

Check against delivery



Statement by Ms. Maud DE BOER - BUQUICCHIO
SPECIAL RAPPORTEUR ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD
PORNOGRAPHY

34th session of the Human Rights Council

Agenda Item 3

7 March 2017

Geneva



Mr President,
Excellencies,
Ladies and Gentlemen,

It is an honour for me to address the Human Rights Council upon completion of my first term as the fifth Special Rapporteur on the sale of children, child prostitution and child pornography.

In the past twelve months children's rights continued to be under enormous strain. Children are deliberately targeted in wars and crises, and their vulnerability to fall victims of sale, trafficking and exploitation increases accordingly. Yet, we remain incapable of protecting them from the depths of horror by failing to deliver on our international commitments.

In the context of the 2030 Development Agenda I am actively engaged in the work of two child-focused partnerships, the Global Partnership to End Violence against Children and the Alliance 8.7 to eradicate forced labour, modern slavery, human trafficking and child labour. Similarly, I am committed to supporting the work of the Independent Expert for the global study on children deprived of liberty, which can also assist in the fulfilment of the 2030 Agenda and the pledge to leave no one behind. All these important initiatives will only achieve their objectives if they get the full support – through means and resources - of Member States.

Mr President,

In my first term as Special Rapporteur I have delivered on the priorities that I set out upon being appointed, namely by increasing knowledge and visibility of the plight of the sale and sexual exploitation of children online, and the sale of children for the purpose of forced labour, by issuing specific recommendations for the establishment of child-centred and rights-compliant comprehensive care, recovery and reintegration programmes for child victims, and the need to tackle the demand side of the phenomena – an aspect that I also address in the thematic study on illegal adoption that I'm presenting today.

Mr President and distinguished delegates,

Since my appointment I have tried to ensure a regional balance in the selection of my country visits. In this regard, I encourage States of the Asian region to respond positively to my requests for visits in order to assess progress and take note of successful initiatives to combat the sale and sexual exploitation of children.

I thank the Government of the Dominican Republic for having accepted my request to undertake a visit to the country on 8-15 May 2017, and look forward to a fruitful cooperation in preparation of the visit. I would also like to thank the Governments of Bulgaria, Cameroon and Ireland for having accepted my requests for a visit.

Mr President,

My annual report to the Human Rights Council contains a study on illegal adoptions. It is the first time that my mandate conducts an in-depth study on this topic. Since its creation in 1990, my mandate has been tasked with addressing “the problem of the adoption of children for commercial purposes”.

My study focuses on illegal adoptions and sale of children that occur at the national and international levels through the commission of illegal acts and illicit practices. These acts reflect deficiencies in child protection systems which are exploited by criminal networks, often with the involvement of State officials or as the result of permissive State policies. All actors are driven by the lucrative business of illegal adoptions and the complete impunity for these crimes only serves to fuel this scourge.

Mr President and distinguished delegates,

One of the key principles that must govern adoption processes, both at the domestic and intercountry level, is the best interests of the child. This principle is breached when the purpose of adoption is to find a child for adoptive parents rather than a family for the child. And let me put it clearly from the outset, international

human rights norms and standards do not set a right to adopt a child or a right to be adopted. To subordinate the best interests of the child to the needs and wishes of prospective adoptive parents is to turn children into commodities and to prepare the ground for the lucrative business of sale of children and illegal adoptions.

Intercountry adoptions are governed by two additional principles: the principle of subsidiarity and the prohibition of improper financial gain. This means that all appropriate national alternative care solutions must be considered in the child's country of origin before resorting to intercountry adoption. It also means that only costs and expenses of adoptions may be charged or paid while other payments such as donations should be prohibited. Both in domestic and intercountry adoptions States must ensure that adoptions are authorised only by competent authorities who determine that the adoption is permissible in view of the child's status concerning parents, and that the latter have given their informed consent.

These four principles are set out in the Convention on the Rights of the Child, and are developed by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. I invite all States that regulate intercountry adoptions and which are not parties to it, to ratify the 1993 Hague Convention as an effective means to prevent and combat illegal adoptions.

Mr President,

All adoptions which result from the commission of crimes such as the abduction, sale and trafficking of children, and from illicit practices such as lack of proper informed consent by biological parents, improper financial gain by intermediaries and related corruption, are illegal, and must be prohibited, criminalised and sanctioned as such by all Member States.

My study describes a long array of forms and methods of illegal adoptions, both at the domestic and intercountry level, which have occurred in the past and continue happening in systematic or systemic ways. Methods employed and actors involved are often the same. The kidnapping of babies, falsely informing parents that their baby was stillborn or died shortly after birth, the consent of biological parents

obtained through misrepresentations, bribery or coercion, the payment for the child and bribes paid to intermediaries involved in the adoption process are among the most common methods of sale and illegal adoption of children. Inherent to these methods is the falsification of documents and bypassing of regulations.

In the majority of cases the targets of illegal adoptions are parents, and in particular mothers, who are in an acute situation of vulnerability – single mothers, in economic hardship, from rural areas, who belong to indigenous communities, and who have no access to education and cannot make their voices heard or whose voices are completely ignored. They are the easy preys of those who do business with illegal adoptions.

Mr President,

For the purpose of this intervention, I will focus on two major aspects related to illegal adoptions: the enabling environment that fosters illegal intercountry adoptions, and the rights of victims of large scale illegal adoptions.

In addition to the crimes committed by individuals or criminal networks to secure the adoption of a child, the main issue in relation to illegal adoptions revolves around the extent to which States are prepared to tackle the enabling environment for such crimes as well as to respond appropriately when they occur. Conditions in most countries of origin – such as poverty, lacunae in birth registration, legislation facilitating relinquishment or abandonment, poorly paid and under-resourced civil service, inadequate social protection systems, alternative care systems relying on privately-run residential facilities - render certain groups of populations particularly vulnerable to the initiatives of those seeking to procure children for adoption.

In this regard, my study highlights four elements which encourage practices that perpetuate a context favourable to illegal adoption, which are: the pressure of demand, financial transactions, the role of intermediaries, and the recourse to countries of origin that have not ratified the 1993 Hague Convention.

Countries of origin require or accept substantial amounts of money from prospective adopters and/or their agencies that are not justified by services connected with the adoption process but will inevitably influence that process. Receiving countries are often prepared to accept such conditions in order to enable their citizens to adopt from a given country. And the substantial amounts of money thus “agreed” for an intercountry adoption are such that third parties are strongly incited to profit from those arrangements through the procurement of children for intercountry adoption.

Mr President and distinguished delegates,

Let me now turn to the other major issue of concern highlighted in my study, which is the plight of victims of large scale illegal adoptions and the absence of State responses to address their demands and ensure their rights.

Various countries emerging from a conflict or authoritarian regime have been confronted with allegations of systematic illegal adoptions as part of past large scale abuses. However, few countries – such as Argentina - have responded to victims’ calls for truth, justice, reparation and guarantees of non-recurrence, and none have done so in a comprehensive manner and with a victim-centred approach.

Even though transitional justice measures in their context of origin were applied following regime change, their principles can also be used to respond to the legitimate quests for truth, justice reparation and guarantees of non-repetition of victims of large scale systemic illegal adoptions, when such violations have been tolerated or committed by the State. With few exceptions – such as in Australia - responses of States to large scale illegal adoptions reflect a piecemeal approach and a chequered pattern of denial, acknowledgement and limited assistance.

Public instances of recognition of past wrong-doings are rare, and even then, they do not lead to concrete action or accountability. Moreover, public inquiries to establish the truth and recognise the experiences of victims have been incomplete and failed to address concerns of all victims. As a result, in many cases, victims’ demands for acknowledgement, apology and redress are yet to be met.

Both States of origin and receiving States must acknowledge the gravity of the situation, and assume their responsibility. There is a generation of children adopted in the late 1990s and 2000s – the peak of intercountry adoptions – who are about to become adults and start their quest for origins. States must have the capacity to anticipate this quest by elaborating adequate databases and DNA records, conducting awareness-raising campaigns to identify birth mothers who are searching for their children, establishing processes that are not complicated and expensive, and providing psycho-social support to triad members (adoptees, adoptive parents and birth families). The design and implementation of all measures and policies must respond to the needs of victims, who must be consulted and empowered at all stages of the process.

Mr President and distinguished delegates,

My study contains a comprehensive list of concrete recommendations to combat the scourge of illegal adoptions, including by addressing the root causes. States must adopt clear and comprehensive legislation which prohibits and criminalises illegal adoptions as a separate offence with sanctions that reflect the gravity of the crimes, and they must review national legislation to ensure that it does not contribute to an enabling environment for illegal adoptions. States must also strengthen and invest more in effective national child protection systems to assist vulnerable families in their child-rearing responsibilities, regulate and supervise adoption processes, and prohibit private and independent adoptions.

In respect to intercountry adoptions, central authorities of States must ensure effective monitoring of adoption accredited bodies, official fees must be established on a purely cost-covering basis, requirements for development of humanitarian aid and payments to residential care facilities must be eliminated, and annual quotas must be replaced by the reversal of flow of files – any application that has not been initiated in relation to children identified as requiring adoption abroad should be refused.

I call on States, as part of their efforts to advance implementation of the 2030 Agenda, in particular SDG targets 8.7 and 16.2, to increase technical cooperation to strengthen effective child protection systems in countries of origin, enhance cooperation among receiving countries and countries of origin to combat illegal intercountry adoptions, increase support and resources to the Hague Conference on Private International law, and support the establishment of an international body of experts on transitional justice and illegal adoptions to promote and advise on measures to redress victims of large scale illegal adoptions and prevent further abuses through necessary legislative, policy and institutional reforms.

Mr President,

Let me now introduce the main conclusions and recommendations of the visit I conducted to Georgia from 11 to 18 April 2016. I wish to thank the Government of Georgia for the collaboration before, during and after the visit, and for its readiness to engage in an open and constructive dialogue to improve the situation of children in the country.

I commend the progress made by Georgia in the last decade to better protect children from abuse, violence and exploitation.

Last year, Georgia adopted a Juvenile Justice Code, the first of its kind in the region, which introduces a child-sensitive justice system. It also adopted legislative amendments to facilitate the identification and access to support services of children living and/or working on the street, and revised the Child Protection Referral Mechanism. In addition, last year Georgia ratified the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

At the beginning of this year, the Government of Georgia has adopted the new National Action Plan on Combating Trafficking in Human Beings for 2017-2018, which pays particular attention to the prevention and protection of child victims. I also welcome the expansion, since the beginning of this year, of the advisory hotline of domestic violence to provide counselling to all victims of domestic violence, sexual abuse and human trafficking, including children. In addition, since the 1st of

January legal exceptions to the prohibition of child marriage are no longer effective. In this regard, I encourage the Government of Georgia to engage leaders of ethnic and religious minorities in awareness-raising campaigns in order to reinforce the implementation of the law.

Despite these positive developments, the sale and sexual exploitation of children in Georgia remain issues of concern.

Internal commercial surrogacy arrangements have increased steadily and without comprehensive regulation that protects the rights of all vulnerable parties. The legal amendments and the joint ministerial order adopted in 2016 can hardly fill protection gaps. Therefore, I call on the Government of Georgia to adopt comprehensive regulations on the practice of commercial surrogacy arrangements, including on the clinics that provide these and associated practices.

I am also concerned by the persisting nature of the plight of children living and/or working on the street, who are subject to abuse and exploitation, including forced begging. In this respect, I encourage the Government of Georgia to adopt a systematic approach in tackling the phenomena by *inter alia* conducting comprehensive research on the root causes as well as the background, recruitment and forms of exploitation of these children, by establishing early identification mechanisms for vulnerable children with social protection policies targeted at children from minorities, and by adopting bilateral and transnational agreements with neighbouring countries such as Azerbaijan.

Mr President,

During my visit I also noted with deep concern that cases of child sexual exploitation are not effectively investigated, prosecuted and sanctioned. Consequently, I urge Georgia to criminalise all forms of sale and sexual exploitation of children as separate crimes, to increase the knowledge and awareness of these crimes among judges, prosecutors, lawyers and law enforcement, to adopt proactive investigation and prosecution strategies against these crimes, and to sign protocols

with ICT companies to prevent and combat online child sexual abuse and exploitation.

I also encourage the Government of Georgia to fully accomplish the deinstitutionalisation process by regulating, monitoring and supervising non State-run childcare institutions, with the ultimate goal of closing them down and favouring alternative child care measures to ensure the right to a family environment of all children, including children with disabilities. For this purpose, the Government of Georgia must strengthen the Social Service Agency and its monitoring unit with the necessary resources.

Georgia must stop outsourcing the provision of support services and assume its primary responsibility in providing comprehensive, child-centred and rights-based care, recovery and reintegration programmes for child victims. It must invest more on recruiting and training qualified and specialised social workers, and adopt standards for their work.

As part of preventive strategies, Georgia should increase awareness-raising campaigns on digital education and safe internet usage with the involvement of the private sector, and enhance corporate social responsibility, engaging travel and tourism industries, to prevent child sexual exploitation in travel and tourism. As part of prevention, Georgia should also adopt long-term support measures for care-leavers to facilitate their reintegration.

Lastly, I call on the Government of Georgia to increase resources and coordination – by creating an inter-agency coordination mechanism - to improve the child protection system and combat and prevent child abuse, violence and exploitation and achieve implementation of SDG targets 5.3, 8.7 and 16.2 of the 2030 Development Agenda.

I remain at the disposal of the Government of Georgia to assist in the effective implementation of my recommendations.

Mr President and distinguished delegates,

How long are we going to wait until we stand up for children's rights? Until we stop selling them as commodities? Until we stop prioritising our interests instead of the best interests of the child? The clock of implementation of the SDG targets is already ticking, and unless we are serious about our commitments, my mandate will continue unabated reminding this Council of its obligations towards children.

Thank you for your attention and I look forward to a fruitful dialogue with you.
