevant jurisprudence on this area of law, looking particularly to the recent case law on gamete donation and surrogacy, much of which seems to hold increasing relevance for closed-records adoptees seeking to connect with their genetic relatives, even though its messages are mixed in terms of promoting the rights of

1. I am very grateful to the conference organisers for their kind invitation to present this paper. Some sections of it have been published as a book chapter (in Diver, *A Law of Blood-ties: The ‘Right’ to Access Genetic Ancestry* New York: Springer, 2013); some of the material will also appear within a forthcoming journal article entitled ‘Monstrous’ otherings?’ The Gothic nature of origin-tracing and ‘non-rights’ in law and literature’ *Adoption & Culture* (forthcoming, 2021).

relinquished persons. It concludes with a discussion of some of the recent UN initiatives aimed at addressing the various inequities that can arise from depriving people of origin, namely, harsh othering and ‘orphanisation.’

2. Conceptualizing access to genetic ancestry as a human right: law and policy frameworks

Limited justiciability attaches to the ‘right’ to avoid origin deprivation (or, more accurately, genetic non-ancestry). Within human rights law however, certain entitlements to access at least some key aspects of genetic identity can be found. Citizens generally have the right to possess both name² and nationality, given that States are duty bound to respect ‘cultural integrity’³ where possible. Other relevant principles and concepts include human dignity, the best interests of the child,⁴ equality, and non-discrimination,⁵ even if domestic interpretations of these can differ profoundly across jurisdictions. As Sclater and Kaganas have argued, the child welfare paramountcy principle is particularly problematic, given the ‘myriad meanings’ that often tend to render it quite ‘indeterminate’ (168). Given also that many socio-economic rights entitlements—such as the right to respect for home, family and private life under Article 8 of the European Convention on Human Rights (‘ECHR’)—are often heavily resource-dependant, it may be argued that these so-called entitlements seem more akin to non-judicial, finite or rationed privileges.

If we accept however that ‘universal protection of relationships with significant others is in fact protection of the distinctness and the uniqueness in the individual’ (Ronen, 151), then vetoes on information disclosure and contact become problematic. The Children’s Convention clearly aims to protect ‘authenticity’ and ‘self-realization’ of individual identity (Ronen, 149). It

2. See for example Articles 16 (1) (a) and 30 (1) of The Hague Convention.

3. See Article 27 of The International Covenant on Civil and Political Rights (‘ICCPR’) and Anaya (97-103) on the international legal and customary norms of non-discrimination and protection of cultural integrity.

4. See Article 3 (1) of The Children’s Convention (‘UNCRC’) which states that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

5. See for example the anti-discrimination provisions of the Universal Declaration on Human Rights (1948) (‘UDHR’) namely Article 7; Article 2 (‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’); Article 25 (2) (‘Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.’ See also Article 6 of The Universal Declaration on the Human Genome and Human Rights (1997) which states that ‘No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity.’

is noteworthy however that during its drafting stage several signatory states expressed unease over the inclusion of a clause on the ‘biological element’ of identity for fear it might conflict with future domestic policies on reproductive technologies.⁶ As Detrick, Doek and Cantwell noted, some Working Group members disliked the term ‘family identity’, preferring instead a much less expansive notion of ‘family relations as recognised by law’ (294). It seems that, rather than reaffirming a commitment to removing obstacles to ‘birth-kin repatriation’ (Brower Blair, 642), the Convention’s drafters avoided the creation of any positive obligation to actively facilitate information release (Stewart, 224). ‘Borderline or unusual conditions’ were also not considered, and there was little acknowledgement of the adverse consequences of living with genetic kinlessness (Stewart, 223).

Article 21 of the Children’s Convention framed international adoption as akin to the domestic sort, stressing the need for parental consents to relinquishment. Its silence on issues of biogenetic information release has meant however that domestic legislators and jurists must make hard decisions with ambiguous guidance⁷ and against a backdrop of an increasingly deep lack of consensus on such matters.⁸ Article 20 (1) does at least call out for ‘special protection and assistance by the State’ to include any children ‘temporarily or permanently deprived of ... family environment.’ Article 20 (3) stresses the ‘desirability of continuity’ but is silent on more pragmatic issues such as the opportunity for reunion, and access to meaningful information. Arguably, the right to preserve genetic heritage could fall within this provision’s requirement that States have ‘due regard’ for the child’s ‘ethnic, religious, cultural and linguistic background.’⁹ The Convention is not unequivocal however: its Preamble states that families are of ‘fundamental importance’ and stresses the need for ‘full and harmonious development of ... personality.’¹⁰ It goes on to highlight ‘authenticity’ within a ‘cultural context (and) personal

6. During its drafting, only one signatory state suggested that a ‘biological element’ of identity ought to be included in the final draft of the Convention. See also the Report of the Working Group on a Draft Convention on the Rights of the Child (1989) E/CN.4/1989/48

7. See also The Hague Convention (1993) Art 31 which (together with Articles 15 and 16) states that any items of information ‘shall be used only for the purposes for which they were gathered or transmitted’.

8. The ‘margin of appreciation’ is a doctrine referred to by enforcement/judicial bodies (such as the European Court of Human Rights) in determining whether signatory states have acted in breach of their Convention obligations. States are permitted varying degrees of discretion in carrying out certain obligations at the level of domestic compliance, especially where certain rights might be subject to a variety of differing interpretations by member states; factors such as religious or cultural differences will generally be taken into account, as will a lack of consensus over contentious issues. See further *O’Donnell* (1982).

9. Article 21 (a) deals with the issues of parental consent, inter-country adoption and the prohibition of financial gain.

10. See The Preamble to the United Nations Convention on the Rights (‘The Children’s Convention’) of the Child, Para 5

meaning’ (Ronen, 147) but creates no juridical duty to actively protect or realise identity rights for those affected by parental vetoes or genitor anonymity laws. Support for the psychological benefits of knowing familial origin can at least be implied to some extent: Articles 7 and 8 speak to the significance of ‘family relations’ even if they do avoid defining relatedness.¹¹ Article 9 (1) allows for kin separation only where the child’s best interests require it, whilst Article 9 (3) provides for the maintenance of ‘personal relations and direct contact,’ again unless best interests demand otherwise.¹² The Convention fails though to define exactly which categories of relatedness might fall within its potentially wide remit of ‘family relationships’ (McCarthy, 12). Article 9 (3) refers only to the need for contact between child and parents, with no mention of siblings or other kinfolk.¹³

The presence of ‘ties meaningful’ (Ronen, 147) remains a key factor as seen recently in the European Court of Human Rights in *Paradiso v Italy* (2017), a difficult case involving surrogacy, adoption, and unknown genetic parentage (examined in the next section).¹⁴ Where there is a lack of ‘remembered relatedness’ any bonds formed by gestation and/or birth may simply be ignored by jurists, or seen as having withered on the vine (for want of a better analogy involving family trees or biological roots).¹⁵ Conversely, the absence of genetic relatedness has also been used to essentially justify the permanent removal of an infant from his parents (as in *Paradiso*). And yet meaningful psychological bonds are needed it seems to spark rights to respect for family life (under Article 8 of the European Convention). Such reasoning fails to take into account many key socio-cultural aspects of one’s identity which will not easily be ‘remembered’ during infancy if one has been relinquished by birth parents and adopted out into another culture: ethnicity, culture, religion, and nationality can easily be lost or removed, as seen in ‘scoop’-led adoption practices of the past century, across a number of jurisdictions.

11. See Article 8 of The Children’s Convention which states that (1) ‘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.’ (2) ‘Where a child is illegally deprived of some or all of the elements of his identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.’

12. Article 9 (4) covers the provision of information but is clearly aimed at situations involving civil or political rights violations such as ‘detention, imprisonment, exile deportation or death’ rather than adoption or assisted conception. See also Articles 20 (1) and 22 (2)

13. Article 9 (3) states that ‘State parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.’

14. European Court of Human Rights, Grand Chamber, (2017) Application no. 25358/12

15. See for example *Keegan v Ireland* (1994) (App no 16969/90) 18 EHRR 342; *Kroon v The Netherlands* (1995) 19 EHRR 263; *X v Croatia* (app no 12233/04) (17.07.2008); *Johansen v Norway* [1996] EHRR 31 (app no 17383/90) . See however *Marckx v Belgium* (1979) (application no 6833/74) (1979)

The Children's Convention similarly places no legal obligation upon parents to inform their adopted or donor-conceived children of their biological heritage or indeed provide them with any useful information on it.

The apparent tensions between Articles 5, 12 and 13 of the Children's Convention (on the child's right to 'be heard' and to participate in all proceedings affecting them) reflect the problems attaching to child protection and identity formation more generally (Ronen, 162).¹⁶ The issues surrounding legislative and judicial balancing of these competing principles (put bluntly, child protection versus child participation) have been repeatedly raised by The UN Committee on the Rights of the Child.¹⁷ And yet, the rights enshrined in Article 8 of the Children's Convention could easily be referred to—if not expanded upon—in domestic hearings to permit courts to look beyond the usual hard borders of family, nationality, and name. Arguably, they could cite these persuasive principles to include socio-cultural aspects more fully within their analyses of what 'original identity' might be comprised of. Article 10 might prove similarly useful, insofar as it appears to promote the reunification of estranged family members, by highlighting the need for regular contact between children and parents who 'have been separated,' even though its wording is of course much more suggestive of separations brought about by civil or political crises (territorial displacements, conflicts, genocide) or contentious private issues (marital separations, familial breakdown).

The European Convention on Adoption (2008)¹⁸ ('ECA') seemed to embrace the spirit of the Children's Convention by highlighting the importance of the voice of the child. The issue of making information available to adoptees was however tied to a policy of 'age-appropriateness.'¹⁹ Arguably, some 'nuancing of the severing of all links' (Horgan and Martin, 161) now exists in certain

16. See also Freeman's (1996) comparative analysis of the lack of identity rights of donor gamete-conceived individuals as opposed to those of adult adoptees generally in open records jurisdictions such as the UK.

17. See for example the Committee's Observations on Saint Lucia CRC/C/150 (2005) 10 para 66 which recommended that the views of the child be afforded greater consideration in decisions involving custody after parental separation; Islamic Republic of Iran CRC/C/146 (2005) 88 para 462 which noted that the 'best interests' principle of the child is often completely side-lined in favour of custody decisions based upon the age of the child, and how this often tends to discriminate against mothers.

18. Approved at the 118th Ministerial Session (Strasbourg) March 2008; adopted May 2008, opened for signatures November 2008. Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/202.htm> accessed 19.07.20 This effectively replaced The 1967 European Convention on Adoption which appeared to support harmonization of domestic laws on international adoption: no means of enforcement was created by the 1967 Convention nor was it included in the *Acquis Communautaire* of EU member states. Sweden formally denounced the 1967 Convention in January 2003, whilst the UK partially renounced its provisions in June 2005.

19. Article 5(a) of the 1967 Convention set out the suggested minimum level of 'essential principles' that signatory states should aim for in respect of domestic adoptions. These permitted but did not require secrecy in relation to the provision of medical information.

circumstances: blood-ties still remain key to parental duties of fiscal support or preventing marriages between genetic relatives. Article 10 of the ECA allows for alternative models of adoption ('simple', customary or de facto) that preserve biological links while Article 22 addresses the issue of balancing the privacy (i.e. 'anonymity') rights of relinquishing parents.²⁰ And yet a wide degree of discretion is still afforded to domestic authorities: decisions on information release rest largely with national legislators and courts, who are only required to 'bear in mind' the provisions of Article 7 of the Children's Convention, rather than having to actively or usefully embed it within domestic law or policy frameworks. Unlike the 1993 Hague Convention, Article 14 of the ECA does acknowledge that adoptive placements can be revoked,²¹ though it seems to assume that full integration (legal, social, psychological) into the substitute family is the preferred outcome: as such, non-disclosure vetoes and wide-ranging adopter discretion (e.g. on issues such as birth family contact) still hold sway. The ECA offers little guidance on how knowable ancestry might actually be achieved, providing merely that, where parentage is in dispute, 'adoption proceedings shall, where appropriate, be suspended to await the results of the parentage proceedings. The competent authorities shall act expeditiously in such parentage proceedings.'²² Similarly, signatory states are encouraged rather than bound to enact specific, useful legislation that might favour those of us who search for our original kinfolk.

Guidance on the avoidance of origin deprivation and genetic kinlessness within the various UN Committee Documents remains fairly limited too. (Though non-binding in nature, the results of such international scrutiny at least offer some measure of censure for non-compliant signatory states.²³) The Committee has reiterated the need to preserve links between children and their 'own distinctive communities,' noting how child protection systems should consider 'indigenous culture, values and the child's right to indigenous identity.'²⁴ There is some disquiet over e.g. information vetoes, and the ways in which some children 'born out of wedlock' will simply never be able to

20. See Article 22(3) which states that 'The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.'

21. See for example the Irish High Court case *A G v Dowse* [2006] IEHC 65

22. Article 16 (2008 Convention)

23. See <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> (accessed 18.07.20).

24. As the International Reference Centre for the Rights of Children Deprived of Their Family ('IRC') noted in respect of incidences of child abandonment in Islamic states, 'the reasons ... are very similar from one country to another: children born out of wedlock are the first victims of abandonment and they remain stigmatised throughout their life.' IRC (2007:2). See further Bargach (2002) and Ishaque (2008).

'know the identity of their father.'²⁵ Protection against the lingering social stigma of 'illegitimate' birth seems unlikely to be achieved solely via international law principles however, given the wider socio-cultural aspects of this particular form of 'othering.' Much of the jurisprudence on genetic identity rights seems to fall within the realm of 'private law,' not least its usual definitions on parentage, parenthood, and parenting. This is so even though The Hague Convention on Intercountry Adoption (1993)²⁶ seems to speak to public law principles, by requiring States to compile 'identity' information on the 'adoptable' child, including 'background, social environment, family history, medical history, including that of the child's family.' Although its Article 16 (1) (b) requires that 'due consideration' should be given to the child's 'ethnic, religious and cultural background,' states are equally obliged to take care 'not to reveal the identity of the mother and father, if, in the State of origin, these identities may not be disclosed.'²⁷ Clearly, 'no substantive norm' (Stark, 68) attaches either to promises of confidentiality made to birth parents or to the practicalities of releasing information to their descendants. It is noteworthy too that the Hague Conference on Private International Law ('HCCH') (in assessing the impacts of Hague 1993 over two decades) recently found that '...some States noted that further work is required to preserve information relating to the origins of children and to allow adoptees to access this information with the necessary counselling and support' (2015, 22).²⁸ It was seen as significant also that 'the Convention establishes only basic standards in relation to post-adoption services' (2015, 20).

As Anaya has stated, a 'cultural integrity norm ... requires diverse applications in diverse settings' (104). It seems unlikely that a usefully detailed template for reparation or repatriation will arise in respect of lost or removed genetic ancestries. As Oren has argued of disputed parentage scenarios

25. See St Vincent and The Grenadines CRC/C/118 (2002) 101 para 437. See also Haiti CRC/124 (2003) 95 para 426, which highlights Article 306 of Haiti's Civil Code, which makes it illegal for children born out of wedlock to learn the identity of their father; Luxembourg CRC/C/146 (2005) 36 paras 184 and 185. See also Austria CRC/C/146 (2005) 47 paras 251, 252; Morocco CRC/C/132 (2003) 100 para 482; Syrian Arab Republic CRC/C/132 (2003) 116 para 554; Pakistan CRC/C/133 (2003) 37 para 210. Concern over the lack of guidance available to providing care for 'parentless' children was evident too. See for example the Day of Discussion (2005) CRC Outline CRC/C/146 Annex II *ibid* para 4; See also CRC-*Children Without Parental Care* (2005) Recommendations [CRC/C/156, Chapter VI]

26. The Hague Convention (1993)

27. Article 16 (2). See also The Convention on Jurisdiction, Applicable Law, Recognition Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996) available at http://hcch.e-vision.nl/index_em.php?act=conventions.text&c id=70 accessed 13.07.20 which contains some guidance on promoting the best interests of the child at domestic level. See Article 4 (b) however which specifically excludes 'decisions on adoptions, measures preparatory to adoption, or the annulment or revocation of adoption.' Article 6 (1) however does apply to 'refugee children', children who have been 'internationally displaced' and 'children whose habitual residence cannot be established.'

28. <https://assets.hcch.net/docs/f9f65ec0-1795-435c-aadf-77617816011c.pdf> (accessed 18.07.20) Where non-signatory states are involved, bilateral agreements may be drawn up, which may - or may not - reflect the aims of Hague (1993). (para 12)

(in respect of Argentina's Abuelas atrocity), the rights of the child—and the remit of the best interests principle—may often be determined only after gauging which set of competing adults has the stronger 'parental rights claim' (187). Where a loss of genetic identity has arisen through political upheaval or enforced cultural assimilation it might, hypothetically at least, be regarded as tantamount to rights-violating 'inhuman or degrading treatment' as was argued in connection with the Abuelas. Categorising origin deprivation as a civil or political rights issue (rather than a socio-economic one) would at least align the notion with powerful—often much more juridical—concepts within international human rights law. There is for example a clear duty upon states to actively enable identity protection under Article 24 of The International Covenant on Civil and Political Rights (1966) ('ICCPR')²⁹ which mirrors those found in Article 15 of The Universal Declaration on Human Rights (1948) (The 'UDHR'),³⁰ and Articles 9 and 4 (a) of The European Convention on Nationality (1997).³¹ Article 9 of The Nationality Convention also refers to the recovery of lost nationality; 'Each State Party shall facilitate, in the cases and under the conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.' The wording of this provision seems to place a largely aspirational, non-interference obligation on signatory states to 'facilitate' rather than actively enforce or monitor the right to recover lost nationality, however. The right is further qualified by provisos on territorial residence and prolonged habitation, not to mention the inclusion of a reference to national laws. Such limitations are usually more associated with resource-dependant, socio-economic human rights such as the state's duty to promote and protect respect for family life rights.³² Cultural heritage rights do often also tend to rely upon various 'land-based' property aspects: place of habitation or birth, or tribal status via residence on Native land for example.³³ This perhaps weakens the argument that a right to identity might be best conceptualised—or realigned—as a political, rather than socio-cultural entitlement. Where a child has been conceived

29. Articles 24 (2) and (3) of The ICCPR state that; '2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.'

30. Article 15 of the UDHR states that '1. Everyone has the right to a nationality 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'

31. Article 4 (a) states that 'everyone has the right to a nationality'

32. See Article 10 (1) of the International Covenant on Economic and Social Rights (The 'ICESCR') which states that 'The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.' and Article 16 (3) of the UDHR which describes the family as 'the natural and fundamental group of society and is entitled to protection by society and the State.'

33. See for example *Re Bridget et al (Minors)* [1995] BO93520 (The 'Rost twins case') where the question of whether or not the children possessed Pomo ancestry appeared to turn on the issue of paternal residence on tribal lands.

or born in one jurisdiction but adopted in another for example it will be difficult to establish a right to genetic identity information by simply arguing the ‘right’ to name or nationality. Origin deprivation in such circumstances might result in ‘statelessness’ (as has occurred in some of the case law referred to in the second half of this paper).

‘Identity’ rights are far from absolute therefore and will likely remain open to widely varying interpretations across domestic courts. In other words, possessing ‘a name’ (Article 24 (2) ICCPR) is not necessarily the same as being afforded unfettered access to original onomastic information or accurate, authentic birth/conception records. The right to ‘acquire nationality’ (Article 24 (3) ICCPR) similarly does not equal those rights which might arise by virtue of birth or knowable, evidenced ancestry. Loss of nationality seems increasingly subject to domestically drafted, rapidly changing sanctions (such as immigration laws).³⁴ And yet, Article II (e) of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (‘The Genocide Convention’) promotes the right to ascertain one’s ‘national identity.’ Genocide included within its definition ‘forcibly transferring children of the group to another group.’ The wording suggests some degree of acknowledgement that genetic identity matters, both in terms of discovering and preserving it, and providing meaningful redress for rights violations (Stewart, 223).³⁵ The harms of identity loss have been acknowledged: indigenous adoptees in the United States have suffered ‘society... putting on them an identity which they didn’t possess and taking from them an identity that they did possess’ (Westermeyer, 1974).³⁶ Conceptual framings of identity loss should therefore include its socio-cultural and civil or political aspects.

Denials of cultural heritage may affect key rights to occupy or possess land, learn a language, practice religious belief, or hold tribal status. As Article 27 of the ICCPR states: ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’³⁷ The duty upon

34. Provided that this has occurred in a ‘non-arbitrary’ fashion; See Article 15 (2) UDHR

35. This point, coupled with the argument that much harm can flow from loss of identity was central to the arguments of the *Abuelas*’ families. Stewart appears to suggest that a right of repatriation should not however be ‘absolute’ given that it might defeat ‘competing interests’. These are not defined but presumably might include conflicting parental rights such as privacy or familial autonomy or perhaps wider public interest, where the use of finite state resources would be involved e.g. in facilitating kin contact.

36. Indian Child Welfare Programme *Hearings before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs* (1974) 93d Cong 2d Session 46 per Dr Westermeyer J

37. See also Pritchard (1998) on The Human Rights Committee’s General Comment No 23 (50) (Art 27) para 6.2 which suggests that Article 27 places a positive obligation on signatory states to actively protect ‘the identity of a minority.’

states to preserve ‘cultural integrity’—especially in relation to the rights of vulnerable minorities, ‘parentless’ children, or displaced persons—seems an obvious one. As Anaya has further argued on cultural heritage rights, ‘While in principle the cultural integrity norm can be understood to apply to all segments of humanity, the norm has developed remedial aspects particular to indigenous peoples in light of their historic and continuing vulnerability (102).’ The wording of Article 27 (ICCPR) is however such that individual identity rights issues could easily fall outside of its protective remit. It appears to assume that certain groups will always possess essential knowledge as to the original identities—or whereabouts—of their ‘lost’ members, and that dispossessed adoptees for example might have some useful awareness of what their own cultural persuasion or nationality would have been had they not been relinquished and then affected by origin deprivation. Where individuals are denied truths through the lawful exercise of parental discretion, vetoes, or court decisions on information release or familial contact, provisions such as Article 27 (ICCPR) become ineffective, if not completely irrelevant. Harms in this context can quietly but profoundly affect individuals as private law matters, rather than being regarded as ethno-racial violations of collective, cultural heritage rights.³⁸ In other words, they can be deemed both ‘necessary and proportionate,’ given how new bonds of social and familial kinship are meant to bring much-vaunted, protective ‘permanence’ to those who have been genetically abandoned or relinquished. In any event, it seems that a wider ‘rights-based approach to children’s issues’ is gradually enabling a ‘decisive shift’ in domestic judicial attitudes towards the notion of children’s rights in general (McCarthy, 1) even though the jurisprudence in this area remains inconsistent.

Whether a right to genetic identity should be framed as a ‘new’ right or not is still open to question. Newer rights may be vulnerable to resource dependency and lack the redressive urgency associated with older, more established rights (Cerdeña, 115-117).³⁹ Article 8 of The Children’s Convention—perhaps now more of a middle-aged provision rather than an adolescent one, in human rights terms—was aimed at fixing the ‘legal void’ that can prevent displaced or abducted children from reconnecting with their original families (Stewart, 222). As its Argentinean sponsor presciently observed at the time of drafting, meaningful implementations tend to require considerable willingness on the part of

38. See for example the ‘traumas and identity conflicts’ arising in *Serrano-Cruz Sisters v El Salvador* Inter-American Court of Human Rights (March 1, 2005) Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120 para A (1) at page 13. On the American Convention on Human Rights generally, see Robertson and Merrills (1996)

39. See also Stewart (1992-1993) who suggests that the right to identity under the Children’s Convention successfully conforms with Alston’s (1984) template for ‘new rights’

domestic legal systems to interpret their Convention obligations pro-actively (Cerda, 116). So, while cases involving cultural heritage or national identity losses are likely to involve calls for ‘displaced’ children to be repatriated, private law cases involving adoption or donor anonymity will not. They are likely to remain subject to tough veneers of political and judicial deference towards the sanctity of family privacy. As Brower-Blair has further noted, ‘current practices of the nations of the world regarding release of identifying information are not sufficiently uniform to support an absolute right to information under customary international law or general principles of law’ (643). She cites two key factors: a lack of international focus on the issue of disclosure and the use of judicial balancing exercises to determine when parental interests ought to outweigh the rights of the child. Whether the persuasive influence of international law principles might eventually bring about ‘the required level of recognition’ remains to be seen (660–661). The Council of Europe’s Joint Declaration on Intercountry Adoption (2008) appeared to acknowledge the difficulties faced by ‘parentless’ children: its Preamble stressed the paramountcy of child welfare by declaring that the ‘higher interests of the child must take precedence over any other consideration.’ It has placed a positive obligation upon signatory states ‘to respond to the psychological distress of all their abandoned and orphaned children’ (para 4). It called also for consideration to be given ‘at European level’ to the setting up of an ‘adoption procedure based on the exchange of good practice between States.’ And yet, errors occurred: by amalgamating international law policies on intercountry adoption with those aimed at preventing child trafficking, for example, many ‘abandoned and orphaned children’ fell outside the remit of the law and were denied any ‘right to a family,’ remaining in long-term care.

Such discrimination may occur even where national and regional charters have been ‘layered’ on top of one another in a bid to better incorporate basic human rights provisions into domestic law and policy (Diver, 2013). Quebec’s veto system for example is essentially at odds with the non-discrimination provisions of The Canadian Charter,⁴⁰ which require equality of treatment for all Canadian citizens irrespective of birth status. S.3 of The Canadian Human Rights Act (1985) similarly included “family status” as one of the prohibited grounds of discrimination.⁴¹ The Quebec Charter of Human Rights and Freedoms (1976) references socio-economic rights, with s. 10 providing

40. Section 15 (1) for example, guarantees that, “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

41. Section 3 of the Canadian Human Rights Act (1977) lists the prohibited grounds as ‘race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.’

that “every person has a right to full and equal recognition and exercise of his human rights and freedoms without distinction, exclusion or preference.”⁴² It stresses too that “discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such a right.” The Quebec Charter’s careful drafting enables balancing exercises to be effected however in favour of preserving parental privacy. Although s. 5 guarantees the “right to respect for ...private life” s. 9 clearly prioritises parental interests by proclaiming that “every person has a right to non-disclosure of confidential information.”⁴³ Wording matters: it is difficult to see how an adoptee might successfully plead that an unjustified interference has occurred in respect of either their identity or family life given the veto-friendly nature of the Quebec Charter. Canadian NGOs have noted that the use of the non-disclosure veto does not appear to comply with the requirements of Section 15(1) of the Canadian Charter, Section 3 of The Canadian Human Rights Act or indeed Article 3 of The UN Children’s Convention, in preventing discrimination against adoptees.⁴⁵ This is ironic given The Supreme Court of Canada’s definition of discrimination as:

*“a distinction, whether intentional or not but based upon grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individuals or group not imposed on others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.”*⁴⁶

The concept of genetic identity should not simply be dismissed as an irrelevant issue in court

42. The Charter’s Preamble also declares that ‘all human beings are equal in worth and dignity and are entitled to equal protection of the law.’ See further Gosselin v Quebec (Att Gen) [2002] 4 SCR 429, 2002 SCC 84 on violations of the Charter’s provisions.

43. S 52 also provides for general derogation from The Canadian Charter.

44. Quebec’s opposition has been well-documented with the Province’s federal government being the only one to avail of the Charter’s controversial ‘notwithstanding’ clause to effectively achieve a degree of non-compliance in respect of other matters. Arguably, Quebec legislators were perhaps being mindful of France’s long-established practice of ‘accouchement sous X’ (anonymous birth). Though Quebec has recently ‘opened’ birth records – to an extent – the presence of a maternal veto on disclosure will prevent the release of any information (personal experience, February 2020).

45. See <http://www.parentfinders.org> accessed 12.07.20. The pressure group lobbies for legislative reforms on closed records and anonymity in reproductive and genetic technologies and drafts Recommendations on how compliance with the various provisions of human rights law might be better achieved.

46. *Andrews v The Law Society of British Columbia* [1989] 1 SCR 143 pp 174–5. See also the Canadian Human Rights Tribunal case of Shirley (Starrs) McKenna v Dept of the Sec of State (October 8 1993) T D where it was found that the provisions of the Citizenship Acts 1974–76 had resulted in discrimination against the adopted children of a Canadian citizen (in respect of its bar on *ius sanguinis* transmission of citizenship and ‘Canadian heritage’) pp 22

proceedings involving the cauterisation of genetic ancestry. As Oren has argued (187) ‘competing versions of ‘best interest of the child’ are also competing versions of children’s rights.’ Linking genetic identity needs to ‘psychological integrity’ (Oren, 175) may yet come to be regarded as a particularly important aspect of child welfare paramountcy discourses, in both international and domestic law, given how a number of recent cases involving surrogacy have seen the best interests principles ignored or side-lined.

3. Trends in recent case law: lessons for law and policy makers?

The concept of a ‘right to know’ is particularly relevant to the prevention of non-ancestry and origin deprivation (Colliver, 1995; Marks, 2006). Many cases involving genetic identity losses appear to turn upon the issue of whether child welfare paramountcy should take precedence over conflicting parental interests such as privacy, or indeed over government policies, on, for example, criminalising commercial surrogacy. Judicial discourses on the right to receive information tend to stress the importance of being able to obtain essential facts and truths. They reinforce the argument that basic legal norms and human rights standards ought to be adhered to and actively implemented at the level of domestic decision-making, even if only as baseline minimal requirements.⁴⁷ As Colliver has further argued, ‘If national governments and institutions incorporate these standards into their laws or policies, they may be enforced through the national courts and other institutional mechanisms’ (43).

As the Family Court for England and Wales recently noted in respect of assisted reproduction, frequently ‘...the path to parenthood is ‘less a journey along a primrose path, more a trek through a thorn forest’ (2018).⁴⁸ For the children ‘commissioned’ into existence by closed records adoption, surrogacy or anonymous gamete donation, the voyage towards authentic identity is equally—if not more so—beset with hazardous obstacles. As Cahn has noted, ‘...the toxicity of internalized family secrets’ cannot be ignored, given how often such ‘secrecy has an emotional component’ (1076). Being met with shame, stigma, or suspicion is a common feature of many searches for genetic relatives. As one international adoptee recently

47. See also The Dissenting Opinion of Judge a Cancado Trindade in *Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120 *ibid* para a (1) at page 13, wherein he criticizes the Court for not taking the opportunity to create a useful precedent in respect of the child’s right to identity (para 13)

48. *B (Adoption: Surrogacy and Parental Responsibility)* [2018] EWFC 86, Per Theis J, (citing Hedley J in *re X and Y* (Foreign Surrogacy) [2008] EWHC 3131

described her experience of trying to trace her original family: ‘*I even went to one of their houses and begged, literally, on my knees. And they called the police on me.*’⁴⁹

Such harsh ‘othering’ of origin-deprived persons can also be found within much of the recent jurisprudence on surrogacy and gamete donation. The issue of ascertaining, indeed creating, legal parenthood remains one of the most controversial aspects of family law (Carbone, 1295; Steiner, 2). Cases involving surrogacy seem to repeat the mistakes and varied cruelties of adoption practices from half a century ago, when the so-called ‘golden age’ served to spark a wide range of injustices.⁵⁰ These often relied firmly upon the ‘politics of exclusion’ (Whitehead, 55) which is still evident where cross-border, commissioned births are involved. Problems continue to arise in terms of law, ethics, and human rights: funding aimed at supporting those who search for their genetic family is increasingly fragile however.⁵¹

In terms of state responses to the issue of surrogacy, there is a profoundly worrying lack of consensus amongst jurists and decision-makers. Modes of legal regulation range from a total ban, or criminalisation of non-altruistic acts, through to quiet acceptance of the practice, and a quite cheery promotion of profit-making ‘fertility tourism’ (Van Beers, 103). Academics have tended to highlight the profound human rights difficulties especially associated with surrogacy, arguing that it is harmful, and reminiscent of human slavery, thus meriting criminalisation (Lilienthal et al, 88). Clearly too, certain ‘regimes have played a part in creating reproductive black markets which have led to dangerous consequences’ for surrogates and children (Kriari and Volongo, 353). Differing domestic approaches have led to a distasteful degree of ‘forum shopping’ which sees commissioning would-be parents skilfully evading the laws of one’s home jurisdiction (Ní Shúilleabháin, 105). Others have noted its similarity to both human trafficking (Lahl, 241) and ‘womb-leasing’ (Harris, 137), given the existence of what essentially are ‘reproductive brothels’ (Corea, 276; Vijay, 210) made possible by reliance upon harsh property law models of human commodification and ownership (Field, 1155). Gendered, racial, and socio-economic inequalities

49. <https://www.abc.net.au/news/2020-06-12/womans-search-for-parents-leads-to-landmark-s.korea-ruling/12350896?fbclid=IwAR1kDN7LWbzN1Th6zo5a5jMcPRbqPP6Zm5Gm7RwhnhYDEK8yIO3IAk6iuQ> (accessed 17.09.20)

50. On surrogacy definitions see further Charrot (39) who frames it as ‘an arrangement between a woman who is going to bear the child (the surrogate) and a couple who wish that child to be “theirs” (the intended parents) whereby the surrogate undergoes artificial insemination in order to become pregnant, bears the child and then gives it up to the intended parents. [Where] ...the surrogate’s own eggs are used (“traditional” or “partial” surrogacy) [occurs] otherwise (if the surrogate’s eggs are not used) [then] “gestational”, “host” or “full” surrogacy [occurs]...and could involve the gametes of both intended parents, or the gametes (sperm/eggs) of one intended parent, plus those of a donor.’

51. See for example the situation in Australia <https://www.abc.net.au/news/2018-06-19/advocates-raise-concerns-about-international-adoptees/9883704> (accessed 10.07.20)

are evident too, (Tobin, 351), where a ‘language of property’ is invoked to determine questions or complex issues of legal parenthood (Maillard, 226). As Finnerty has further argued, the widespread presence of ‘legislative voids’ (83) compounds things further, creating an inconsistent ‘laissez-faire approach’ (Vijay, 201). Often it then falls to domestic courts to decide the fates of genetically relinquished, potentially stateless vulnerable infants.

And yet, human nature being what it is, domestic judges have also heard cases where surrogate mothers have changed their minds and hope to raise the ‘commissioned’ infant that they have carried.⁵² Not dissimilar claims have also been made by gamete donors wanting to have some form of contact with their biological children.⁵³ As James (178) has observed, domestic jurists often perform complicated ‘legal gymnastics’⁵⁴ to achieve equitable, compassionate outcomes, though these do not necessarily always result in decisions grounded in child rights principles (Fenton-Glynn, 2015, 37). Ireland’s Supreme Court recently highlighted the urgent need for reform of its domestic laws on surrogacy—and birth registration—on the basis that many ‘scientific and medical advances have far outpaced the use of existing legal practices and mechanisms.’⁵⁵ Here, an altruistic and entirely amicable surrogacy agreement between two sisters sparked a legal challenge to Ireland’s birth registration policies. The lower court had originally permitted the child’s genetic mother (whose sister had acted as her gestational surrogate) to register herself as the child’s parent, which acknowledged the twin truths of the child’s genetic background and the ‘commissioning’ mother’s role as legal and biological parent. (In other words, her sister had carried the child for her, but she had used her own egg in the child’s conception, and it was always intended that she would be the child’s parent). The Irish Supreme Court overturned the lower court’s decision on appeal however, stating that any change to the law on surrogacy must come from legislators rather than judges,

52. See for example *A v B; re D (A Child) (Habitual Residence: Consent and Acquiescence)* [2015] EWHC 1562 (Fam)

53. See for example *Re Z (A Child) (No 2)* [2016] EWHC 1191 and *re G (A Minor); Re Z (A Minor)* [2013] EWHC 134 (Fam). The Irish Supreme Court’s decision in *McD. -v- L. & Anor* [2009] IESC 81 offers a similar perspective, with the sperm donor father being refused a Guardianship Order but still permitted to apply for ‘access’ (child contact).

54. See also *In the matter of Z (A Child) (No 2)* EWHC 1191 (Fam) (20 May 2016) where the High Court (England and Wales) recently made a significant declaration of incompatibility (with the European Convention on Human Rights) in relation to s. 54 of the Human Fertilisation and Embryology Act 2008 (‘HFEA’), under which only couples (rather than single persons) were able to apply for Parental Orders.

55. *M.R. and D.R. -v- An t-Ard-Chláraitheoir* op cit n 8, at para 113. ‘Constitutional claims’ to a right to parent have been upheld however in controversial contested adoptions. See for example *N & Anor v Health Service Executive & Ors* [2006] IESC 60 (the ‘Baby Anne’ case) where an adoptive placement was controversially overturned after two years. See also the UK Supreme Court in *Re G (Children)* [2006] UKHL 43 where it was held that courts making a welfare determination must evaluate parental ‘contributions’ which may be genetic, gestational or social/psychological.

given how it ‘...affects the status and rights of persons, especially those of the children; it creates complex relationships, and has a deep social content. It is, thus, quintessentially a matter for the Oireachtas (Irish Parliament)’ (para 113).

As the High Court (for England and Wales) stressed in 2014, much ‘painful legal confusion ...can arise when children are born as a result of unregulated artificial conception.’⁵⁶ It was noted here that the need for ‘fairness’ demanded that the child’s circumstances (her conception and neonatal period) should be ‘reflected as accurately as possible amidst the adult discord.’⁵⁷ The court’s primary task was to ensure that any child so conceived might grow into ‘a happy and balanced adult ...to achieve [her] fullest potential.’⁵⁸ Significantly, in *re B (Adoption: Surrogacy and Parental Responsibility)* [2018],⁵⁹ Theis J also noted that a child’s lifelong welfare needs are the paramount consideration. Here, the child—conceived abroad via surrogacy and anonymous egg donor—waited ‘in limbo,’ devoid of legal status. Though the father (both genetic and legal) had relinquished all interest in the child, refusing contact and ‘parenthood,’ the court still stressed that he was ‘part of B’s identity and background.’ No mention was made however of the anonymous egg donor who was the child’s biological ancestor. Making an adoption order to resolve the matter, the court expressed the hope that this outcome might bring some measure of ‘lifelong security and stability’ to the child. It is perhaps most significant that the court mentioned the mother’s own adoptee status, suggesting that she was likely therefore to have a good degree of ‘sensitivity and understanding to B’s background,’ and be very ‘aware of the issues that can arise.’

The courts expressed similar understanding of the difficulties of such cases in 2018, in the case of *Z (Embryo Adoption: Declaration of Non-Parentage)* for example, where, yet again, the commissioning couple’s marriage broke down soon after the infant’s birth, and the father essentially fled from legal paternity. The judge called upon parents and fertility clinics to avoid ‘administrative falsehoods’ (arguably, including donor anonymity within this) and to pay heed to the potential legal position of any child who might be so conceived, given the many ‘medical,

56. *L v C (Applications by non-biological mother)* [2014] EWFC 1 per Jackson J at para 1. See also *M v F and H (Legal Paternity)* [2013] EWHC 1901 (Fam) (on sperm donation) and *JP v LP and Others* [2014] EWHC 595 (Fam) which presented similar issues and difficulties.

57. *L v C* [2014] *ibid*, at para 55, per Jackson L

58. The court relied upon the test for child welfare established in the Court of Appeal in *Re N (A Child)* [2007] EWCA Civ 1053.

59. EWFC 86

social and emotional reasons’ that underpin the very human need to seek out genetic truths.⁶⁰ An earlier case involving commercial, cross-border surrogacy (in Nepal, since banned)⁶¹ had similarly stressed the child’s long-term needs: only a Parental Order would serve here to ‘give him the lifelong security his welfare requires.’⁶² It seems fair to argue that even though genetic truths require and merit meaningful acknowledgement in law, policy and practice, they are often overlooked or side-lined in a bid to effect workable outcomes within the limited available domestic legal and conceptual frameworks on ‘relatedness.’

The jurisprudence on international surrogacy is particularly problematic, despite an increasing awareness of the need for genetic ancestry and authentic identity (Fenton-Glynn, 2017, 555).⁶³ Where states suddenly ban the practice of surrogacy, babies conceived and born abroad may suddenly be seen in law as stateless and/or parentless.⁶⁴ Such deliberate ‘orphanisation’—indeed active ‘othering’—can have profound impacts and implications. In *Paradiso and Campanelli v Italy* (2017)⁶⁵ for example, an unmarried Italian couple entered into a gestational surrogacy agreement (with an anonymous egg donor) via a Russian fertility clinic. Because they then used inaccurate paperwork to bring their child back into Italy (where surrogacy is illegal) the authorities declared that the baby had been legally ‘abandoned.’ There was later found to be no genetic connection between the child and his commissioning parents even though they had argued that the father’s sperm had been used. The boy had spent the first eight months of his life with them, but was essentially ‘orphanised’ by being placed in a children’s home and then freed for adoption, with no further contact permitted between him and his parents from the point of his removal from them. The European Court of Human Rights found at first that the applicants had ‘acted as parents’ towards the boy;⁶⁶ the Grand Chamber overturned this on appeal, however. In terms of human rights violations, they found that only

60. EWFC 68

61. *CH v SM* [2016] EWHC 1068 (Fam) para 17, per Theis J. A key aspect of this case was the Nepalese government’s decision to ban surrogacy, and deny exit visas to children so-conceived, shortly before the birth of the child.

62. *Ibid* at para 29 (applying s.1(4) of the Adoption and Children Act 2002)

63. See for example *Mennesson v. France* [2014] (Application no. 65192/11) and *Labassee v. France* (Application no no 65941/11).

64. See for example *Re X and Y (Foreign Surrogacy)* [2008] EWHC 3030 (Fam) and *Van der Musselle v Belgium* App no 8919/80 [1983] ECHR 13 (23 November 1983)

65. European Court of Human Rights, Grand Chamber, (2017) Application no. 25358/12

66. Para 98

the parents’ basic right to respect for private life (i.e. their ‘decision to become parents’)⁶⁷ was relevant here. The right to be afforded respect for one’s home and family life under Article 8 of the European Convention was not engaged here, given, it seems, the absence of any genetic connection to evidence ‘relatedness.’

It is the Court’s dismissal of the child’s psychological connection to his parents that is perhaps of most concern: it serves to remind adoptees of the abhorrent practice of easy ‘rehomeing’ (a euphemism for re-abandonment) that seems to be becoming more widespread. They deemed it as essentially too brief to be significant, but it may be argued that the 8 months in question were in fact the child’s entire life at that point. Much emphasis was also placed upon the illegality of the parents’ acts, with the European Court granting the Italian state a wide margin of appreciation (discretion to interpret the Convention’s provisions). Clearly, they missed an opportunity to at least pass comment on the reasons behind Italy’s ban on commercial surrogacy (Ryan, 202) which surely would have been of interest to adoption scholars, human rights lawyers, and origin-deprived persons. Though the European Court must confine itself to matters of procedure, the ‘permeable line between procedure and substance’ was evident here. As *Illiadou* has noted, the Court made a clear ‘distinction between legitimate and illegitimate families’ which served to stigmatise those who are ‘illegitimate.’ (154).

As Ní Shúilleabháin further observed, the Court previously seemed loathe to intervene in matters of domestic policy involving such issues as bioethics (122). In the case of *Mennesson v France* for example, a married French couple successfully brought their commercial surrogacy-conceived children home to France from the United States. The children subsequently suffered discriminatory treatment in terms of being denied nationality rights and liability for inheritance tax. The fact that they had a genetic connection to their father meant however that French law created a ‘contradiction between the legal and social reality’ and ‘undermined the children’s identity’ within their society (Pluym, 2014). As such, the best interests of the child were not being protected, and the private life element of Article 8 of the European Convention was deemed to have been infringed. It is noteworthy that, again, no interference with the right to respect for family life was declared. It may be argued that the human rights of the donor-commissioned child remain highly vulnerable to side-lining in such scenarios, especially where the ‘weightier’ interests of parents (privacy, reproductive freedoms) and wider society (Noon, 2020) must be

67. Para 163

protected.⁶⁸ Vetoes on birth information, together with the practice of ‘anonymous births,’ do not sit well with Article 7 of the Children’s Convention (UNCRC) which was drafted to promote, if not protect, the right to know one’s parents. The best interests of the child principle (in Article 3 of the UNCRC) cannot it seems require jurists, legislators, or parents to provide the vulnerable child with genetic identity or ancestral truths. This is so even though the loss of familial contact should only be deemed ‘necessary’ (under Article 8(2) of the European Convention) where ‘compelling reasons’ are found to exist (Doughty, 22). It seems fair to conclude that where blood-ties are absent—and the law is silent, equivocal, or inconsistent—domestic jurists will generally fall back upon common law rules of property ownership for guidance. Human rights principles (such as human dignity, equality of treatment and opportunity) are perhaps simply too vague or resource dependent to offer much scope for meaningful realisation of the right to (genetic) identity. This is so even though certain adoptee-relevant rights and interests (birth information, kin contact) are gradually becoming more juridical in nature.⁶⁹ A ‘law of surrogacy’ seems unlikely however to coalesce any time soon into an articulate, child-centric rights framework, either at the level of domestic or international law.

As Cahn has argued, ‘...the law’s tight focus on the parent-child relationship has left out legal questions relating to donor-conceived adults’ (1078). Similarly, the predominant ‘free market approach to reproductive questions’ suggests that economic laws and considerations will likely govern global reproductive markets for the foreseeable future (Van Beers, 133). In the absence of profound infringements of fundamental rights, the Strasbourg court seems unlikely to make calls on—or even highlight the need for—a more coherent regulation of surrogacy law across Europe. All of this is relevant to those who are affected by closed records adoptions (or parental vetoes on information): if there is no consensus over the notion of a right to knowable genetic ancestry within gamete donation, it is unlikely that adoptees will be able to argue a fundamental right to access their own information.

That said, there have been increasingly vocal calls for the establishment of ‘a human rights based system of international governance ...based on three regulatory models: public health monitoring, inter-country adoption, and trafficking in human beings, organs and tissues (Shalev

68. Adding that the UK is apparently still obsessed with adoption, ‘regardless of whether it is the solution which best meets the needs of the child.’ (2020) *Seen and Heard* (NAGALRO) available at https://www.nagalro.com/blog/20/nagalro_joins_campaign_to_revoke_si_no_445 (accessed 10.06.20)

69. See for example *Anayo v Germany* [2010] ECHR 2083 and *Neulinger v Sweden* [2010] 54 EHRR 1087. See further Diver (2013).

et al., 9). Malta IV for example declared that ‘legal parentage is an issue of international concern ...a gateway through which many of the obligations owed by adults to children flow’ (para 5).⁷⁰ The concept of harmful, ‘limping parentage’ referred to in UN Documents is an entirely apt one, where children’s parentage is unknown—or rendered deliberately unknowable—and legal parenthood is slow to be allocated, confirmed, or created. The image of a wounded or otherwise incapable legal ‘creature,’ symbolises law’s struggle to keep up with the realities of a child’s situation: those of us who are origin deprived clearly all have genitors somewhere even where the law has held that we are not legally related to them, or permitted to know their identities or make contact. The law can be said to similarly trail behind scientific advances, especially where DNA serves daily to reunite separated kinfolk and focus public attention on our innate need to know our origins and make connections with those we resemble. At the risk of stretching the analogy too far, human rights may also be said to be shambling along in this area, given the lack of consensus amongst drafters and signatory states on pretty much all things to do with genetic relatedness and the need for open, accurate birth records. That said, the consequences of human exploitation (in terms of child trafficking or enslaving birth mothers and surrogates) are at least more widely recognised.⁷¹ The Hague Conference on Private International Law (‘HCCH’) for example recently noted the

*‘significant diversity in national approaches... [which] can lead to conflicting legal statuses across borders and can create significant problems for children and families, e.g., uncertain paternity or maternity, limping parental statuses, uncertain identity of the child, immigration problems, uncertain nationality or statelessness of the child, abandonment including the lack of maintenance’ (para 4, emphasis added).*⁷²

In 2019, the HCCH stressed its commitment to a new Convention which would at least recognise the legality of foreign court decisions (on legal parentage), while a separate protocol would seek to govern international surrogacy. It is noteworthy that the practice of surrogacy

70. The 2016 Declaration of the Fourth Malta Conference (“Malta IV”) on Cross-Frontier Child Protection and Family Law, avoided addressing the difficulties of surrogacy directly but still at least highlighted the need for the 1996 Child Protection Convention (and its international co-operation mechanisms) to be better utilised.

71. HCCH para 45 [<https://assets.hcch.net/docs/0510f196-073a-4a29-a2a1-2742c95312a2.pdf>]

72. Report of The February 2016 Meeting of The Experts’ Group on Parentage / Surrogacy. HCCH. Online, para 4 (accessed 31.04.20)

was neither denounced nor endorsed; intercountry adoptions were specifically excluded from its scope given that various human rights protections already (apparently) attach to it.⁷³ Significant also was the fact that sensitive terminologies are being discussed: ‘surrogate mother’ is too emotive, and might be better replaced by the phrase ‘surrogate woman’ or ‘surrogate.’ Such thinking does to an extent mirror those legal processes that similarly seek to remove or deny the importance or input of those with whom we share genetic material, wider ancestry, and living relations. Encouragingly for those of us affected by rights-denying, archaic rules on parental vetoes, there seems to be growing recognition of how domestic adoption policy often similarly ‘raises many important issues and challenges.’ Though this was not framed as a priority for the HCCH at present, the issue seems likely to be revisited later (2).

There is some hope to be found also in how the stories of the origin deprived are finally being heard: in 2019 the UN took direct testimony from an NGO/support group for donor-conceived and surrogacy-born persons (Donorkinderen). Their formal recommendations stressed an acute ‘need for urgent national and international measures’ including legal frameworks enabling a ‘right ...to access information about their identity and origins ... [and] preserve relations with their biological, social, and gestational families’ (2019). Such calls for meaningful domestic law reform are relevant to those of us who were relinquished, adopted, denied by birth relatives, or prevented from accessing our own birth-right information. They clearly highlight how harmful intergenerational impacts can easily attach to non-origin. The Recommendations specifically ask that ‘comprehensive and complete records of all parties involved in the conception of the child be held by the State in perpetuity for future generations.’⁷⁴

Given that ‘tens of thousands of children’ (not to mention generations of adoptees, domestic and international) are still having ‘their rights denied’ (Allan et al, 2020), such calls for reform need to be heeded by those jurists who hold the power to make or sever our ties of legal relatedness and links to genetic ancestry. For adoptees, it may yet be the case that some much needed guidance on the opening of sealed records—and the removal of vetoes—will flow from surrogacy reforms, if some level of consensus can be achieved e.g. on the nature of the harms arising from origin deprivation. The concept of adoption is clearly ‘no longer seen as a one

73. See further the 1993 Intercountry (Hague) Adoption Convention

74. <https://www.donorkinderen.com/united-nations-2019> (accessed 12.06.20) Legal frameworks should also

dimensional triangulation of interests, but as a constellation of interests which can often span different countries’ with the child remaining as a fixed point, a ‘vulnerable party in a process conducted by adults’ (Horgan and Martin, 157). The same can be said of surrogacy and gamete donation, where deprivation of genetic origin can easily serve to entrench a lifelong sense of otherness and loss.

4. Conclusion

It seems fair to conclude that ‘the social landscape has shifted considerably’ since assisted reproduction first became possible (Wilmot, 232). As Storrow has argued, ‘a new illegitimacy’ (38) can easily serve to continue stigmatising new generations of children, by denying them accurate genetic information and any opportunity for contact with birth relatives. As Carbone suggests (in respect of surrogacy), parental actions, rather than those of the lawmakers, are perhaps the true key to achieving meaningful change: ‘Shortly after the child’s birth, the parent or parents committing themselves to the child’s future should join in establishing a permanent identity’ (1344). A similar rule could serve to protect origin-denied adoptees, if framed as a key element of the best interests principle. As Bauer has argued too, genetically relinquished children may be tied to wider society—and their parents—by a sort of ‘existential debt.’ Their existence is underpinned by unfair, perhaps illicit, processes that have rendered their fundamental human rights subordinate to those of other ‘triad’ members (2020) when it comes to accessing their own truths. Such blatant—and at times quite cruel—‘othering’ surely amounts to unlawful discrimination, particularly when evaluated against a backdrop of human rights principles that are presumed to be grounded in fairness, equity, protection of the vulnerable, and the prevention of harms.

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Current State of the Adoption System and Working to Ensure the Best Interests of the Child

Jung-eun KANG

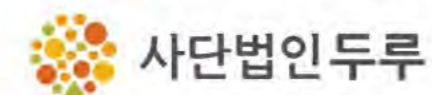
Lawyer, DuRoo Association for Public Interest Law

Current State of the Adoption System and Working to Ensure the Best Interests of the Child

September 9, 2020

Jung-eun KANG, Attorney

DuRoo Association for Public Interest Law



Contents

1. Adoption and Children's Rights
2. Current Korean Law and International Human Rights Standards
3. Implementing International Human Rights Standards
4. Future Work

Adoption and Children's Rights

- Korean overseas adoption is an ongoing issue
 - Over 300 children are adopted overseas annually
 - 45% of all adoptions are overseas adoptions

(Unit: persons)

	Sum	Before 2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Sum	248,728	235,630	2,475	2,464	1,880	922	1,172	1,057	880	863	681	704
Domestic	80,864 (32.5%)	72,947 (31.0%)	1,462 (59.1%)	1,548 (62.8%)	1,125 (59.8%)	686 (74.4%)	637 (54.4%)	683 (64.6%)	546 (62.0%)	465 (53.9%)	378 (55.5%)	387 (55.0%)
Overseas	167,864 (67.5%)	162,683 (69.0%)	1,013 (40.9%)	916 (37.2%)	755 (40.2%)	236 (25.6%)	535 (45.6%)	374 (35.4%)	334 (38.0%)	398 (46.1%)	303 (44.5%)	317 (45.0%)

(May 11, 2020, The 15th Adoption Day, Ministry of Health and Welfare press release, Chart 3. 2019 adoption statistics)

Adoption and Children's Rights

- Types of adoption cases (2019)
 - Children of unwed mothers make up 100% of overseas adoptions and the majority of domestic adoptions (85%)

(Unit: persons)

Year	Domestic Adoption				Overseas Adoption			
	Total	Unwed Mother's Child	Abandoned Child	Family Dissolution, etc.	Total	Unwed Mother's Child	Abandoned Child	Family Dissolution, etc.
2017	465	417 (89.7%)	35 (7.5%)	13 (2.8%)	398	397 (99.7%)	-	1 (0.3%)
2018	378	315 (88.3%)	47 (12.5%)	16 (4.2%)	303	302 (99.7%)	1 (0.3%)	-
2019	387	329 (85.0%)	51 (13.2%)	7 (1.8%)	317	317 (100%)	-	-

(May 11, 2020, The 15th Adoption Day, Ministry of Health and Welfare press release, Chart 3. 2019 adoption statistics)

Adoption and Children's Rights

- Rates of Overseas Adoptions by Country (2019)
 - U.S. (232 adoptions, 73.2%) up 11.2% from the previous year
 - Followed by Canada (23), Italy (15), Sweden (13), Norway (12)

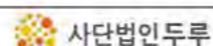
(Unit: persons)

Year	Sum	USA	SWE	CAN	NOR	AUS	LUX	DNK	FRA	ITA	UK	DEU
2017	398	274 (68.8%)	25 (6.3%)	28 (7.0%)	20 (5.0%)	24 (6.0%)	5 (1.3%)	6 (1.5%)	5 (1.3%)	11 (2.8%)	-	-
2018	303	188 (62.0%)	28 (9.2%)	22 (7.3%)	19 (6.3%)	14 (4.6%)	5 (1.7%)	7 (2.3%)	7 (2.3%)	12 (4.0%)	-	1 (0.3%)
2019	317	232 (73.2%)	13 (4.1%)	23 (7.3%)	12 (3.8%)	10 (3.2%)	3 (0.9%)	3 (0.9%)	5 (1.6%)	15 (4.7%)	1 (0.3%)	-

(May 11, 2020, The 15th Adoption Day, Ministry of Health and Welfare press release, Chart 3. 2019 adoption statistics)

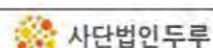
Adoption and Children's Rights

- **Why is adoption a problem for children's rights?**
 - Children have the right to know their identity and roots.
 - Children have the right to birth registration, a name, and a nationality.
 - Children have the right to know and be cared for by their parents.
 - Children have the right to dignity and being valued as a person.
 - Children have moral rights.
 - Children have the right to the pursuit of happiness.
 - Children have the right to be kept safe from violence.



Adoption and Children's Rights

- **Why is adoption a problem for children's rights?**
 - The best interests of the child: What duties and obligations did the State or responsible party fulfill?
 - No discrimination: Did a parent's life circumstances (such as unwed status) contribute to discrimination?
 - Expression and participation: Are the child's opinions and participation reflected throughout the adoption process? Was access to information always guaranteed?
 - Life, survival, and development: Is the child suffering from lack of citizenship, child abuse, or life-threatening circumstances?

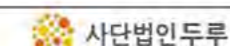


Current Korean Law

- **Korean constitutional law**
 - Children have fundamental rights

“Children are not only the subject of education and protection by parents and the State but are independent entities, and their individual personal rights receive the same protection as adults under Article 10 of the Constitution, which guarantees dignity and the right to the pursuit of happiness.”

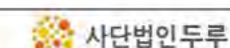
(Constitutional Court, April 27, 2000 Declaration, 98 Heon-ga 16, 98 Heon-ma 429 (consolidated) decision, Constitutional Court, May 27, 2004 Declaration, 2003 Heon-ga 1, 2004 Heon-ga 4 (consolidated) decision, etc.)



Current Korean Law

- **Korean constitutional law**
 - **Duty of the State:** The State has the duty to protect citizens' basic rights from being infringed upon by others.

“All citizens shall be assured of human worth and dignity and have the right to the pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.” (Article 10)

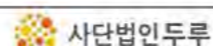


Current Korean Law

- Korean constitutional law
- Duty of the State to protect overseas Koreans
- Overseas adoptees retain their Korean citizenship as “overseas Koreans” until they have attained the citizenship of their adoptive nation.

“It shall be the duty of the State to protect citizens residing abroad as prescribed by this Act.”

(Article 2, Section 2)



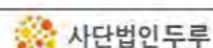
Current Korean Law

- Korean constitutional law
- Duty of the State
- “Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal.”

(Article 36, Section 1)

- “Child-rearing is one of the core aspects of family life...”

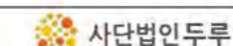
(Constitutional Court, October 30, 2008 Declaration, 2005 Heon-ma 1156 decision)



Current Korean Law

Special Adoption Law vs. Civil Law

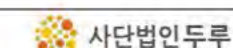
Special Adoption Law	Civil Law
<ul style="list-style-type: none"> - “Children needing protection” <small>(Child Welfare Act, Article 3, Section 4)</small> - Adoption through an adoption agency - Domestic and overseas adoption (overseas adoption from Korea, overseas adoption from a foreign country) - Effect of a full adoption 	<ul style="list-style-type: none"> - Children not designated as “needing protection” - Adoption carried out without an adoption agency - General adoption and full adoption - Adoption by contract, adoption by intervention (court order)



Current Korean Law

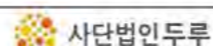
[Overseas adoption process under current law: Special Adoption Law]

- Consultation: Adoption agency
- Decisions in international adoption process: Adoption agency
- Application (for adoptive parents): Adoption agency
- Education (for adoptive parents): Adoption agency
- Screening (of foster parents and adoptive parents): Adoption agency
- Affiliation: Adoption agency
- Agreeing to proceed with the adoption: Adoption agencies in both nations
- **Judgment and authorization: Court (mandatory court approval enacted in 2012)**
- Delivery of the child (in overseas adoption): Adoption agency
- Post-adoption management: Adoption agency
- Post-adoption services: Adoption agency
- **Crisis and resettlement support: No legal basis**



International Human Rights Standards

- **UN Convention on the Rights of the Child, Article 7**
 - The child shall be registered immediately after birth
 - and shall have the right from birth to a name
 - and the right to acquire a nationality
 - and, as far as possible, the right to know his or her parents
 - and the right to be cared for by his or her parents.
- States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.



International Human Rights Standards

- **UN Convention on the Rights of the Child, Article 21**

States parties shall:

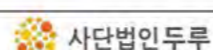
(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information...

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child ... cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

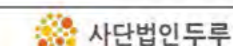
(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.
- Republic of Korea withdrew its reservation to Article 21(a) on August 11, 2017



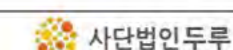
International Human Rights Standards

- UN Committee on the Rights of the Child (2013), General comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration
- In respect of adoption (Art. 21), the right of best interests is further strengthened; it is not simply to be "a primary consideration" but "the paramount consideration".
- The best interests of the child are to be the determining factor when taking a decision on adoption.
- The courts must provide for the best interests of the child to be considered in all such situations and decisions ... and must demonstrate that they have effectively done so.



International Human Rights Standards

- UN Committee on the Rights of the Child (2013), General comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration
- Elements to be taken into account when assessing the child's best interests:
 - (a) The child's views
 - (b) The child's identity: Adopted children shall have "access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country."
 - (c) Preservation of the family environment and maintaining relations: Preventing family separation and preserving family unity are important components of the child protection system ... [and] a child shall not be separated from his or her parents against their will.
 - (d) Care, protection and safety of the child
 - (e) Situation of vulnerability
 - (f) The child's right to health
 - (g) The child's right to education



International Human Rights Standards

- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Intercountry Adoption Convention)

- Signed by Republic of Korea on May 24, 2013, but NOT ratified

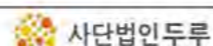
“The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

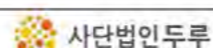
Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children...”



International Human Rights Standards

- Hague Intercountry Adoption Convention
 - Public authorities shall oversee adoption procedures
 - Families of origin must be protected
 - If the family of origin can't be preserved: domestic placement is preferred, and overseas adoption is a last resort
 - Consider the best interests of the child
 - Have non-profit objectives
 - Consider the child's opinions
 - Improve post-adoption services



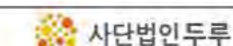
Implementing International Human Rights Standards

[History of Overseas Adoption]

- Legislation for streamlined overseas adoption
- “Act on Special Cases Concerning Orphan Adoption”: Enacted in September 1961 to allow foreign citizens to adopt Korean orphans through a streamlined procedure
- No State intervention
- No intervention by the State until the Family Court permit system was introduced (August 2012)
- Adoption (intermediary) agency permit system: Violation of the State's duty to oversee adoption agencies

“Those not authorized by the Minister of Health and Welfare to make arrangements for the adoption of orphans under this law cannot perform this work.”

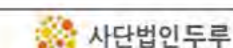
[Act on Special Cases Concerning Orphan Adoption (enacted January 1, 1976, Act No. 2823) Article 5, Paragraph 1]



Implementing International Human Rights Standards

[History of Overseas Adoption]

- False family registration of orphans
- Children are processed as orphans despite knowledge of their parents' existence, and new family registration documents are falsely made.
- Original parents are not asked for their consent throughout the adoption process: Adoption is streamlined.
- “Commercialization” of adoption
- Adoption fees comparable to the GNI per capita in the same year



Implementing International Human Rights Standards

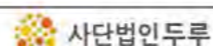
[History of Overseas Adoption]

• “Proxy” adoption

“Article 6 (representation for foreign citizens) Foreign citizens may have an **agency** designated by law to **represent them** in part of the adoption proceedings.”

(Act on Special Cases Concerning Orphan Adoption, enacted September 30, 1961, Act No. 731)

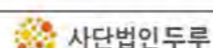
- Adoptive parents carry out adoption proceedings through a proxy representative (adoption agency) in the child’s country of birth without ever meeting the child.
- Screening the parent for eligibility is not possible.
- Time and cost efficiency outweigh the child’s rights, safety, and welfare.



Implementing International Human Rights Standards

• Lack of post-adoption services

- Reports of child abuse in overseas adoptive families
- No monitoring to ensure acclimation to adoptive family or citizenship attainment
- U.S. adoptions: Until 2013, adopted children received IR-4 visas upon entry (citizenship attainment was uncertain) rather than the IR-3 visa (which guaranteed citizenship).
- U.S. Child Citizenship Act enacted in 2000: Effective February 2001, citizenship was granted only to children under 18.



Implementing International Human Rights Standards

• Lack of post-adoption services

- 25,996 overseas adoptees with unconfirmed citizenship status as of August 2017

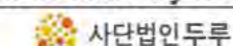
Status of nationality acquisition among overseas adoptees

(As of August 2017)

	Research target*	Confirmed	Checking
All	165,305	139,309	25,996
USA	111,148	92,545	18,603
Outside the U.S.	54,157	46,764	7,393

* A person adopted outside the country before the amendment of the Special Adoption Law (before the introduction of the Family Court Permit System in August 2012)

(Documents submitted by the Ministry of Health and Welfare to Rep. In-soon NAM in January 2018)



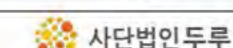
Implementing International Human Rights Standards

• Infringement upon the right to identity

- E.g. Children falsely registered as orphans: adoption agencies taking in children lost on the street and sending them for overseas adoption without their parents' or family's knowledge.
- Special Adoption Law 2011: Guarantees adoptees access to their adoption records, but its enforcement is sparse. 82.8% of requests for records are denied.

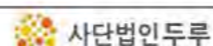
[Requests for adoption information disclosure, data submitted by the Ministry of Health and Welfare to Rep. In-soon NAM on January 30, 2018]

Year	No. of Requests	Disclosures (with birth parent consent)	Not Disclosed
2013	1,252	274	978
2014	1,631	267	1,364
2015	2,021	297	1,724
2016	1,940	354	1,586
2017.10	1,555	255	1,300
Total	8,399	1,447	6,952



Implementing International Human Rights Standards

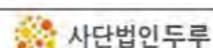
- **UN Committee on the Rights of the Child, Republic of Korea 3rd-4th Reports, Concluding Observations (2011)**
- Roles and functions of the Central Authority (Hague Inter-country Adoption Convention, Article 6)
- The child's views must be held in appropriate consideration during the adoption process, and the interests of the child must be paramount.
- Implement measures to ensure that all adoptions, including overseas adoptions, are carried out with permission from central authorities.
- Ratify the Hague Inter-country Adoption Convention.



사단법인두루

Implementing International Human Rights Standards

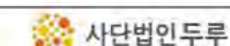
- **UN Committee on the Rights of the Child, Republic of Korea 5th-6th Reports, Concluding Observations (2019)**
- The highest priority should be given to the best interests of the child in adoption procedures for all age groups, with the willing consent of unwed mothers.
- Campaigns for adoption without negative prejudice against unwed mothers
- Take measures to prevent unnecessary delays in implementation, and ensure that adoption agencies are managed transparently and their activities are appropriately regulated.
- Improve post-adoption management and services (including cases of adoption disruption)
- Ensure the right to find and appropriately access information about one's birth parents.
- Ratify the Hague Inter-country Adoption Convention, and enact international adoption legislation.



사단법인두루

Future Work

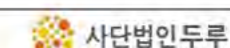
- **Apply strict, uniform adoption procedures for all children.**
- Unify the Special Adoption Law and adoption procedures under civil law
- Strengthen the management and supervision of adoption procedures: Prevent lapses in counseling for birth parents and post-adoption services for adoptive families according to civil law.
- Domestic and overseas adoptions must be carried out by public institutions with strict procedures.
- **Strengthen intervention by public authorities in adoption procedures.**
- Oversight by national and local governments (public institutions with jurisdiction) for adoption procedures
- Ensure that adoption is carried out within the child welfare system in an organic and public manner.



사단법인두루

Future Work

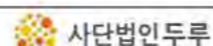
- **Ensure the adoptee's right to know their identity**
- The child (adoptee) has the right to request the disclosure of adoption information.
- State management of adoption records: Compulsory transfer of records to public institutions (from adoption agencies and facilities to the State)
- In a conflict of interest between the child's right to know and birth parents' privacy, the best interests of the child must be considered first.
- Establish a DNA database.
- Guarantee procedures for the investigation of errors and inaccuracies in adoption records.



사단법인두루

Future Work

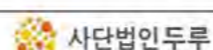
- Reduce the number of grounds for dissolution of adoptions.
- An individual adopted through an adoption agency should be given legal status equal to *chin yangja* in accordance with the Civil Law.
- *Chin yangja* means a child born to a married couple, and for adoptees the legal relationship to the natural parents will be completely terminated
- Parents cannot terminate their guardianship of their natural born child because of the child's immoral behavior.
- Remove the following text from the grounds for dissolution of adoptions: "If the parent-child relationship cannot be maintained due to the adopted child's immoral behavior toward the adoptive parents".



사단법인두루

Future Work

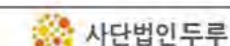
- Prioritize care in the child's original family.
- Improve and strengthen child support and counseling for birth parents provided by the State.
- Guarantee a safe waiting period for considering adoption.
- Ensure the possibility for birth parents to raise their children even after adoption procedures have begun.
- Specify the period for which domestic adoption is prioritized.
- Ensure the child's right to express opinions and participate throughout all stages of the adoption process.
- Provide aid for adjustment and crisis support to overseas adoptees returning to Korea.
- Provide support for sojourn and recovery of citizenship; work training and work opportunities; connection to necessary social welfare services and settlement support; emergency medical, housing, and living support.



사단법인두루

Future Work

- Monitor the role and function of the National Center for the Rights of the Child.
- Public institutions (commissioned by the Minister of Health and Welfare) must perform their roles in adoption procedures.
- Set clear duties and jurisdictions to allow roles and functions to be performed in accordance with the Hague Intercountry Adoption Convention.
- Ratify the Hague Intercountry Adoption Convention.
- Enact the (proposed) Intercountry Adoption Act and amend the Special Adoption Law.
- Listen to opinions from a diverse range of concerned individuals.
- Provide the adopted child with information about the adoption process in a child-friendly manner.

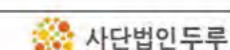


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Future Work

- Campaign to improve social awareness in the media and mainstream society.
- Set duties and responsibilities for the legislative, executive, and judicial branches.
- Provide education and training for adoption-related workers (including education on child rights).
- Ensure continuous and systematic monitoring of legislation and (systemic) enforcement.


"For adoption that is in the best interests of the child"



사단법인두루

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Session 3: Panel Discussion

Birth Family Search and DNA Testing

Helle THAARUP

Director of Korean Operations, 325KAMRA / Overseas Adoptee / Denmark

A Perspective on Birth Family Search: Process and Limitations within the Existing Framework for Searching

Dave RIPP *Birth Family Search Mentor, G.O.A.'L. / Overseas Adoptee / USA*

Problems with Adoption Records from the Position of the Ministry of Health and Welfare's Child Welfare Policy Division

Hye-ryung JO

Administrative Officer, Ministry of Health and Welfare, Division of Child Welfare Policy

The Best Interests and the Right to Origins

ROSS OKE *General Manager, Human Rights Beyond Borders / Overseas Adoptee / USA*

Recommendations for the Adoption Archive

Ik-han KIM *Professor, Graduate School of Record Information at Myongji University*



Birth Family Search and DNA Testing

Helle THAARUP

Korean Operations Director, 325KAMRA
Overseas Adoptee / Denmark

My name is Helle Thaarup, and I am a Korean adoptee. I was adopted to Denmark when I was 3 months old. In 2017 I decided to move to South Korea to get involved in the Korean adoptee community. I was hoping that I could get to know the different organizations here on ground that help other adoptees. In 2018 I started working for 325KAMRA.

325KAMRA is a non-profit organization. The acronym KAMRA was recently changed from Korean American Mixed Race Adoptees to Korean Adoptees Making Reunions Attainable, to make it more inclusive of the Korean adoptee community. The mission of the NPO is to distribute DNA kits to Korean adoptees and Korean birth families worldwide. We want to reunite Korean families when possible and also help pass on important

medical and family history from birth families to adoptees when a reunion is not possible. We provide DNA kits from a DNA testing company called FTDNA (FamilyTreeDNA) and distribute them free of charge, which is made possible by a donation from the T&W Foundation via Thomas Park Clement.

When I became familiar with 325KAMRA, it was the first time I had heard about DNA testing related to birth family search. Not having factual information in my own adoption records that can help me find family was one of the reasons why I got involved and why it makes sense for me to do this kind of work.

I am here today to talk about birth family search, the importance of DNA testing when searching for family, and our experience with adoptee cases, records, and identity.

For adoptees who have records with information, they can apply through their adoption agency or the National Center for the Rights of the Child (NCRC) to get access to parts of their records. The agency or NCRC will initiate a search if there is information on the birth family. Some adoptees are able to locate and reunite birth families. For many adoptees this is not a possibility. The amount of information shared during the time of adoption is often only partial information sent by the agency. Many adoptees experience getting more information and sometimes very different information, when going to their adoption agency in South Korea. Some adoptees have two sets of records: one that is manufactured and one record that contains the correct information. At the time of the adoption the adoptive parents are often given only the manufactured one. Later on the adoptee might get access to the correct record.

Some adoptees have to show up several times at their agency in order to gain more information. In terms of records one can also never rely on the information given, due to many factors. These records have been proven to be falsified/manipulated, switched, or are simply nonexistent. I have seen cases where adoptees are not able to obtain their family registry at their local community center. They are told that they are not registered. (This is a necessary step in order to complete an

adoption. Every child born in Korea needs to be registered on a family registry.)

There are cases where there is actual information on both ends for the adoptee and the birth family. The adoption agencies don't initiate contact unless the other party has asked to open the case. (The search must be initiated from both sides before the agency will begin contact and connect the family.) Which means that if a birth parent goes to the agency and asks to reach out to their child, it is only if the adoptee has already reached out to the agency that they will initiate contact. This sometimes applies the other way around too.

We know of one case where an adoptee, Robin Joy Park, had been reunited with a person she thought was her biological family for five years. She later found out, through DNA testing, that her records had been those of another adoptee who was at the same orphanage.

It was a similar story for Deann Borshay Liem, which is explained and portrayed in her documentary *In the Matter of Cha Jung Hee*. The identity of Cha Jung Hee was given to Deann after the girl's birth father changed his mind at the last minute and Deann was sent to the States within a couple of days. A social worker at the agency decided that the adoptive couple in the States would never know the difference even though they had gotten to know Cha Jung Hee through pictures.

In another case where an adoptee's identity

was switched with another child's, the identity of a child who died in an orphanage was given to someone else. Still today, this adoptee has not been able to receive any information from her original records through the adoption agency.

We know of at least 11 more cases where records have been switched.

DNA Testing as a Last Resort

When there are no leads in the records, or when a case leads nowhere, DNA testing is often used as a last resort. For some adoptees and birth families this is the only way for them to search for each other. DNA testing is also important for confirming the relationship between adoptee and birth family.

Here's the difference in the DNA tests used:

- **One-to-one** tests are those used in the Korean forensic database. This is the one that was just described.
- **Autosomal DNA** tests identify unknown living or recently deceased relatives (within 2 generations), help people understand their long-term ancestry and tribal migrations, or help people build a family tree. Autosomal tests are used by 325KAMRA through the DNA company FTDNA (FamilyTreeDNA). These tests give Korean adoptees a greater chance to search for their biological family. Using autosomal tests, we have had

success in matching adoptees with distant cousins and finding birth family by building family trees and doing more DNA testing. This is not possible when you DNA test with the police or DowGene.

The DNA tests used by companies in Korea such as DowGene and the ones used by the Korean National Police Agency will only show direct matches such as mother, father, and siblings. These tests cannot define if there is a distant relationship that goes beyond birth father, birth mother, or full siblings. The tests will say there is not a family match, but perhaps the sibling is a half-sibling, or it is an aunt instead of a mother.

Kara Boss's case, which was handled by DowGene, is one example. She wrote on Facebook: "I received a negative test result with my half niece last summer when I tested at DowGene. However 325kamra results came in a couple weeks later with a positive test and this was validated in April with my father testing at SNU. DowGene even told my half niece last summer that there was almost 0% chance that we were related, which proved to be not true."

Furthermore, the national forensic DNA database for missing persons' families is only available to adoptees with no records of birth family or for birth families that have lost a

family member. If you have information on your birth family, such as names and birth dates, or if you have been relinquished by your birth family for adoption, it is not easy, and often not possible, to submit your DNA to this database. There are many steps to follow that must all be exhausted before relinquished adoptees or adoptees with information in their records can test this way. (The decision is made based on the adoptee's records, which might contain wrong or falsified information.) Autosomal DNA tests do not require these steps.

Records and Identity

For Korean adoptees, records and identity are closely linked, and what is on the record is often the only information about their past that they know. Scant and incomplete information means scant and incomplete knowledge of their beginnings in life. This is a big part of a person's identity and perhaps the only evidence of their existence. Adoptees cling to these pieces as the only link to themselves and their country of birth, without knowing whether the information given is true or not.

The numbers of adoptees seeking to do birth family search speaks for itself. The need is there, but the resources to help adoptees are not. And that is what we wish to change.

A Perspective on Birth Family Search: Process and Limitations within the Existing Framework for Searching

Dave RIPP

Birth Family Search Mentor, G.O.A.'L.
Overseas Adoptee / USA

I returned to Korea through G.O.A.'L.'s annual First Trip Home program in 2016, where I was exposed to a wide variety of fellow adoptees' personal origin journeys. Hearing about each journey revealed some of the limitations of a birth family search. A few months later I relocated back to Korea, and by late summer of 2019, I started working at G.O.A.'L. assisting other adoptees through the process of birth family search.

So for the past year, I've been in a unique position where I get to see and assist in hundreds of family search cases at all stages of the search process, and while it's important to recognize that each case is different, it often starts from a common point: confusion. Many questions arise from this point of confusion: what's possible, what's not possible and why, who's involved,

what does the actual process entail, as well as the transparency of documentation and actions taken in the search process.

A common theme of requests for help often sound like: "I want to start a search with your organization because I do not trust (insert agency)" or "I've heard of this agency or that agency, but I'm not sure where to start because I was told to contact my representative agency I was adopted to" and sometimes "I haven't heard back from my adoption agency for a long time." To me, this speaks of the wider issue of misinformation and lack of trust in what is being done or communicated on behalf of the adoptee. From my perspective as a fellow adoptee who is able to assist other adoptees with their birth family search, I have found that withheld documentation, accuracy of

information, and lack of tracking have all presented obstacles when searching. But as an organization, we want to educate adoptees about the process and the limitations that can occur.

By now, it's quite well understood that not all abandonment cases were truly abandonments (as there are numerous personal anecdotal publications) and that there are documents that exist in an adoptee's files that are not accessible to the adoptee, even if those documents could assist in a family search. Currently, there is no way that the adoptee will ever know if they were truly abandoned or not, since there is not a truly neutral third party organization that can audit or verify the contents of an adoption file. The agencies will often claim that it is private property, or that there is sensitive identifying information that is protected by the privacy laws in Korea, so they refuse to release that information. However, I have reviewed countless cases where similar documents have been released to adoptees. The sensitive data had been redacted (so as to not violate privacy laws), but some adoptees were still able to obtain certain documents that others were told did not exist in their adoption records. A major issue is that there is no consistency to the practices carried out by each agency. Information regarding the inconsistent practices of record keeping and

release of documents is rapidly disseminated through the social media landscape that adoptees frequent, which leads to even greater apprehension and mistrust of the agencies' practices.

While some files are not able to be accessed, the files adoptees are able to review can sometimes have misleading or even inaccurate information. There's a case that comes to mind when I start to question the accuracy of the information provided within the files given to the adoptee and passed on for review. Within the documents, the name of a religious organization within a specific town was noted as a place of interest. A quick Naver and Google search was able to easily locate the website of this group. However, it immediately became clear that some of the data did not entirely match what was in the file, such as the dates this group operated and even the physical location. While it was within the same city, it was a bit too far away from what was recorded in the file and wasn't a simple issue of the Korean street system changing. But there were no other good leads and most of the main pieces of identifying information matched. In the course of investigating points of interest to visit and the relevance of each place, we requested the assistance of another organization. This organization was given full (as far as we know) and complete access

to all of the adoptee's records, and within those records, the unique seal of the religious organization was found, which redirected the search area. This illustrates how sometimes what may seem like trivial information to one person can lead to substantial movement in a search. While this did not directly impact the objective of finding the birth parent, it did have a profound impact on the adoptee. They were able to verify, without a doubt, that the newly discovered place did exist and where it was located, which became a part of their origin story.

With all of this in mind, I think it's important to note that it's incredibly difficult to find reliable data supporting the anecdotal cases of mismatched or inaccurate adoption records, as the adoption agencies have historically acted under a "마음대로," or "as they see fit," model of business. This makes it a bit difficult for our community to accurately cite data regarding our origins and our past and present search efforts.

As an organization, we want to work toward providing more contexts for those involved, and their relevant official responsibilities, as this helps empower the adoptee and hopefully gives them some sense of control. This can manifest from simply explaining what the "telegrams" that are sent to potential birth parents are, but even before that phase in the search process, how current

contact information was discovered to even attempt contact with a potential birth parent. This is especially relevant as sometimes adoptees are told in their files that they were abandoned, and how can one possibly locate a potential birth parent if their records state they were abandoned (without information)?

But I think it all comes down to what the adoptee hopes to get out of their personal search. In the numerous cases that I've worked on within the past year, there's a common theme: wanting to discover anything that is a part of the adoptee's concrete origin can be just as powerful as an actual reunion. In the current landscape of searching, it's difficult to trust the accuracy of records without a neutral and accountable organization managing the records, or at the very least auditing the process of assisting adoptees searching for their birth parents. Our hope is that, moving forward, adoptees, agencies, and third-party organizations like G.O.A.'L. can better understand such limitations and wholeheartedly assist each other in this journey.

Problems with Adoption Records from the Position of the Ministry of Health and Welfare's Child Welfare Policy Division

Hye-ryung JO

Administrative Officer

Ministry of Health and Welfare, Division of Child Welfare Policy

1. History of the law on adoption records

- Act on Special Cases Concerning Orphan Adoption (Enacted 1961.09.30): No articles regarding adoption records
- Enforcement Rule of the Special Adoption Law (Enacted 1977.04.08): New articles on the storage of adoption records (no storage period)

Article 11 (Keeping of books, etc.) Adoption agencies shall keep the following books and documents:

1. Records on the history of the relevant institution, property inventory and certificates of property ownership, operating regulations, resumes of representatives and employees, budget documents and balance sheets, cash and commodity books, and accounting-related documents
2. The articles of association
3. Adoption-related documents

- Enforcement Rule of the Act on Special Cases Concerning the Promotion and Procedure of Adoption (Full revision 1996.01.06): Establishment of a permanent preservation regulation for adoption records

Article 13 (Post-adoption services for adopted children)

- ② Adoption agencies shall permanently preserve the documents prescribed by the Minister of Health and Welfare as adoption-related documents concerning adopted children and birth parents for post-adoption services mentioned under Paragraph (1).

- **Special Adoption Law and related Enforcement Rules (Full revision 2011.08.04, 2012.08.03):** Establishment of a new regulation for the provision of adoption records to Korean Adoption Services (KAS became a department under the National Center for the Rights of the Child on July 16, 2019; hereinafter referred to as the NCRC), establishment of a new regulation for the digitization of adoption records, establishment of a new regulation for the transfer of adoption records to the NCRC when an adoption agency closes. establishment of a new regulation on the right to request the disclosure of the adoption information of adopted persons.

Special Adoption Law, Article 21 (Duties of Adoption Agencies)

- ④ For the efficient performance of adoption affairs and the establishment of a cooperative system among adoption agencies, the head of an adoption agency shall provide the NCRC, established under Article 26, with information on adopted children and their families, as prescribed by an Ordinance of the Ministry of Health and Welfare.
- ⑤ The head of an adoption agency shall keep records of matters related to adoption affairs as prescribed by Ordinance of the Ministry of Health and Welfare. In such cases, the adoption records may be stored electronically.
- ⑥ The records on adoption affairs prescribed in Paragraph (5) shall be permanently preserved for post-adoption services.

Enforcement Rule of the Special Adoption Law, Article 23 (Provision of Adoption Information)

23.1 Pursuant to Article 21.4 of the SAL, the head of an adoption agency shall provide the NCRC with the following information:

- ㉠ Name, resident registration number, address, date and place of birth, gender, and type of disability or illness, if any, of a child taken into care by the adoption agency;
- ㉡ Name, resident registration number, address, and contact number of the birth parents; reasons for the adoption; matters concerning consent to adoption under Article 12.1 of the SAL; and whether the birth parents consent to the disclosure of adoption information as mentioned under the main clause of Article 36.2 of the SAL;
- ㉢ Name, date of birth, nationality, address, and contact number of the adoptive parents or prospective adoptive parents;
- ㉣ Date when the family court order for adoption, as mentioned under Article 11, 18, or 19 of the SAL, was finalized and the date when the adoption was reported (a departure date in cases of overseas adoption); and
- ㉤ Other information deemed necessary by the Minister of Health and Welfare.

23.2 Where the head of an adoption agency provides the information under Paragraph 1 of this Article to the NCRC, he/she may use the information system outlined under Article 6 of the SAL for such provision.

Enforcement Rule of the Special Adoption Law, Article 25 (Preservation of Adoption Records and Electronic Records)

25.1 Subject to Article 21.6 of the Act, the head of an adoption agency shall permanently retain adoption records, as mentioned under each subparagraph of Article 24, provided that all adoption records kept in electronic form are permanently retained by means of the information system outlined under Article 6 of the SAL.

25.2 Upon closure of business mentioned under Article 17.2, the head of an adoption agency shall transfer the adoption records, as mentioned under Paragraph 1 of this Article, to the NCRC.

Special Adoption Law, Article 36 (Disclosure, etc., of Information on Adoption)

- ① A person who has been adopted under this Law may request the disclosure of information on his/her adoption that is held by the Central Authority or the relevant adoption agency. If a person who has been adopted under this Law is a minor, he/she shall obtain consent thereto from his/her adoptive parents.

2. Efforts to systematize the management of adoption records following the revision to the Special Adoption Law in 2012

Adoption records computerization project

• Purpose

Ensuring adoptees' right to know by providing birth family search services based on the establishment of a national system for preserving and managing adoption records

• Performance

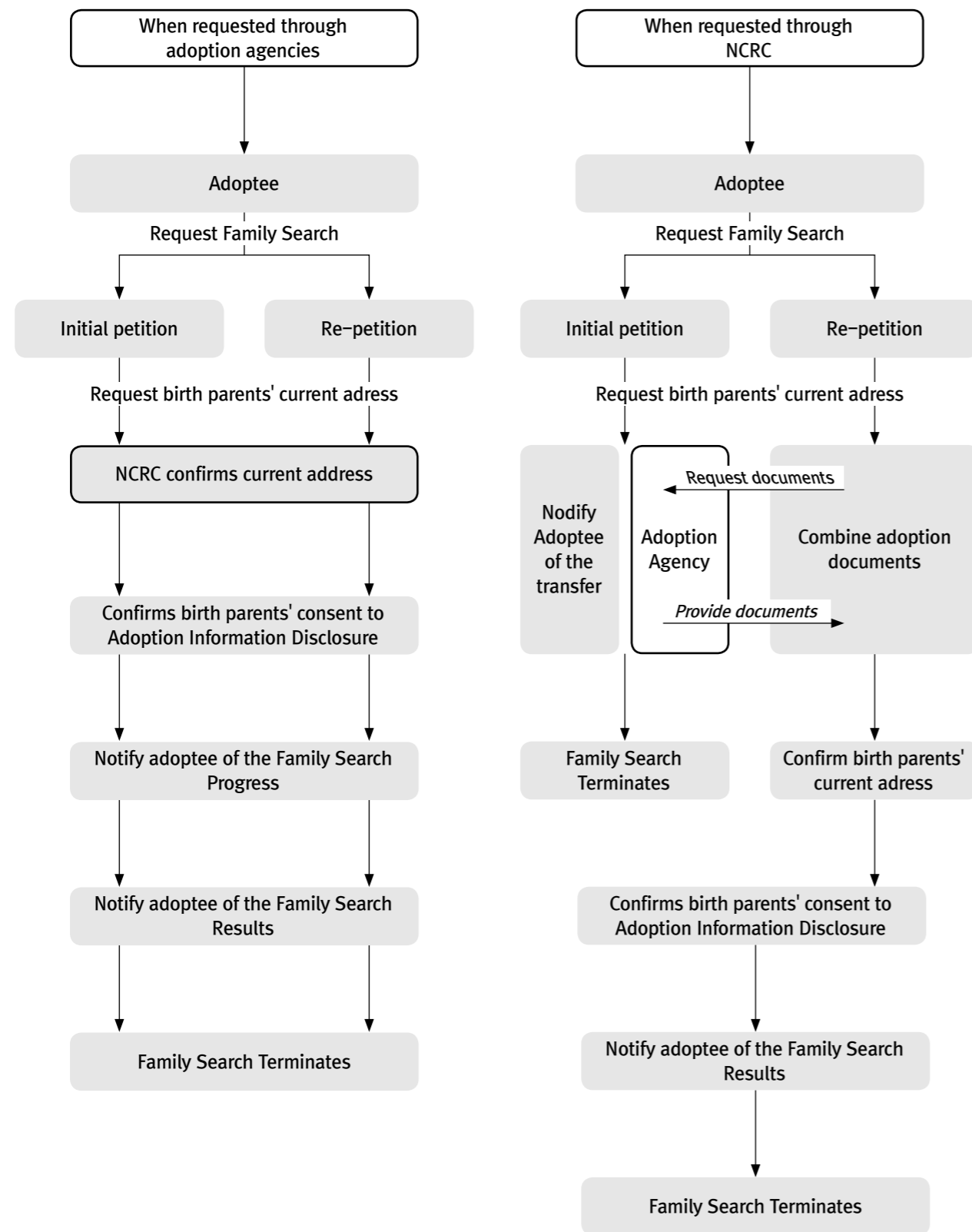
- Since the revision of the Special Adoption Law in 2012, about 23,000 individual adoption records (from the 1950s to August 4, 2012) held by each adoption agency have been completely digitalized * Adoption information dating from August 2012 to the present is entered directly by the adoption agencies into the Central Adoption Information Management System.
- About 60,000 individual adoption-related records held by child welfare facilities, etc., have been completely digitalized (as of the end of 2019).
- About 39,000 individual foreign-migration-permit documents held by the Ministry of Health and Welfare and the National Archives have been completely digitalized (as of the end of 2019)

• Plan

- Continue the digitalization of adoption records held by Korean government and child welfare facilities
- Check the current status and request cooperation from local governments and child welfare facilities that keep adoption records (Periodic briefing sessions will be held for regional child welfare facilities)

□ Adoption Information Disclosure System

- Target Persons adopted under the Special Adoption Law (Parental consent is required for minors)
- Procedures for Adoption Information Disclosure Requests



• Performance over the last three years

Year	Total Requests (A+B)	Total (A)	Address Confirmed			Unable to Locate (B)	In Progress
			Consent to Disclosure	Reunions	Refusal to Disclose		
2017	1,568	787 (50.2%)	279 (17.8%)	90 (5.7%)	508 (32.4%)	781 (49.8%)	-
2018	1,607	1,033 (64.3%)	307 (19.1%)	89 (5.5%)	726 (45.2%)	574 (35.7%)	-
2019	2,175	1,217 (56.0%)	456 (21.0%)	129 (5.9%)	761 (35.0%)	958 (44.0%)	-
2020.1~5.	624	360 (57.7%)	145 (23.2%)	1 (0.2%)	215 (34.5%)	210 (33.7%)	54 (8.7%)

3. Direction of systemic improvements to ensure adoptees' right to know

* The following contents are excerpts from a bill to revise the Special Adoption Law (by National Assembly Member In-soon NAM) submitted during the 20th National Assembly.

- ① Expand adoptees' right to search for relatives beyond what is possible in the current law (parents)
- ② Establish a basis for requesting the phone number or mobile phone number of the birth parents from the relevant organizations to check whether the biological parents consent to disclose adoption information
- ③ New provisions for obtaining birth parents' consent before adoption information is disclosed
- ④ Support for birth family search such as DNA testing and counseling

Excerpts from a bill to revise the Special Adoption Law (by National Assembly Member In-soon NAM)

Article 29 (Right to request disclosure of adoption information)

- ② In the event of the death of an adopted person under this Law, their lineal descendant (limited to adults 18 and older) may ask the head of the Central Authority, etc., to disclose adoption information related to the deceased.
- ③ The Minister of Health and Welfare may, if necessary for verifying the consent of the birth parents, as mentioned under Paragraph (2), ask the chief of a police station having jurisdiction over the location of the birth parents (hereinafter referred to as "police chief") or a telecommunication business operator (hereinafter referred to as "telecommunication business operator"), as mentioned under subparagraph 8 of Article 2 of the Telecommunications Business Act, to provide the telephone number (including mobile phone number) of the birth parents. In this case, the police chief or telecommunications business operator shall provide the relevant information notwithstanding Article 18 of the Personal Information Protection Act, Article 6 of the Electronic Criminal Procedures Promotion Act, and Article 83 of the Telecommunications Business Act.

Article 31 (Birth parents' consent regarding adoption information disclosure)

- ① The Minister of Health and Welfare shall establish and operate a cooperative system and information network (hereinafter referred to as "information linkage system") with the National Police Agency, local governments, the Central Authority, adoption agencies, social welfare facilities, etc., to support the search for families of adopted persons and birth parents.
- ② The Minister of Health and Welfare shall provide the necessary support, such as DNA testing and counseling, for meetings and communication between adopted persons and birth parents.
- ③ The Minister of Health and Welfare can establish and operate a database of genetic information so that adopted people and their birth parents can reunite.
- ④ The Minister of Health and Welfare can, if necessary, use information systems for reporting and finding missing children, etc., as outlined under Articles 8-2 and 11 (2) of the Act on the Protection and Support of Missing Children, etc., and the personal information of missing children (such as name, age, and other identifying information) held by the information system in connection with genetic databases, to support searches for the families of adopted persons and birth parents.
- ⑤ Matters necessary for the establishment and operation of an "information-linked system," as mentioned under Paragraph (1), and a database of genetic information, as mentioned under Paragraph (3), and the methods and procedures necessary for verifying the scope of personal and genetic information that can be linked to the information system mentioned under Paragraph (4), shall be prescribed by Presidential Decree.

4. Closing

The Best Interests and the Right to Origins

Ross OKE

General Manager, Human Rights Beyond Borders

Overseas Adoptee / USA

Thank you to the previous speakers. Their discussions have provided an insightful and informative overview of the right to origins in international and domestic law. What becomes apparent in their lectures is the lack of development on after adoption issues and the persistent ambiguity adopted people encounter when striving to understand their roots, origin, and identity.

While reading the speakers' materials, and based on their presentations, I wanted to add a few remarks to complement what has already been discussed. An overarching theme that has been prominent to me in many people's search to know their origins, and I specifically use origins to encompass more than just birth searches or accessing records, is identity. This term has such a wide variety of meanings that different disciplines will rarely

arrive at a consensus on an exact definition. Some will attempt to capture "identity" as a single construct with defined borders, while others will argue our identities are multiple, fragmented, and never stable. For the sake of working with identity in a more practical sense, I'll provide an imperfect definition, describing it as a blend of elements and events from the past that evolve to inform us of, as well as constitute, who we are, where we come from, where we're going and who we will become. There are inert elements (which we could call facts such as genetics, nationality, etc.) as well as more fluid dimensions, such as cultural, political, social, etc., the latter of which neither remain the same nor necessarily have a unified nature. The fixed aspects are not of the child's choosing. We don't get to choose our genetics or our country and nationality of birth. Thus, if we

interpret children's rights to recognize only these dimensions, then it neglects a more participatory approach necessary for a person's construction of those fluid features of identity. There are emerging discussions on providing children with space and autonomy to develop their own identity, thereby giving children the freedom to construct their own identities without imposing on them who they are or should become.

When determining the best interests of the child, adults can often reduce this decision to focus on care arrangements while prioritizing the physical well-being and development of the child. Furthermore, where adults decide on the family, cultural, and social environment in which a child will grow, then erases that child's origins to fit this fiction, this act both deprives the child of the right to know and to participate as an active subject. Thus, the incorporation of fluid elements into the interpretation and recognition of identity encompasses ensuring the right to participate in the construction of identity.

However, identity construction is more than participation; it also includes the principle of the right to survival and development. Survival often overshadows development, reducing this right to dimensions about physical life and death situations. But development should be interpreted in the broadest sense and in holistic terms to include psychological, spiritual, cultural, and other less tangible

domains. When interpreting the right to origins as also entailing adopted people's development, accessing records, contact with families of origin, etc. are seen less as a fixed set of facts, and more as providing an understanding of the adopted person's life, story, narrative, and identity. Thus, the preservation and access to records is more than recovering identity in the historical sense but rather more as part of the ongoing construction and development of the present and future idea of the self. By having access to records, by being able to interact with families of origin, or by just being able to construct their relationship with Korean society, this provides adopted people with the space and means for participation in the crafting and creation of identity. When we start looking at the right to origins less as fixed elements or individual stories, but more as the ongoing construction of identity, we begin to see that it can also be about finding a place in the world; defining one's relationship to the social and environmental space around us and trying to gain some recognition or acknowledgment in that relationship. In other words, if the fulfillment of the right to origins entails actively participating in the development of one's self to the fullest potential, then access to records and contact with the family of origin, etc. are minimum needs that the society has yet to concede.

Recommendations for the Adoption Archive

Ik-han KIM

Professor

Graduate School of Record Information at Myongji University

1. Thoughts on the Adoption Archive

An archive can be defined as a collection of all recorded information that has value by being utilized and shared. With this perspective, the adoption archive can be considered a system for creating, collecting, managing, and using recorded information of value, for use or sharing by members of the adoption community—including birth parents, adopted individuals, adoptive parents, and all those who value this community. First, we must recognize that the activities surrounding adoption form a way of life whose various phases must be considered in the creation and management of the adoption archive. Regarding adoption as an "extraordinary" circumstance is a disservice to the equitable nature of the archive, and it is the basic position of this panelist that we must be

mindful of this point at all times.

An archive is often fraught in the complicated relationships between parties that have ownership and control of the archived materials. Therefore, the issue of ownership and control must be addressed by the archive, and the public interest must be given priority. An archive of adoptee information must be managed with consideration for this issue in relation to adoptees' human rights. In addition, due to the high potential for the loss, dispersal, and decay of records related to the lives of adoptees, the archive must deal with preventing such losses. The archive can provide meaningful support to adoption as a lived experience by sharing adoptee identities and assisting in the care of adopted individuals. It also serves an important role in activist movements to resolve adoption issues,

by considering the realities of the problems in the State, legal, and social systems related to adoption. Adoptees are subject to a certain way of life, but due to society's ignorance and State policies that ignore their human rights, adoptees become exceptional cases and their records are often lost. From this standpoint, an archive that shares records of their activist efforts becomes an important means of achieving normalization in society.

Modern Korean history is rife with societal tumults, including authoritarianism and inequality. From the 1950s to the present, these aforementioned archives of adoptee information, adoptee lives, and adoption activism might very likely have been severely manipulated or even lost and forgotten. In order to set this right, archival practices must be carefully considered when normalizing the adoption archive.

2. State Management of the Archive for Adoption Records

Human beings are born with the right to grow to adulthood, and to receive care until they have come of age. The caregivers are typically one's birth parents, but sometimes the birth parents may be unable or unwilling to provide care. In cases when a new caregiver must be designated, the State or adoptive individuals may be chosen to provide care. Of course, State care involves passing on the

responsibility for childcare through contracts with private facilities. In this case, the duty to provide State or communal care for the adoptee must be fulfilled. For instance, if an adoption takes place but is later dissolved, the State has a duty to care for former adoptees, in order to guarantee their human rights.

From this point of view, it becomes possible to see what direction must be taken to determine how adoption records are managed. All human beings are born with the right to have their birth records preserved and managed, and to be able to access that information at any time. In the case of adoption, the birth parent has a duty to maintain the adoptee's records until the adoption takes place, and to hand over those records to an appropriate entity once the adoption is finalized. This transfer of information allows adoptees to retain their right to access their records. It is preferable that the State manages and preserves the adoptee's records in a systematic manner when the adoptee is separated from the birth parents. Toward this end, records collected by the adoption agency can be delivered to a State institution when adoption procedures are completed, while permitting the adoption agency to retain copies of those records for management purposes. Moreover, any personal information contained within the adoption records must be carefully

managed with detailed regulations for privacy protection. For instance, access must be managed so that if the birth parent has no desire to reunite with the adoptee, the adoptee's right to access their records is recognized, though that does not guarantee them the right to be reunited.

Currently, adoption-related activities in Korea are performed by adoption agencies and the National Center for the Rights of the Child (NCRC). It is desirable to set a firm policy under which the NCRC will establish a stable archive and manage adoptee records, and under which adoption agencies will cooperate in collecting adoption records and maintaining duplicates as necessary. This will allow for the creation of an archive that serves the public interest, while best ensuring both the human rights of adoptees and reasonable privacy protection. Achieving these ends requires making appropriate legislative reforms, strengthening the roles and functions of the NCRC, and building a smooth networking system between the NCRC and adoption agencies.

3. Multilateral Foundation and Networking for the Adoptee Activity Archive

Adoptees share commonalities in their lived experience, which allows many adoptees to share their experiences and support for one another. As previously mentioned, an archive

is a collection of things that have meaning through the act of sharing. Therefore, if adoptees can actively share the records related to their lives, it will strengthen and solidify their presence as a social group. If adoptees themselves can easily upload and share records about adoptee activities, the adoptee activity archive can become both dynamic and participatory.

There are already many adoptees who have created their own communities both small and large and are actively engaging with them in ways that contribute to the exchange of information about their activities and invigorate their communities. If archival activities became a priority for these communities, then it would be possible to create smaller archives for each community. Networking is an important consideration for such an endeavor. It would be necessary to build a networking platform to support the numerous smaller archives so that they can be managed "separately but together." Adoptee support organizations or the State should establish the archive networking platform, and build a separate modular system that the smaller archives can utilize.

Over the years, various efforts have been made to solve the issues that adoptees face. If these efforts that were made by the adoptees themselves, and as part of activism in civil society, are documented and shared

in the form of an archive, it will allow many adoptees to participate in solving important issues and help build a positive identity for transformation. In addition, the sharing of legislative records, a wide range of cases, and various information related to adoption, can play a role in spurring activism for adoptee human rights.

4. Adoptee History Archive and Historical Reconciliation

Korea unfortunately has a dark history in which adoptees have been victims of abandonment by their nation, as well as illegal activities and crimes against their human rights. A step toward normalizing the lived experiences of adoptees is to reconcile the past and expose the truth about adoption and the wrongdoings of the State, adoption agencies, and individuals. To begin the process of historical reconciliation, an adoptee history archive must be established by surveying and collecting historical records. This archive must approach adoptee history without any bias or desire to exert control, but with a desire for truth and a basis in the concrete historical activities of adoptees.

The adoptee history archive must include a wide range of materials such as records of State policy, records of societal structures that led to distortions about adoption, records related to adoption agencies, records of cases surrounding adoptees, overseas records such

as those kept by adoptive nations or church organizations, various case records that reflect the reality of adoption, and the oral records of adoptees. Moreover, these records must exist in a form that is comprehensive without omitting their overarching core truths. The creation of a historically faithful archive depends, first and foremost, on a comprehensive survey of adoptee history. This research will serve as a documentation strategy for a systematic collection of materials for the adoptee history archive.

5. Recommendations for Implementation

In conclusion, the following recommendations are made for establishing an archive that would manage the various kinds of records that have been mentioned, including basic records related to adoptees, records related to the lives of adoptees, records related to the activities and struggles of adoptees, and records related to adoptee history.

1. The State should commit a sizable budget for building an archival platform that functions under the “separate but together” principle. This platform should include all types of records, from basic information related to adoptees to historical records. In particular, records related to the lives of adoptees and adoptee activism should be collected and managed autonomously by

civil organizations or small communities using “separate” system modules, which would be combined into a network.

2. The combined platform should be hosted by the Ministry of Health and Welfare or the National Center for the Rights of the Child, but the principal decisions should be made by an archive committee that includes adoptee organizations and experts. If there is sufficient will, establishing an adoptee archive foundation to manage the archive should also be explored. This foundation would manage the combined archive, providing not only logistical management but also providing ongoing financial support and technical support to the organizations that create and maintain the “separate” system modules.

3. The adoption archive should collect, manage, and utilize original documents and digital copies by adhering to the principle of authenticity. In particular, the combined archive should preserve and maintain both the originals and copies of documents for which authenticity is crucial, such as basic information about adoptees. Managing adoptees’ basic information by newly inputting only limited data into a database system fails to satisfy this principle. Furthermore, to ensure

that adoption occurs in the public interest and to guarantee adoptees their right to access their information, it is necessary to establish a system that requires adoption agencies provide the combined archive with both the originals and copies of records that were acquired for the purpose of processing adoptions.

4. Two preliminary studies should be performed before creating the adoption archive. The first is a survey to ascertain records concerning adoptees’ lives and activism. This research must be inclusive of small communities, large-scale organizations, and individuals who possess a large collection of records. The findings will help to determine how to manage the network of smaller modular systems, as well as who should be involved in the archive’s record collection efforts. The second is a survey of records pertaining to adoptee history. By ascertaining what records about policies, structures, incidents, and cases, as well as oral records, can be found domestically and abroad, and by creating a roadmap for the practical collection of these records, we can begin to make the history archive a reality.

5. A mid- to long-term budget should be set to make the archive a reality, and at the

same time, the parties responsible for the archive's creation and management should be clarified. The Ministry of Health and Welfare or the National Center for the Rights of the Child should create a committee responsible for pushing forward the archive, formalize a governing body for the archive's establishment, and at the same time apply for and acquire the necessary mid- to long-term budget so that this work can progress in a swift and systematic fashion.

The archive is both a source of proof and a font of memory. It must be free from improper motives such as a desire for control, and offer true evidence as a tool with which work can be accomplished. In addition, the archive allows many people to empathize with the problems faced by adoptees and to remember them long into the future, so that we can further our ability to ensure the human rights of adoptees in more expansive and sustainable ways.



Closing

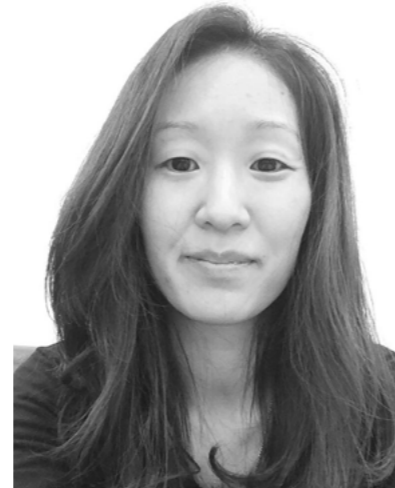
Closing Remarks

Boon Young HAN *Assistant Professor, Hankuk University of Foreign Studies*



Closing Remarks

Boon Young HAN
Assistant Professor
Hankuk University of Foreign Studies



We have reached the end of the First Adoption Truths Day International Conference and it is my task on behalf of the conference organizers to provide some closing remarks. While it is sad to close the door on our conference today, it has been a unique experience to work with everybody, friends and colleagues from around the world, in preparing for this.

2020 has been a challenging year for everyone and even today we find ourselves unexpectedly separated across borders. A special thank you to our keynote speaker and presenters based outside South Korea, in Europe and North America, who have taken the time and effort to contribute their analysis of the adoption experience and the legal framework pertaining to this experience.

We have heard testimonies from those most directly impacted by the adoption program, placed domestically as well as overseas. Under the theme Adoption Justice: Issues of Records and Identity, our presenters have identified and spoken about a child welfare program characterized by a systematic failure to protect children and their families. Our presenters have shared their experiences of switched identities, unclear methods of relinquishment, and an absolute erasure of origins.

The adoption discourse is evolving as we learn more about the lifelong consequences of the adoption program, and we consider adoption truths to be an invaluable aspect of this. We have a vision of justice and protection of basic human rights for those impacted by the adoption program; one we can only achieve together.

Finally, I hope you have found inspiration in today's contributions for your future adoption-related work.

Thank you for your participation and we very much hope to see you in 2021 for further discussion on the issue of adoption truths.

Acknowledgements

Our current moment may prove to be a watershed for the great division of human history into the time before and after COVID-19. The tide that rises and falls between an era of transformation and an era of uncertainty shakes our daily lives at random. In the midst of these twists and turns, and in the midst of the shaking, we manage to find our balance.

We would like to express our gratitude to all those who have worked together in solidarity of mind, heart, and spirit to produce the 1st Adoption Truths Day International Conference.

Thank you.

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