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## **Illegal adoptions of children from Sri Lanka: historical review, search for origins, outlook**

Federal Council report in response to the  
Rebecca Ruiz postulate 17.4181 of  
14 December 2017

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*Partial English translation*



# Ruiz postulate 17.4181 report

## Table of contents

<b>1</b>	<b>Background</b> .....	<b>6</b>
1.1	Past scandals come to light.....	6
1.2	Postulate 17.4181 .....	6
	1.2.1 Content of the postulate and response .....	6
	1.2.2 Advisory group .....	7
1.3	Methodology and structure of the report .....	8
<b>2</b>	<b>Historical analysis</b> .....	<b>8</b>
2.1	Introduction .....	8
2.2	The ZHAW report .....	9
	2.2.1 Mandate .....	9
	2.2.2 Publication.....	9
	2.2.3 Summary and conclusions of the ZHAW report .....	9
	2.2.3.1 Statistics.....	9
	2.2.3.2 Legal framework in Switzerland.....	10
	2.2.3.3 Legal framework in Sri Lanka .....	12
	2.2.3.4 The role of the cantonal authorities.....	12
	2.2.3.5 The role of the federal authorities .....	13
	2.2.3.6 The role of adoption agencies .....	13
	2.2.3.7 Allegations of illegal practices and the reaction of the Swiss authorities.....	14
	2.2.3.8 Conclusions of the ZHAW report .....	16
2.3	Reaction and opinion of Back to the Roots .....	16
2.4	Reaction and opinion of the cantons.....	17
2.5	A need for further historical research .....	18
2.6	Current legal issues.....	19
	2.6.1 Access to documents and tracing.....	19
	2.6.2 Criminal implications .....	19
	2.6.3 Assistance under the Victim Support Act.....	21
	2.6.4 Validity of the adoptions .....	21
2.7	Conclusion and recommendations.....	22
	2.7.1 Position of the Federal Council.....	22
	2.7.2 Recommendations and perspectives.....	22
<b>3</b>	<b>Search for origins</b> .....	<b>Erreur ! Signet non défini.</b>
3.1	Introduction .....	24
3.2	Legal framework.....	24
3.3	Organisation .....	25
	3.3.1 Confederation.....	25
	3.3.2 Cantons.....	25
	3.3.3 Private organisations.....	26
	3.3.4 Statistics.....	26
3.4	Services offered by the authorities for tracing birth relatives .....	27
	3.4.1 General services .....	27
	3.4.2 Intercountry adoptions.....	28
	3.4.3 Adoptions from Sri Lanka .....	29
	3.4.4 Sharing practical experience .....	30

## Ruiz postulate 17.4181 report

3.5	Role of private organisations .....	31
3.5.1	Tracing services .....	31
3.5.1.1	General .....	31
3.5.1.2	What services are available.....	31
3.5.1.3	Initial contact .....	31
3.5.1.4	Tracing birth relatives in intercountry adoptions.....	32
3.5.1.5	Tracing the birth relatives of people adopted from Sri Lanka in the 1970s and 1980s.....	32
3.5.2	Adoption agencies.....	33
3.5.3	Espace A.....	33
3.5.4	Back to the Roots .....	33
3.6	Fees .....	34
3.6.1	Authorities .....	34
3.6.2	Tracing services .....	35
3.6.3	Other private organisations .....	36
3.7	Identified problems and requests.....	36
3.7.1	By the cantons .....	36
3.7.2	By private organisations .....	37
3.7.3	By Back to the Roots.....	38
3.7.4	By international bodies .....	39
3.8	Conclusions and outlook .....	39
<b>4</b>	<b>Intercountry adoption today .....</b>	<b>41</b>
4.1	Introduction and methodology .....	41
4.2	How intercountry adoption has developed since the 1980s .....	41
4.2.1	Statistics.....	41
4.2.2	International law – main sources .....	42
4.2.2.1	UN Convention on the Rights of the Child .....	42
4.2.2.2	1993 Hague Convention .....	42
4.2.3	National law.....	43
4.2.3.1	Civil Code.....	43
4.2.3.2	Federal ordinances.....	43
4.2.3.3	Federal Act on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (HCAA).....	44
4.2.3.4	Federal Act on Private International Law (PILA) .....	44
4.3	Analysis of current Swiss practice and legislation.....	45
4.3.1	Introduction .....	45
4.3.2	Organisation and role of the authorities .....	45
4.3.2.1	Role of the cantons.....	45
4.3.2.2	Role of the Confederation.....	46
4.3.2.3	Advantages and disadvantages.....	47
4.3.3	Critical analysis of the procedure under the Hague Convention.....	48
4.3.3.1	Introduction .....	48
4.3.3.2	Assessment and suitability .....	48
4.3.3.3	Proposing a child and matching.....	48
4.3.3.4	Adoption and post-adoption.....	51
4.3.4	Procedure with non-member states.....	52

## **Ruiz postulate 17.4181 report**

4.3.4.1	Assessment and suitability .....	52
4.3.4.2	Proposing a child and matching.....	52
4.3.4.3	Adoption and post-adoption.....	53
4.3.5	Private adoption agencies .....	54
4.3.5.1	Role.....	54
4.3.5.2	Accreditation and oversight .....	55
4.3.5.3	Difficulties and challenges .....	56
4.3.6	Financial questions.....	57
4.3.7	Circumventing the Hague Convention and the Adoption Ordinance .....	59
4.3.8	Unlawful practices .....	60
4.4	The position on intercountry adoption today .....	61
4.5	Conclusion and recommendations.....	62
<b>5</b>	<b>Summary and outlook .....</b>	<b>64</b>
<b>6</b>	<b>Annex .....</b>	<b>66</b>
<b>7</b>	<b>List of abbreviations.....</b>	<b>68</b>

### **Summary**

This report is a follow-up to postulate 17.4181 submitted on 14 December 2017 by National Council member Rebecca Ruiz. The postulate instructs the Federal Council to cooperate with the cantons in examining the practices of private adoption agencies and the cantonal and federal authorities concerning the adoptions of children from Sri Lanka in the 1980s. In particular, the Federal Council should shed light on allegations of illegal practices, information held by the authorities and the measures that were put in place at that time. In addition to this historical aspect, the postulate requires a review of the efforts and means available to support the persons whose search for their birth family has been hampered by illegal practices. Finally, the postulate instructs the Federal Council to analyse the current legislation regulating international adoption procedures and to make recommendations on current and future practices and the legislative framework. The present report thus discusses these three aspects (historical review, search for origins, and analysis of the current legislative framework).

With regard to the historical review aspect of the report, the Zurich University of Applied Sciences (ZHAW) was tasked with analysing the practices that led to the adoption of Sri Lankan children in Switzerland between 1973 and 1997. On the basis of the many records consulted, the ZHAW report, published on 27 February 2020, clearly details that all the adoption procedures examined were flawed to various degrees, both in Sri Lanka and in Switzerland. What is found is beyond dispute: the Swiss authorities were aware of the problems, but did not take the measures necessary to counter them, each authority claiming the limits of its responsibility. From today's perspective, this inaction seems difficult to understand. As highlighted by the ZHAW report, all this demonstrates how, in essence, children were sought for parents, rather than parents for children. Today, the Federal Council acknowledges the findings of the ZHAW report, recognises the shortcomings of the federal and cantonal Swiss authorities, and expresses its regret to the adoptees and their families. The Federal Council welcomes the various research projects underway or announced, aimed at expanding the scope of the historical review. The Confederation will commission complementary research comprising an analysis of the federal archives to assess the situation with respect to other countries of origin. This will help the scientific community conduct further research.

The Federal Council is aware that for those affected, the consequences of the failings by the authorities at the time continue to mark their lives. Support for search of origins has therefore taken on added significance. Following consultation with the competent cantonal authorities, tracing services, adoption agencies and relevant associations, the report provides an overview of the organisation and services provided by the various stakeholders to support persons tracing their origins, in particular in Sri Lanka, and indicates the problem areas and limitations. These questions will be addressed in greater depth by a working group consisting of representatives from the Confederation, the cantons, adoptees and private partners.

The last part of the report analyses the current situation of intercountry adoption in Switzerland. Although there have fortunately been developments since the 1980s, the report offers a critical view of the organisational, jurisdictional and procedural issues, bringing the flaws to the fore. Finally, the report examines financial issues, the fight against illegal practices and the role of adoption agencies in terms of difficulties and potential improvements. In order to strengthen the protection of children in this area, the Federal Department of Justice and Police (FDJP) was asked to set up a panel of experts to carry out an in-depth inquiry into the Swiss system and to propose any remedies, including legislative reforms. The events of that time must not be repeated.

## 1 Background

### 1.1 Past scandals come to light

In September 2017, the Dutch investigative journalism programme 'Zembla' broadcast a report featuring testimonies from adult adoptees in search of their birth family.<sup>1</sup> The report exposed the shortcomings related to intercountry adoption from Sri Lanka in the 1980s including forged documents in the files, acting mothers hired to give consent to the adoption in court in exchange for a few dollars, child trafficking, corruption and baby farms. Various Swiss media took up the topic, conducting their own investigations.<sup>2</sup> One of the findings was that, as early as the 1980s, the Swiss media revealed the existence of possible illegal practices in the procedures for the adoption of children from Sri Lanka and that these practices must have been known to the Swiss authorities. Shortly after these reports were broadcast, a member of the National Council, Rebecca Ana Ruiz, submitted postulate 17.4181 to Parliament.

### 1.2 Postulate 17.4181

#### 1.2.1 Content of the postulate and response

The Ruiz postulate 'Shedding light on illegal adoptions in Switzerland of children from Sri Lanka in the 1980s' was submitted on 14 December 2017. It reads as follows:

*"The Federal Council shall cooperate with the cantons in considering the practices of private adoption agencies and cantonal and federal authorities concerning the adoptions of children from Sri Lanka in the 1980s. It shall prepare a report shedding light on allegations of illegal practices, information held by the authorities and the measures that were put in place at that time. The report shall also indicate the efforts and means available to support the persons whose search for their birth family has been hampered by illegal practices. Finally, the report shall analyse the current legislative framework that regulates international adoption procedures and make recommendations on current and future practices and the legislative framework."*

The postulate is accompanied by the following information:

*"In the 1980s, 11,000 Sri Lankan children were adopted by European parents, including 700 in Switzerland. Several recent reports revealed various illegal practices that took place at the time: some children were allegedly stolen or sold, notably in a system known as baby factories. This scandal also played out in our country, with the alleged complicity of certain Swiss adoption agencies. Today, the Sri Lankan government admits the facts.*

*These adults adopted as children have the right to know the truth about their birth families under the Convention on the Rights of the Child (Article 8) and the Swiss Civil Code (Article 268c). The authorities in Switzerland and Sri Lanka must provide the necessary support in this context.*

*In the 1980s, adoption procedures and the supervision of Swiss adoption agencies fell under cantonal jurisdiction. The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption came into force in Switzerland in 2003. This convention regulates the conditions for adoption to ensure that*

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<sup>1</sup> Available on the internet (with English subtitles) <https://www.youtube.com/watch?v=Y5sbRcobbUA>.

<sup>2</sup> In particular, the NZZ article (in German) of 21.09.2017 about adoption scams in Sri Lanka: <https://www.nzz.ch/panorama/aktuelle-themen/sri-lanka-bestaetigt-grossflaechigen-adoptionsbetrug-in-der-vergangenheit-ld.1317672>, RTS Swiss news programme of 24.11.2017, Temps présent report (in French) of 4 October 2018 about babies stolen in Sri Lanka for adoption in Switzerland: <https://pages.rts.ch/emissions/temps-present/suisse/9787679-les-bebes-voles-du-sri-lanka-un-scandale-suisse.html>, Temps present report (in French) of 19.09.2019 about the trafficking of babies and the time for reckoning: <https://pages.rts.ch/emissions/temps-present/suisse/10613163-trafic-de-bebes-voles-l-heure-des-comptes.html#10669672>; a list of media reports (in German and French) is available on the website of the association Back to the Roots <https://backtotheroots.net/medias/medienberichte/?lang=fr>.

## Rapport Po. Ruiz 17.4181

*there is no trafficking, theft or sale of children. Almost fifteen years after its entry into force, it seems appropriate to analyse the existing practice of the Swiss authorities regarding intercountry adoption to assess whether the current legislation is sufficient to avoid illegal practices in this field, including the supervision of private adoption agencies.”*

The Federal Council proposed to accept the postulate on 14 February 2018, outlining that:

*“Since 1 January 2003, the date of entry into force of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Classified Compilation of Federal Legislation, SR 0.211.221.311), the Federal Office of Justice (FOJ) has been the federal central authority designated by Switzerland under this Convention. Since then, the FOJ has also been responsible for the accreditation and supervision of private adoption agencies, and has a general advisory and coordination function in adoption matters. Until 31 December 2002, the field of intercountry adoptions, including the accreditation and supervision of private adoption agencies, fell within the exclusive remit of the cantonal authorities. Also today, the cantons are still mainly responsible for the adoption procedure and for help with tracing birth families (Art. 268c Civil Code). In view of the complexity of the matter and the coordination function of the federal authorities, the Federal Council nevertheless believes it advisable to accept the postulate as set out, while emphasising the need for the cooperation of the cantons.”*

The National Council accepted the postulate on 16 March 2018. This report has been prepared in fulfillment of the parliamentary mandate.

### 1.2.2 Advisory group

In order to ensure the review is as comprehensive as possible, an advisory group was set up to support the work of the Confederation. In addition to representatives of the FOJ, the group includes the following persons:

- Ursula Berset, member of the interest group Back to the roots
- Barbara Gysi, member of the National Council
- Alain Hofer, Deputy Secretary-General, Conference of Cantonal Justice and Police Directors (CCJPD)
- Denise Hug, Head of Adoptions, cantonal child welfare office, Bern / President of the association of cantonal central authorities on adoption
- Sarah Ramani Ineichen, President of the interest group Back to the roots
- Sonia Marconato Stöcklin, Legal Assistant, State Secretariat for Migration (SEM)
- Christian Nanchen, Head of youth welfare service, Valais / member of the conference of cantonal central authorities on adoption for the French-, Italian- and Romansch-speaking parts of Switzerland
- Veronika Neruda, Head of family and social affairs, Conference of Cantonal Directors of Social Services (CDSS)
- Diana Wider, Secretary-General, Conference for Child and Adult Protection
- François Wisard, Special Advisor, Federal Department of Foreign Affairs (FDFA)

The advisory group was responsible for the validation of the mandate given to the Zurich University of Applied Sciences (ZHAW; see 2.1), to ensure that all the relevant elements were satisfactorily addressed.<sup>3</sup> It then monitored the progress of the historical research and was called on to submit any comments before the publication of the report, while maintaining the necessary scientific independence of the authors of the historical report. The ZHAW was free

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<sup>3</sup> <https://www.zhaw.ch/de/ueber-uns/>.

## Rapport Po. Ruiz 17.4181

to decide at any time whether or not to take into consideration the advisory group's comments.

Finally, the advisory group commented on the structure of the present report and helped to ensure that the report covers all the important aspects related to this matter.

### 1.3 Methodology and structure of the report

The Federal Council instructed the Federal Department of Justice and Police (FDJP) to proceed with the work required to implement the postulate. The FDJP gave this mandate to the FOJ.

The report is divided into three sections, following the wording of the postulate: the first section addresses historical research and analysis; the second section looks at the current possibilities to support the persons concerned in tracing their birth family; and the last section analyses the legislative framework of intercountry adoption and draws up recommendations on how to improve it in the future. The methodology specific to each part of the report is detailed in the corresponding chapter.

## 2 Historical analysis

### 2.1 Introduction

As the body responsible for drafting the Federal Council's report, the FOJ entrusted the task of carrying out the historical research and analysis to the ZHAW Department of Social Work, to ensure the independence and professionalism of the research. Although the title of the Ruiz postulate refers to the 1980s, the decision was taken to extend the period of review from 1973 (date of entry into force of the new adoption legislation) to 1997, the year of the death of Alice Honegger, head of the main Swiss adoption agency working with Sri Lanka.

Until 1 January 2003, the date of entry into force of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (HCA93), adoption procedures and accreditation and supervision of the private adoption agencies fell under cantonal jurisdiction.<sup>4</sup> The federal authorities were involved in the issuance of entry visas through the Swiss Embassy in Sri Lanka for the children to be adopted. This further complicates the search for the documents needed for a historical analysis, since the records are scattered in various places at federal, cantonal and communal level. Some of the relevant records are also held by (former) private adoption agencies. In addition, not much scientific research has been conducted to date on the history of national and international adoption. In its investigations, the ZHAW focused on the federal records and on reviewing the practices of three cantons (Bern, Geneva and St Gallen) as an example.

This chapter summarises the main points of the ZHAW report, to which reference is made for a more detailed analysis.<sup>5</sup>

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<sup>4</sup> Classified Compilation of Federal Legislation, SR 0.211.221.311.

<sup>5</sup> SABINE BITTER/ANNIKA BANGERTER/NADJA RAMSAUER, Adoptions of Children from Sri Lankan Origin in Switzerland 1973-1997 – A review of the practice of private adoption agencies and the authorities, Historical analysis concerning the Ruiz postulate 174181 on behalf of the Federal Office of Justice, January 2020, DOI 10.21256/zhaw-2382; the report is available (in German, French and Italian) on the FOJ website: <https://www.bj.admin.ch/bj/fr/home/gesellschaft/adoption/illegale-adoptionen.html>. (a summary of the report is available in English: [res-ber-zhaw-adoptionen-srilanka-e \(3\).pdf](#)).



## **2.2 The ZHAW report**

### **2.2.1 Mandate**

The mandate entrusted to the ZHAW included the following tasks in particular:

- clarifying the existing legislative framework and its evolution since 1973, both for adoption procedures and for the accreditation and supervision of private adoption agencies;
- providing statistical data, insofar as possible, on the number and the profile of the children adopted in Switzerland from Sri Lanka;
- describing the practical sequence of the adoption procedures, indicating the role and the practice of the adoption agencies and the communal, cantonal and federal authorities;
- indicating the number of adoption agencies accredited for Sri Lanka during the period under review, the manner in which cantonal supervision was exercised over these adoption agencies, the number of children placed through these agencies, the existence of complaints of malpractice against the adoption agencies, the existence of cooperation agreements with institutions or private persons in Sri Lanka and the existence of any cantonal subsidies;
- determining the costs of an adoption procedure for the period considered, in Switzerland and in Sri Lanka, with or without an accredited Swiss adoption agency;
- defining when the first allegations of irregularities in the procedures arose, to whom they were communicated, what was the reaction of the authorities involved and why these revelations did not lead to a total and immediate halt to adoptions from Sri Lanka ;
- determining which practices were denounced and which actors were involved;
- clarifying the status of the children placed in Switzerland for adoption, but whose adoption process was never completed;
- undertaking a critical appraisal of the Swiss authorities' response to the scandal.

### **2.2.2 Publication**

The ZHAW delivered its final report (hereafter: ZHAW report) in January 2020 in German. Because of the large size of the report – 250 pages – the ZHAW also prepared a summary, which was translated into French, Italian and English. The publication of the report by the FOJ on 27 February 2020 was accompanied by a press conference to present the results and to answer questions from journalists.<sup>6</sup> The FOJ, in agreement with the advisory group, decided to publish the ZHAW report as soon as it was finalised and without waiting for the Federal Council's full report, in a bid to raise public awareness of this chapter of Swiss adoption practice and support the cantons in handling this issue. The publication received wide media coverage, including testimonies from adoptees.<sup>7</sup>

### **2.2.3 Summary and conclusions of the ZHAW report**

#### **2.2.3.1 Statistics**

The ZHAW report contains statistics on entry permits granted to foreign children placed in Switzerland for adoption and for other reasons, as well as statistics on adoptions in Switzerland of children with Sri Lankan nationality.<sup>8</sup> Under the legislation then in force, an adoption could only be granted in Switzerland after a two-year placement with the adoptive family. The

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<sup>6</sup> The ZHAW report (available in German), the summary of the report (available in French, Italian and English) and relevant documentation (most of which is available in German, French and Italian), including press releases from the cantons de St Gallen, Bern, Geneva and Solothurn, from the CCJPD and from the interest group Back to the Roots, can be found on the web page [Illegal adoptions](#) of the FOJ website.

<sup>7</sup> A list of media reports (not available in English) can be found on the website of the interest group [Back to the Roots](#).

<sup>8</sup> ZHAW report, 2.2, p. 19 ff. and annexes.

## Rapport Po. Ruiz 17.4181

two statistics, from the migration authorities on the one hand and the adoption authorities on the other, cannot therefore be closely compared. Between 1973 and 1997, 950 entry permits were granted, mainly between 1980 and 1986 (749). By way of comparison, 14,408 entry permits were granted to foreign children placed for adoption or placed for other reasons between 1970 and 1999, all countries taken together.

Statistics show that 881 adoptions were granted in Switzerland between 1979 and 1997, mainly in the cantons of Zurich (201), St Gallen (85), Aargau (78), Vaud (72) and Bern (66).<sup>9</sup>

### 2.2.3.2 Legal framework in Switzerland

The ZHAW report highlights the context and the legal framework in force at the time. Generally speaking, international adoption experienced its rise from the mid-1970s, in parallel with a decline in national adoptions related to the improved legal status and social acceptance of single mothers and their children in Switzerland.<sup>10</sup> The new law on filiation, which came into force in 1978, thus improved the legal situation of children born out of wedlock.<sup>11</sup>

The **1973 revision of adoption law** generally strengthened the protection of the rights of adopted children by introducing full adoption, which gives the adopted child the same legal status as the child of biological parents. However, children placed for adoption but whose adoption was never granted had a precarious residence status, since if they were not adopted, they were not eligible for Swiss citizenship.<sup>12</sup> Full adoption also has the effect of dissolving the pre-existing bond of filiation and has as a consequence the strict compliance with the secrecy of adoption. The right of an adoptee to know his or her birth family was only recognised much later by case law and then anchored in Swiss law in 2003.<sup>13</sup>

The **general conditions for adoption**<sup>14</sup> were governed by Articles 264 ff. of the Civil Code (CC).<sup>15</sup> In the case of joint adoption, the couple had to have been married for at least 5 years or the spouses had to be at least 35 years old. Single adopters had to be at least 35 years old. The biological parents had to give their consent to the adoption at the earliest 6 weeks after the birth; their consent could be dispensed with if they were unknown, incapable of judgment, absent for a long time without a known address or had not shown serious concern and care for the child. Finally, the adoption could only be granted after a two-year placement with the prospective adoptive parents and an investigation of all the essential circumstances (including the personality and health of the adoptive parents, their economic situation and the development of the foster relationship).

The Ordinance of 19 October 1977<sup>16</sup> on the Placement of Children in Foster Care (FCAO) set out the **procedure to be followed** and introduced an obligation, prior to any placement of a child, to assess the suitability of the prospective adoptive parents and to grant an authorisation to take in a specific child.<sup>17</sup> The prospective adoptive parents then had to provide a declaration by the legal representative specifying the grounds for placing the child in Switzerland and the consent of the biological parents, and to undertake to provide for the child's welfare

<sup>9</sup> The data is only available from 1979 onwards; cf. ZHAW report, p. 23.

<sup>10</sup> ZHAW report, p. 16 f.

<sup>11</sup> ZHAW report, p. 30.

<sup>12</sup> ZHAW report, p. 30 f.

<sup>13</sup> ZHAW report, p. 26; see also SANDRO KÖRBER/ HEIDI STEINEGGER, Zu wissen, von wem man abstammt, ist mehr als ein Grundrecht (knowing who your birth family is, is more than a basic right), FamPra.ch (not available in English) 1/2020, p. 1 ff.

<sup>14</sup> ZHAW report, p. 27.

<sup>15</sup> Classified Compilation of Federal Legislation, SR 210.

<sup>16</sup> Classified Compilation of Federal Legislation, SR 211.222.338; before the FCAO, the placement of children (with a view to adoption or not) and its supervision were not regulated by federal law.

<sup>17</sup> ZHAW report, p. 31.

## Rapport Po. Ruiz 17.4181

and material needs. However, in view of the intercountry adoption problems and abuses reported, it was necessary to adopt more stringent rules. From 1989, the revised 1977 Ordinance required that the prospective adoptive parents had to submit a report on the child's life, indicate the child's country of origin, name the adoption agency and provide a declaration from the competent authority of the child's country of origin stating that the child could be entrusted to parents in Switzerland. However, the revised Ordinance also provided that the authorisation for placing a child could now be issued on a provisional basis, so that it was no longer necessary to know the child's identity in advance. The data on the child to be adopted had to be submitted at the latest at the time of the visa application at the Swiss Embassy, which had to check the various documents concerning the child (identity, consents, state of health).<sup>18</sup>

The Ordinance of 28 March 1973 on Placements with a View to Adoption (AdoPO) made **the activities of adoption agencies** involved in the adoption process subject to accreditation and supervision.<sup>19</sup> The Ordinance, which was revised for the first time on 19 October 1977, provided that anyone bringing children from abroad to Switzerland for adoption needed special accreditation, had to demonstrate knowledge of the cultural and social particularities and adoption law of the child's country of origin, and commit to respecting international law. Furthermore, the Ordinance stipulated that the placement of the child was only authorised after the consent of the biological parents had been obtained and the suitability of the prospective adoptive parents had been examined. Finally, according to this Ordinance, the adoption agencies were only entitled to reasonable compensation for their work and any payment to the biological parents was strictly forbidden. The supervisory authority (which, until 2003, was a cantonal authority) could withdraw the accreditation of an adoption agency that failed to comply with these requirements. If the supervisory authority determined there was an infringement, it was to inform the FDJP, which in turn was to warn the supervisory authorities of other cantons. The FDJP also had the right of appeal against the cantons' decisions. Following the 1989 revision of the AdoPO, accreditation was also required specifically for each country with which the adoption agency intended to collaborate.

The Federal Act of 18 December 1987 on **Private International Law (PILA)**, which came into force on 1 January 1989, covers adoption in Articles 75 to 78.<sup>20</sup> In principle, the adoption of a child by a person domiciled in Switzerland had to be granted in Switzerland and was subject to Swiss law, involving a two-year placement period with the prospective adoptive family. Consequently, adoption proceedings that took place in the child's country of origin were not recognised in Switzerland unless the adoptive parents were domiciled in or possessed the nationality of that country. The PILA took over the rules already in force on this matter since 1973.<sup>21</sup>

It was only in the 1990s that the **international community** established a binding legal framework for intercountry adoption, in particular through the Convention of 20 November 1989 on the Rights of the Child (CRC), which entered into force in Switzerland on 26 March 1997, and through the HCA93, which entered into force in Switzerland on 1 January 2003.<sup>22</sup>

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<sup>18</sup> ZHAW report, p. 35 f.

<sup>19</sup> AS 1973 628; now, the Adoption Ordinance (AdoptO; Classified Compilation of Federal Legislation, SR 211.221.36).

<sup>20</sup> Classified Compilation of Federal Legislation, SR 291.

<sup>21</sup> Cf. Art. 8a to 8c of the Federal Act of 25 June 1891 on the Civil Law Status of Immigrants and Temporary Residents (LRDC; Classified Compilation of Federal Legislation, SR 211.434.1; abrogated by the PILA on 1 January 1989).

<sup>22</sup> Classified Compilation of Federal Legislation, SR 0.107.

## Rapport Po. Ruiz 17.4181

### 2.2.3.3 Legal framework in Sri Lanka

Sri Lanka has had a specific procedure for intercountry adoptions since 1976. Foreign couples had to produce a social report from the authorities (or an accredited adoption agency) in their country of origin, legalised by the Sri Lankan representation in that country.<sup>23</sup> The file then had to be submitted to the Department of Probation and Child Care Services, which could offer the couple a child from a state institute.<sup>24</sup> In practice, however, most proposals for children were made by a private adoption agency<sup>25</sup> and the authorities did not appear to be able to enforce the legal requirements.<sup>26</sup> For the legal procedure, the assistance of a lawyer on-site was necessary.<sup>27</sup> The adoptive parents had to provide follow-up reports for three years after the adoption.<sup>28</sup>

Following investigations into irregular practices, the Sri Lankan authorities imposed a moratorium on adoptions on 3 June 1987, which lasted until the spring of 1988. It did not affect adoptions already in progress.<sup>29</sup> The work on the revision of the adoption law started in 1987 and led to several changes in the law: from 1992 onwards, payments in connection with an adoption were prohibited, and intercountry adoptions were only possible for children from state institutes through a matching procedure under the Department of Probation and Child Care Services.<sup>30</sup> The HCA93 came into force in Sri Lanka on 1 May 1995.

### 2.2.3.4 The role of the cantonal authorities

Under federalism, it was the cantons that were responsible for implementing the laws governing adoption. This has resulted in great disparities in procedure and practice, as shown by the examples of the cantons of Bern, Geneva and St Gallen. Responsibility for the different stages of the procedure (social report, entry and residence permit [subject to the approval of the federal authority], authorisation for placing a child, supervision of placement, granting of adoption) lay with administrative authorities (professional or not) or judicial authorities, with some aspects delegated to private bodies.<sup>31</sup> Moreover, the actual handling of the procedure remained controversial for a long time<sup>32</sup> and some aspects were not clearly defined in federal and cantonal legislation.<sup>33</sup> The ZHAW report, based on the examination of dozens of specific adoption cases and cantonal records, concluded that there were various shortcomings at all stages of the procedure: insufficient or late assessment of prospective adoptive parents,<sup>34</sup> authorisations for placing a child with fictitious names, no appointed guardian,<sup>35</sup> lack of supervision of the pre-adoptive placement, absence of the biological parents' consent, or a cursory review only of the child's documents.<sup>36</sup>

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<sup>23</sup> ZHAW report, p. 128 ff.

<sup>24</sup> ZHAW report, p. 129.

<sup>25</sup> ZHAW report, p. 114.

<sup>26</sup> ZHAW report, p. 67 and 123 ff.

<sup>27</sup> ZHAW report, p. 110.

<sup>28</sup> ZHAW report, p. 130.

<sup>29</sup> ZHAW report, p. 80, 127, 133 and 166.

<sup>30</sup> ZHAW report, p. 127 and 133.

<sup>31</sup> ZHAW report, p. 50.

<sup>32</sup> ZHAW report, p. 53.

<sup>33</sup> In particular the methods and criteria for the assessment of prospective adoptive parents, cf. ZHAW report, p. 170 ff.

<sup>34</sup> ZHAW report, p. 169 ff.

<sup>35</sup> ZHAW report, p. 189 f, with reference to a circular issued on 21.12.1988 by the Federal Council to the guardianship authorities, calling on them to appoint an independent guardian.

<sup>36</sup> ZHAW report, 6, p. 214 ff.

## Rapport Po. Ruiz 17.4181

### 2.2.3.5 The role of the federal authorities

The cantonal supervisory authorities notified the FDJP of their decisions relating to the accreditation of intermediaries involved in adoptions.<sup>37</sup> The FDJP was responsible for informing the other cantons and had the right to appeal against cantonal decisions under Article 24, para. 2, AdoPO. The FDJP does not, however, appear to have made use of its right to appeal against cantonal decisions concerning the Swiss adoption agencies accredited for Sri Lanka, in particular Alice Honegger. Within the FDJP, the FOJ was responsible for drafting legislative reviews in the field of adoption, which included managing the work of the working group 'Adoption d'enfants du Tiers Monde' [Adoption of children from the Third World] and the various revisions of federal ordinances. The Swiss Federal Aliens Office (SFAO),<sup>38</sup> also attached to the FDJP, was responsible for approving entry and residence permits issued by the cantonal migration authorities for children placed for adoption.<sup>39</sup> The purpose of this federal approval procedure was to ensure a coherent national policy on foreigners and the uniform application of the law and regulations on foreigners. In view of its supervisory role in this area, the SFAO also issued directives and circulars to the cantonal authorities and Swiss representations abroad. However, its powers were limited to migration law considerations.<sup>40</sup> The developments in the practice of the SFAO concerning the use of fictitious identity data and provisional permits, contrary to the requirements of the FCAO, are described in a detailed critical analysis in the ZHAW report.<sup>41</sup>

The Swiss Embassy in Colombo,<sup>42</sup> attached to the FDFA, was on the front line with respect to adoptions from Sri Lanka and, from the mid-1970s onwards, sent information (newspaper excerpts, copies of Sri Lankan legislation) on the subject of adoption to the SFAO.<sup>43</sup> The Swiss Embassy also issued entry visas on the basis of the SFAO's authorisation and provided information and support to Swiss parents regarding local procedures.<sup>44</sup>

### 2.2.3.6 The role of adoption agencies

In the absence of direct cooperation between the Swiss and the Sri Lankan authorities, adoption agencies played a key role in the adoption process. The AdoPO defined adoption mediation as follows (Art. 2): "Adoption mediation consists in indicating that there is an opportunity to adopt a minor child and, where appropriate, placing the child with foster parents with a view to adopt the child." In this respect, two categories of adoption agencies need to be distinguished: the Swiss and the Sri Lankan ones. Private persons and organisations on Swiss territory were subject to accreditation and supervision by the cantonal authorities. Three Swiss adoption agencies were active in Sri Lanka at the time: Alice Honegger (canton of St Gallen), 'Terre des Hommes' (canton of Vaud) and the 'Bureau genevois d'adoption' (BGA; canton of Geneva). Despite the lack of accurate records, the ZHAW shows that probably less than half of the adoptions from Sri Lanka took place through one of these three adoption agencies (mainly through the agent Alice Honegger).<sup>45</sup> The role of Terre des Hommes and the BGA was marginal: the former soon ceased its activities in Sri Lanka and the latter, facilitated only

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<sup>37</sup> ZHAW report, p. 142 f.

<sup>38</sup> This office was called the Swiss Federal Aliens Police until 1979; from 1980 to 2003, it was called the Swiss Federal Aliens Office; today, it is called the State Secretariat for Migration (SEM).

<sup>39</sup> ZHAW report, p. 142.

<sup>40</sup> ZHAW report, p. 172.

<sup>41</sup> ZHAW report, p. 176 ff; despite a crackdown on the practice in 1983, a procedural request submitted by Ms Honegger and National Council member Edgar Oehler led to further easing of restrictions on the practice in the summer of 1984 with the possibility of sending the identity data of the adopted child by telex from Sri Lanka, at the time of the application for a visa.

<sup>42</sup> Before 1980 this was a consular agency, then from 1980, an embassy; cf. ZHAW report, p. 139.

<sup>43</sup> ZHAW report, p. 150.

<sup>44</sup> ZHAW report, p. 54.

<sup>45</sup> ZHAW report p. 98 f.

a few adoptions per year, focusing on the preparation of adoptive parents.<sup>46</sup> Despite this, the ZHAW report identifies a series of grey areas regarding the activities of these two adoption agencies and their connection with Sri Lanka, which should be further investigated, as should the way supervision was conducted at the time in the respective cantons. The ZHAW report includes a detailed study on the activities of Alice Honegger, who was a key figure in Switzerland for the adoption of children from Sri Lanka.<sup>47</sup> The report highlights her questionable working practices, her links to child-trafficking networks in Sri Lanka for the purpose of illegal adoption, and her influence on the procedures at the time. In this respect, the ZHAW report criticises the collusion of the Swiss authorities, who could and should have permanently withdrawn her accreditation.<sup>48</sup> Finally, the ZHAW report mentions another person in Switzerland, Maria Elisabeth Cornelia Koran-Van der Hoorn, who was involved in adoption procedures from Sri Lanka, but whom the cantonal authorities did not consider to be subject to the accreditation requirement under the AdoPO.<sup>49</sup> In this regard, the ZHAW report reveals the issues associated with the unclear definition of adoption agencies.

The other category of adoption agencies consisted of different people operating locally in Sri Lanka. Swiss couples, who were under no legal obligation to work with an accredited adoption agency in Switzerland, contacted these people in Sri Lanka directly without going through a person or organisation in Switzerland.<sup>50</sup> This was the subject of criticism by the experts.<sup>51</sup> The ZHAW report pays particular attention to the activity of Dawn de Silva, who was involved in many adoption cases in Switzerland.<sup>52</sup> She seemed to know the Swiss system well, giving adoptive parents precise indications on the procedure to follow and the fees and gifts to take to Sri Lanka, while swearing them to absolute secrecy. She was arrested by the Sri Lankan police in January 1987 on suspicion of operating a baby farm in her hotel. However, it is unclear if she was ever convicted there. In any case, she appeared to benefit from strong support from within the government.<sup>53</sup> In general, it is unclear whether and if so how Sri Lankan adoption agencies were supervised by the local authorities. Several of these adoption agencies had direct links to hospitals and children's homes.<sup>54</sup>

### 2.2.3.7 Allegations of illegal practices and the reaction of the Swiss authorities

As early as 1981, the Swiss Embassy in Colombo regularly sent the SFAO excerpts from newspaper articles on illegal practices associated with intercountry adoption.<sup>55</sup> In 1981, a Sri Lankan press report claimed that less than 10% of the 800 children adopted by foreigners had been adopted in compliance with the legal requirements. The Minister of Social Services Asoka Karunaratne admitted in a newspaper interview that Sri Lankan laws were not sufficient to prevent child trafficking.<sup>56</sup>

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<sup>46</sup> However, Terre des Hommes has had a general impact on the practice and evolution of intercountry adoption in Switzerland since the 1960s, cf. ZHAW report p. 85.

<sup>47</sup> ZHAW report, in particular 4.2.1 and 4.2.2.

<sup>48</sup> The cantonal supervisory authority of the canton of St Gallen temporarily withdrew her accreditation between May and November 1982, cf. ZHAW report, p. 69 ff.

<sup>49</sup> Also known under the name of Ries Koran, ZHAW report, p. 106.

<sup>50</sup> This is also not an obligation in the current legislation.

<sup>51</sup> ZHAW report, p. 99, which refers to the report of 23.07.1986 of the working group of the Civil Code section of the Federal Office of Justice on the adoption of children from the Third World.

<sup>52</sup> ZHAW report, p. 102 ff.

<sup>53</sup> ZHAW report, p. 105.

<sup>54</sup> ZHAW report p. 113 ff.

<sup>55</sup> ZHAW report, p. 67, 153 and 197 ff.

<sup>56</sup> ZHAW report, p. 67.

## Rapport Po. Ruiz 17.4181

The information from the Sri Lankan newspapers was printed in Swiss newspapers, along with testimonies of Swiss couples (see articles [not available in English] in the *Tages-Anzeiger* of 10 May 1982 and the *Schweizer Illustrierte* of 24 May 1982). On the basis of these articles and various other archival sources, which have been confirmed by the current findings of adoptees searching for their birth family, the ZHAW report provides an enlightening overview of the illegal practices at the time, including: missing or falsified data in the children's documents;<sup>57</sup> the commercial nature of adoption agencies and the exorbitant fees charged;<sup>58</sup> baby farms run by lawyers in particular;<sup>59</sup> the exploitation of poor women who sold their babies, deliberately became pregnant or were ensnared by promises of adoption;<sup>60</sup> corruption; the hiring of 'acting mothers' (women paid to pretend to be the birth mothers and give consent to the adoption of a child before the judge).<sup>61</sup>

After receiving the articles from Sri Lanka, the SFAO introduced a new requirement for adoptions at the end of December 1981. From that date, the SFAO would only authorise the Swiss Embassy to issue a visa for an adopted child under the following condition: certification was required in each individual case that there had been no child trafficking.<sup>62</sup> This led to an exchange of correspondence between the SFAO and the Swiss Embassy in the spring of 1982 in a bid to clarify who was responsible and how to enforce this requirement. While the SFAO expected the Swiss Embassy to do it, the Swiss Embassy claimed it was not in a position to do so, due to the large number of files to process and the complexity of the investigations. Ultimately, it seems that these exchanges did not achieve any tangible results. It was also decided in May 1982 to submit all requests concerning Sri Lanka to the deputy director of the SFAO. In parallel, the supervisory authority of the canton of St Gallen temporarily withdrew Alice Honegger's licence to operate as an adoption mediator. This led the Sri Lankan authorities, the Swiss Embassy in Sri Lanka and adoptive parents to send reports and letters in support of Alice Honegger to the supervisory authority, which granted her a new licence in 1982.<sup>63</sup> In the light of the criticism voiced within professional and private circles, a working group was set up in 1984 to look into the general problem of adopted children from the 'third world' and to propose a revision of the federal ordinances in this field. The FOJ working group delivered its report on 23 July 1986, which led to the revision of the FCAO and the AdoPO in 1989 (see 2.2.3.2 above).

Correspondence from 1987 between the SFAO and the Swiss Embassy in Colombo shows that the issue of a thorough verification of the adoption files had not yet been resolved. The Swiss Embassy seemed to have become resigned on the issue of verification and therefore to adopt a pragmatic approach, claiming it would be unacceptable to deny adoptive Swiss parents the visa when the adoption had already been legally granted in Sri Lanka and the adoptive parents had received a letter from the SFAO assuring them a visa would be issued.<sup>64</sup> Following the publication of further articles covering baby farms in the Sri Lankan press in 1987, the Sri Lankan government declared a moratorium on new intercountry adoption procedures.<sup>65</sup> Even though the moratorium was lifted as early as the spring of 1988, statistics show a sharp decline in the number of entry permits to Switzerland from 1987 onwards:

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<sup>57</sup> ZHAW report, p. 202 ff.

<sup>58</sup> ZHAW report, p. 195 f.

<sup>59</sup> ZHAW report, p. 122.

<sup>60</sup> ZHAW report, p. 200.

<sup>61</sup> ZHAW report, p. 132 and 201.

<sup>62</sup> 'Certification that there has been no child trafficking', see ZHAW report, p. 153 f.

<sup>63</sup> ZHAW report, p. 161 ff.

<sup>64</sup> ZHAW report, p. 165.

<sup>65</sup> ZHAW report, p. 122 and 166; the head of the Department of Probation and Child Care Services, quoted in an interview, admitted his inability to stop these practices.

## Rapport Po. Ruiz 17.4181

whereas in the previous years around 100 entry permits were issued each year, the average was then around 15, and from 1994 onwards less than 5. This drastic decline corresponds to the period when various legislative reforms took place in Switzerland (see 2.2.3.2 and 2.2.3.5 above) and in Sri Lanka (see 2.2.3.3 above), even though the ZHAW report does not adopt a position on any causal links or other reasons for this decline.

The matter of the child trafficking scandal was also raised during question time on 14 June 1982 in the National Council in a question tabled by the member of the National Council, Alma Bacciarini, concerning trafficking of newborn babies in Sri Lanka and Taiwan.<sup>66</sup> In its response, the Federal Council underscored that there could be no question of child trafficking, since the children were always entrusted to the adoptive parents by a court adoption order that was formally valid under Sri Lankan law, and they then travelled with valid papers. However, it acknowledged that, on the basis of the information provided by the Swiss Embassy, it was not excluded that the working methods of Sri Lankan adoption agencies were questionable. This position of the Swiss authorities recurs regularly in the records: the Swiss authorities recognised some of the problems, but felt they lacked reliable evidence to pursue the matter, and could not rely on newspaper articles when the official Sri Lankan discourse claimed that the proceedings were legal. Indeed, even if an unlawful act such as the abduction of a child had originally occurred, the adoption procedure could subsequently be made to appear legal (e.g. through the hiring of acting mothers) making the unlawful act difficult to detect.

### 2.2.3.8 Conclusions of the ZHAW report

The ZHAW report concludes that numerous abuses and shortcomings tainted child adoption procedures in Sri Lanka in the period under review. A network of lawyers and adoption agencies was set up in Sri Lanka, using dubious and even illegal methods to satisfy the demand for children by European couples eager to adopt. These highly profitable activities were not supervised by the Sri Lankan authorities, who made several unsuccessful attempts to put an end to the adoptions. Meanwhile, the Swiss authorities, which had received press articles and information from the Swiss Embassy in Colombo and were aware of the issue as early as 1981, appear not to have considered stopping adoptions from Sri Lanka, claiming insufficient evidence. Various measures were taken, including the temporary withdrawal of Alice Honegger's licence, the issuance of directives and the revision of federal ordinances (for both the law concerning foreign nationals and civil law), but they were clearly not sufficient to address the problems highlighted. The fragmentation of jurisdictions due to federalism undoubtedly contributed to the inefficiency observed, with each authority hiding behind the limits of its field of competence. The ZHAW report also concludes that there is a need for further historical research on this issue and on the history of intercountry adoption in Switzerland in general.

## 2.3 Reaction and opinion of Back to the Roots

Back to the Roots (BTTR), an association that represents the interests of Sri Lankan adoptees in Switzerland, was founded on 24 February 2018 by Sarah Ramani Ineichen (president), Sakuntala Küttel and Olivia Ramya Tanner.<sup>67</sup> All three women were adopted in Switzerland from Sri Lanka and have been unable to trace their birth families up to now. BTTR seeks to raise awareness among the public, political circles and the authorities of the serious shortcomings of the past in adoption procedures concerning children from Sri Lanka and supports Sri Lankan adoptees in the search for their birth family. The group is committed to ensuring

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<sup>66</sup> ZHAW report p. 72 and 198.

<sup>67</sup> <https://backtotheroots.net>.



## Rapport Po. Ruiz 17.4181

that the voice of adoptees is taken into account in the historical analysis of past events and in revising the current system of adoption.

BTTR welcomed the publication of the ZHAW report as a first important step in this process, saying it demonstrated that the authorities were gradually beginning to accept their responsibility.<sup>68</sup> The group has addressed a number of specific demands to the Federal Council and the cantons:

- 1. Former adoption practices must be investigated throughout Switzerland. The work started by the ZHAW report should be expanded to include all cantons and all adoption agencies. Any future review should be monitored by an independent panel of experts.*
- 2. Any injustice that is identified should be publicly acknowledged and reparation for it be made by both the Confederation and the cantons.*
- 3. Existing adoption law and current practices should be evaluated and revised if necessary. A deeper scientific study should be made of the implications of adoption for children and their birth parents in general. The best interests of the child must be of paramount importance in all procedures and legal provisions.*
- 4. Adoptees should receive help both in Switzerland and in Sri Lanka to trace their birth family. Swiss adoption papers must be made more readily available to those concerned. The services of reliable tracing agencies should be engaged to carry out enquiries in Sri Lanka. The search for birth families must be free of charge for adoptees. Those searching for their birth family should be supported by a specialised independent body and receive psychological support.*
- 5. Sri Lankan mothers should receive help to search for their children. Adoptees were given away by their birth mothers owing to enormous social or economic pressure; in some instances children were stolen or disappeared with the help of organised networks. Mothers were not sufficiently protected from exploitation. They must be informed about what happened and advised on how to find their children. DNA testing should be made available to adoptees and mothers who are searching for their children: for many, this is the only way of finding their relatives.*

### 2.4 Reaction and opinion of the cantons

In a statement on 27 February 2020, the Cantonal Conference of Justice and Police Directors (CCJPD) acknowledged the shortcomings in adoption procedures highlighted in the ZHAW report and the grave consequences of these shortcomings for adoptees.<sup>69</sup> It noted that the irregularities had occurred at all administrative levels, but were a result of how individual cases were assessed rather than Switzerland's federalist structure. The CCJPD said it would examine, together with the adoptees, how the cantons could help those affected. For this purpose it would set up a working group comprising adoptees and representatives from the cantons and the Confederation (see 3.8). Already at its meeting on 31 January 2020, the CCJPD executive committee advised the cantons to facilitate access to documents and information, to process tracing applications free of charge and, if possible, to designate an independent body as a contact point for adoptees. Further measures are to be considered and implemented in cooperation with adoptees and the authorities concerned.

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<sup>68</sup> Press release of 27.02.2020, available at [Medienmitteilungen | Back To The Roots](#) (in French and German).

<sup>69</sup> The opinion of the CCJPD is available on the FOJ website at <https://www.bj.admin.ch/dam/data/bj/gesellschaft/adoption/illegale-adoptionen/stgn-kkjpd-ber-zhaw-d.pdf> (not available in English).

## Rapport Po. Ruiz 17.4181

In a press release dated 27 February 2020,<sup>70</sup> the canton of St Gallen acknowledged that its authorities should have been more rigorous in their oversight of Alice Honegger's activities as an adoption agency, as was pointed out in the report of January 2019.<sup>71</sup> Since then, all the documents from the former adoption agency have been transferred to the cantonal record office, allowing the canton of St Gallen to now begin a comprehensive examination of all foster care and adoption cases involving Sri Lankan children between 1973 and 1997. In addition, the canton provides free tracing consultations and has made a donation of CHF 20,000 to BTTR.

In a press release dated 27 February 2020, the Geneva cantonal government announced that it would support adoptees in searching for their birth family.<sup>72</sup> The canton commissioned an ad-hoc group and instructed it to remove any hurdles for adoptees in their tracing endeavours and to ensure coordination between the cantonal agencies concerned. The cantonal government also announced it would commission external experts to carry out a historical review of the situation in its canton if the Confederation did not launch a national-level investigation into the matter.

The canton of Bern announced in a press release on 27 February 2020 that in the light of the disturbing facts revealed by the ZHAW report it would support the adoptees in the search for their Sri Lankan roots and would not charge any fees.<sup>73</sup>

The canton of Solothurn, in its press release of 27 February 2020, expressed its shock and dismay at the results of the ZHAW report, saying it presumed there were also cases involving illegal adoptions in its own canton even though it had not been part of the historical review.<sup>74</sup> The canton assured those who had been adopted from Sri Lanka during the period in question that they could count on non-bureaucratic support in tracing their Sri Lankan roots. The canton also announced that it had donated CHF 7,000 to BTTR in 2019.

Other cantons also supported the activities of BTTR in 2019.<sup>75</sup>

### 2.5 A need for further historical research

In its conclusions the ZHAW points out the need for further research on intercountry adoptions in Switzerland. The report says the historical review should be extended to all cantons in order to gain a full picture of the system of international adoptions before the country ratified the Hague Convention in 2003. The report goes on to say that research should be broadened to other countries of origin besides Sri Lanka, since statistics show that in the 1980s many children were adopted also from India and Latin America, particularly from Brazil, Chile, Colombia and Peru. A look beyond the borders of Switzerland might be helpful too, since other

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<sup>70</sup> The opinion of the canton of St Gallen is available on the FOJ website at <https://www.bj.admin.ch/dam/data/bj/gesellschaft/adoption/illegale-adoptionen/mm-sg-2020-02-27-d.pdf> (not available in English).

<sup>71</sup> The report was commissioned by the Office for Social Affairs of the Department of the Interior of the canton of St Gallen and is available on its website: <https://www.sg.ch/content/dam/sgch/gesundheit-soziales/soziales/familie/Adoptionen%20von%20Kindern%20aus%20Sri%20Lanka%20in%20den%20Jahren%201979%20bis%201997%20-%20Bericht%20von%20Sabine%20Bitter.pdf> (not available in English).

<sup>72</sup> The opinion of the canton of Geneva is available on the canton's website: <https://www.ge.ch/document/adoptions-enfants-provenance-du-sri-lanka-annees-80> (not available in English).

<sup>73</sup> The opinion of the canton of Bern is available on the canton's website: [https://www.jgk.be.ch/jgk/fr/index/direktion/organisation/kja/aktuell\\_meldungNeu.html/jgk/fr/meldungen/dir/kja/2020/02/20200226\\_1635\\_publication\\_der\\_historischenanalysebetreffenddaspostulatruiz1741](https://www.jgk.be.ch/jgk/fr/index/direktion/organisation/kja/aktuell_meldungNeu.html/jgk/fr/meldungen/dir/kja/2020/02/20200226_1635_publication_der_historischenanalysebetreffenddaspostulatruiz1741) (not available in English).

<sup>74</sup> The opinion of the canton of Solothurn is available on the canton's website: [https://so.ch/staatskanzlei/medien/medienmitteilung/news/unregelmassigkeiten-bei-adoptionen-von-kindern-aus-sri-lanka/?tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Baction%5D=detail&cHash=40cb6875e137dfdb1d1dfa9670f2e1ad](https://so.ch/staatskanzlei/medien/medienmitteilung/news/unregelmassigkeiten-bei-adoptionen-von-kindern-aus-sri-lanka/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=40cb6875e137dfdb1d1dfa9670f2e1ad) (not available in English).

<sup>75</sup> Support is generally provided through the national lottery (Swisslos), cf. <https://backtotheroots.net/nous-meme/financement/?lang=fr>.

## Rapport Po. Ruiz 17.4181

countries, including the Netherlands<sup>76</sup> and Chile,<sup>77</sup> are also currently looking into previous intercountry adoptions and past scandals.

As part of a national research programme by the Swiss National Science Foundation (SNSF) entitled 'Welfare and Coercion – Past, Present and Future' (NRP 76), a scientific report was published on 2 November 2020 on welfare and coercion with respect to adoptions and foster care.<sup>78</sup> The report outlines the current status of research and available data, and identifies research gaps, particularly regarding adoptions within Switzerland compared with those from abroad. It also looks at how the intercountry adoption system has evolved and mentions the difficulties of oversight. Based on the results of the research, the NRP 76 Steering Committee will decide whether to commission more detailed studies in this field.

In addition, researchers may submit research projects on specific topics to the SNSF at any time. In view of the lack of existing research on intercountry adoptions, such submissions would be welcome.<sup>79</sup> Interested parties can submit proposals for new NRP topics after the State Secretariat for Education, Research and Innovation (SERI) has opened a new selection round. Topics for new NRPs are selected through a bottom-up process, with the Federal Council ultimately deciding which NRPs should be launched.<sup>80</sup>

## 2.6 Current legal issues

### 2.6.1 Access to documents and tracing

Every adoptee's search for their birth family usually begins with access to the documents held in the archives of the Swiss authorities. The ZHAW report notes that, in general, there is little documentation in the archives on individual adoption cases pertaining to Sri Lanka. Moreover, the fact that relevant documents are scattered across communal, cantonal and federal archives creates an additional hurdle for conducting a historical review and for adoptees who are trying to trace their roots. This latter point is considered in more detail in chapter 3. A further obstacle is that documents are often only in the possession of private individuals, including adoption agencies and adoptive parents, or foreign authorities, which makes it impossible or very difficult to obtain them if those concerned refuse to hand them over.

### 2.6.2 Criminal implications

The ZHAW report points out that the adoptions involved numerous criminal acts, such as the abduction of babies, forced consent by parents to adoption, and corruption of officials and judges. However, it appears there were few convictions in Sri Lanka for these crimes: investigations were opened but never concluded.<sup>81</sup> The ZHAW report also mentions a report by the Sri Lankan authorities whose exact content is not known but which concedes that illegal practices did take place but were not prosecuted owing to legislative loopholes.<sup>82</sup> The ZHAW report further states that proceedings were opened in Switzerland against the adoption agent

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<sup>76</sup> An independent committee was mandated to prepare a report on past intercountry adoptions with an initial focus on Brazil, Colombia, Indonesia, Sri Lanka and Bangladesh, cf. <https://www.committeeinvestigatingintercountryadoption.nl/>.

<sup>77</sup> <https://www.bbc.com/news/world-latin-america-48929112>.

<sup>78</sup> <https://www.bfh.ch/soziale-arbeit/de/aktuell/news/2020/nfp-76-fremdplatzierung-forschungsstand> (not available in English).

<sup>79</sup> <http://www.snf.ch>.

<sup>80</sup> The procedure is described under [National Research Programmes NRP \(admin.ch\)](#).

<sup>81</sup> ZHAW report, p. 111 and 200 f.

<sup>82</sup> ZHAW report, p. 126 f. and p. 133.

## Rapport Po. Ruiz 17.4181

Alice Honegger, who was accredited by the St Gallen authorities, but only resulted in a temporary withdrawal of her licence for a few months in 1982 and had no criminal consequences.<sup>83</sup>

There have been several potentially relevant improvements in Swiss penal law since the period under review in the ZHAW report. For example, bribing foreign public officials or accepting bribes have been criminal offences since 1 May 2000 and 1 July 2006 respectively (Title Nineteen of the Swiss Criminal Code SCC<sup>84</sup>). Since 2003 there has also been legislation on criminal offences in connection with international adoptions, set out in the Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases (HCAA).<sup>85</sup> The offences include: taking in a child [for later adoption] in Switzerland without authorisation or the necessary conditions being met (Art. 22); improper monetary gain (Art. 23); and child trafficking for the purpose of adoption (Art. 24). Owing to the principle of non-retroactivity in criminal law, these penal provisions are only applicable to offences that were committed after the provisions came into force. Before that, only penal provisions relating to general offences such as document forgery (Art. 251 SCC) or abduction (Art. 183 and 220 SCC) were applicable. The penal provision on human trafficking (Art. 182 SCC) usually does not apply because human trafficking is linked to the exploitation of the victim and adoptions seldom involve exploitation.<sup>86</sup>

With respect to the above-mentioned offences, which theoretically come into question, it would be necessary to examine each case in more detail to determine if Swiss criminal law is applicable or if jurisdiction lies with the Swiss prosecution authorities (see Art. 3 ff. SCC). Most of the criminally relevant acts took place in Sri Lanka (e.g. forgery of documents under Art. 25 ff. SCC or child abduction, which is the first offence listed in Art. 220 SCC). Their prosecution is therefore primarily the responsibility of the Sri Lankan authorities and would have to take place according to Sri Lankan law. Although the SCC is applicable under certain conditions to offences committed abroad (see Art. 5-7 SCC), it is questionable whether these conditions would be fulfilled: this would have to be assessed on the basis of a specific case and the provisions applicable at the time.

With respect to abduction (Art. 183 SCC) or the refusal to return or surrender a child to the person who holds the right of custody (second offence listed in Art. 220 SCC), it would in principle be conceivable that based on the fact that a child was brought to Switzerland from Sri Lanka the offence was committed in Switzerland and that therefore Swiss law applies (Art. 3 and 8 SCC). However, this would require that the unlawful act in the sense of criminal law was being carried out at the time the child was brought to Switzerland and that the person who brought the child to Switzerland acted intentionally. Again, this can only be assessed on the basis of a specific case study. However, where a child was brought to Switzerland by its (prospective) adoptive parents without them being aware that the child had been unlawfully taken from its birth parents, an intentional act would seem to be ruled out. Therefore, in numerous cases probably no criminal offence was committed in Switzerland. Quite apart from this, the offences would generally have become time-barred so that prosecution in Switzerland would no longer be possible today.

The ZHAW report shows that each adoption case was unique and involved many different persons and authorities, both in Switzerland and in Sri Lanka. As mentioned, only a detailed

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<sup>83</sup> ZHAW report, p. 96 ff.

<sup>84</sup> Classified Compilation of Federal Legislation, SR 311.0.

<sup>85</sup> Classified Compilation of Federal Legislation, SR 211.221.31.

<sup>86</sup> The former Art. 196 SCC only provided for sexual exploitation; since the amendment came into force on 1 December 2006, the new Art. 182 SCC includes, besides sexual exploitation, exploitation of the victim's labour and removal of an organ.

## Rapport Po. Ruiz 17.4181

examination of each case would allow an individual assessment as to whether one or more criminal offences had been committed and whether Switzerland is, or would have been, responsible for prosecution.

### 2.6.3 Assistance under the Victim Support Act

During the course of the work to date, the question also arose as to whether adoptees from Sri Lanka are entitled to victim support under the Federal Act of 23 March 2007 on the Provision of Support to Victims of Crime (VSA).<sup>87</sup> Below are some considerations in this regard:

Under the provisions of the law, support is generally granted to victims of crimes committed in Switzerland (Art. 3 VSA).

If the offence was committed abroad, victim support services only provide counselling and support if the victim is domiciled in Switzerland at the time the offence was committed and the application for support was submitted (Art. 17 para. 1 let. a VSA). It is clear that these conditions were not fulfilled at the time the criminal acts were committed in Sri Lanka. Moreover, the VSA also excludes the possibility of any compensation or payment of damages for pain and suffering for the victims of crimes committed abroad.<sup>88</sup>

In order to qualify for support under the VSA, it must be determined whether the offences committed in Sri Lanka continued in Switzerland. This could prove difficult against the backdrop of the remarks made above (see 2.6.2).

### 2.6.4 Validity of the adoptions

With the introduction of full adoption into the Swiss Civil Code (CC) in 1973, the legislator also introduced the possibility of challenging an adoption, wishing to regulate this point clearly.<sup>89</sup> Challenging an adoption (Art. 269-269b CC) is subject to strict conditions and time limits in order to ensure the legal certainty of filiation and the principle of the indissolubility of full adoption.<sup>90</sup> Where consent to the adoption has not been obtained from the persons whose consent is required (Art. 269 CC), the adoption may only be challenged if it does not seriously impair the interests of the child.<sup>91</sup> If the adoption displays other grave defects (Art. 269a CC), a challenge is excluded if the defect has been rectified in the interim or if it relates solely to procedural provisions. An action to challenge an adoption must be brought within six months of discovering the grounds for the challenge and in any event within two years of the adoption.

Legal doctrine also includes the possibility of dissolving (not just challenging) an adoption in cases displaying extreme defects, for example where an adoption has not been pronounced by a state authority or has been obtained as a result of criminal acts. One opinion includes the forgery of civil status documents in particular in this category, specifying that it would in any event be up to the person affected to apply to the court, by way of declaratory relief, in order to have an adoption nullified and the civil status register corrected.<sup>92</sup> However, this opinion has never been confirmed by cantonal or federal jurisprudence. One should therefore

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<sup>87</sup> Classified Compilation of Federal Legislation, SR 312.5.

<sup>88</sup> Under the old law, in order to receive support the victim had to be a Swiss citizen and residing in Switzerland at the time of the offence and submission of the application (Art. 11, para. 3a VSA in conjunction with Art. 48, let. a VSA).

<sup>89</sup> Dispatch of the Federal Council dated 12.05.1971 concerning the revision of the Swiss Civil Code (adoption and Art. 321 CC), Federal Gazette 1971 I 1200 f. (cf. 3.5.4) (not available in English).

<sup>90</sup> Decision of the Swiss Federal Supreme Court 137 I 154, E. 3 (not available in English).

<sup>91</sup> Decision of the Swiss Federal Supreme Court of 30.08.2004, 5C.18/2004, E. 3 (not available in English).

<sup>92</sup> PETER BREITSCHMID, *Basler Kommentar zum Schweizerischen Privatrecht, Zivilgesetzbuch (Art. 1-456 ZGB)*, published by Thomas Geiser/Christiana Fountoulakis, sixth edition, Basel 2018, Art. 269 CC n. 3 (not available in English).

## Rapport Po. Ruiz 17.4181

be very cautious in assuming a legal loophole, particularly in the knowledge that the legislator did not change the system for challenging adoptions under Articles 269 and 269a CC during the latest revision of adoption law, which came into effect on 1 January 2018.<sup>93</sup>

### 2.7 Conclusion and recommendations

#### 2.7.1 Position of the Federal Council

The Federal Council takes note of the ZHAW report and its conclusions. It thanks the authors for their work and notes, as the report points out, that many questions remain unanswered. The report highlights the many, in part serious, irregularities in adoption procedures for children from Sri Lanka during the period under review. The Federal Council acknowledges the shortcomings of the Swiss federal and cantonal authorities in this respect and, in particular, with regard to all children whose adoption procedures involved unlawful acts.

The Federal Council is aware that the failings of the authorities at the time continue to shape the lives of those concerned to this day. For this reason, it is particularly important to support them in their search for their birth family (see chapter 3). The ZHAW report has also helped to make adoptive parents aware of the unlawful or irregular nature of certain adoption practices at the time. The Federal Council would like to encourage adoptive parents to do their utmost today to support their adopted children in the search for their birth family.

The Federal Council expresses its regret to the adoptees and their families on the failures of the authorities. Even though the situation has fortunately improved since the 1980s, the Federal Council intends to critically examine the current practice in order to prevent unlawful intercountry adoption practices and to further strengthen the protection of children in adoption proceedings and put their best interests at the centre. The events of that time must not be repeated.

#### 2.7.2 Recommendations and perspectives

The ZHAW report highlights the need for additional historical research at cantonal and federal level.

The Federal Council believes that the study of historical facts is generally the task of independent academic research. It encourages the scientific community to take up the topic of intercountry adoption and launch appropriate projects, particularly under the aegis of the Swiss National Science Foundation. The Federal Council also welcomes the various ongoing or announced projects by several cantons in this respect.

The ZHAW report focuses on Sri Lanka, but indicates that adoption practices from other countries of origin should also be examined (in particular India, from which three times more children were adopted in Switzerland in the past than from Sri Lanka). For this reason, the FOJ will commission research comprising an analysis of the federal archives by the end of the year in order to obtain an initial overview of the situation with respect to other countries of origin. This should facilitate further research by the scientific community. However, the Federal Council does not consider it expedient for the Confederation to conduct other or more comprehensive historical research on adoptions from Sri Lanka outside of this framework. Rather, the Confederation should focus on the two other topics in this report: tangible support

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<sup>93</sup> Official Compilation of Federal Legislation, AS 2017 3699.

## **Rapport Po. Ruiz 17.4181**

for adoptees in tracing their birth family (see chapter 3) and the analysis and reform of the current legislative framework (see chapter 4).

## 5 Summary and outlook

Nearly 40 years ago the Swiss media reported on the scandal concerning children who were trafficked from Sri Lanka to Switzerland for adoption. These children are now adults and want to know where they are from and if those allegations are true. In light of this, Parliament adopted postulate 17.4181 by National Council member Rebecca Ruiz on 16 March 2018, which instructs the Federal Council to shed light on the allegations of illegal practices concerning children adopted in Switzerland from Sri Lanka in the 1980s.

The 250-page historical review of cases by the ZHAW clearly shows that all the adoption procedures examined contained irregularities to varying degrees, both in Switzerland and Sri Lanka. The results of the report are unequivocal: the Swiss authorities were aware of the problems but did not take the necessary steps to address them. Instead, each authority claimed the limits of its responsibility. From today's perspective this inaction is incomprehensible. As the report points out, children were sought for would-be parents rather than the other way round.

Today, the Federal Council takes note of the findings of the ZHAW report and acknowledges the failings of the Swiss federal and cantonal authorities. It expresses its regret to the adoptees and their families.

The ZHAW report highlights the need for additional historical research at cantonal and federal level. The Federal Council welcomes the various ongoing or announced projects in this field. At federal level, the Confederation will commission complementary research comprising an analysis of the federal archives to assess the situation for other countries of origin. This will help the scientific community conduct further research. Indeed, adoptions from Sri Lanka represent only a small part of the intercountry adoptions of the last decades.

The Federal Council is aware that the failings of the authorities at the time continue to shape the lives of those concerned to this day. For this reason it is particularly important to support them in the search for their roots. After reviewing the organisation and services of various agencies that support adoptees in their tracing endeavours, this report concludes that there is an urgent need for action in Switzerland on the part of both the authorities and private organisations to improve the situation and develop tracing organisations and services in Switzerland. The search for birth families in Sri Lanka shows the enormous difficulties adoptees face: procedures can be long, complicated, costly and psychologically stressful, with no guarantee of success. These difficulties are exacerbated in international searches, particularly if the file contains irregularities and false information. If the adoptive parents, the adoption agencies concerned or the foreign authorities of the respective country refuse to cooperate, most searches fail. These questions will be addressed in greater depth by a working group established specifically for tracing adoptees' origins and comprising representatives of the federal and cantonal authorities, the adoptees themselves and private stakeholders, in collaboration with the CCJPD. The working group is tasked with looking into the question of supporting those concerned and formulating specific proposals for rapid and tangible improvement.

Even though the situation with respect to international adoptions has fortunately improved since the 1980s, this report reveals ongoing weaknesses in the adoption system and advocates that a specific policy on intercountry adoption be established in Switzerland. The report suggests various approaches: optimising institutional structures, limiting the number of countries from which children can be adopted, consistent implementation of the international recommendations on financial matters and for combating unlawful practices in general, and revising the appropriate chapter of the Federal Act on Private International Law. In order to improve the protection of children in the area of adoption, the FDJP is instructed to set up a



## **Rapport Po. Ruiz 17.4181**

group of experts who are to conduct a comprehensive analysis of the adoption system in Switzerland and propose solutions, including legislative reform. This aims to ensure that the best interests of the child are at the heart of every intercountry adoption procedure and that the events of the past are not repeated.

## 7 List of abbreviations

ACCA	Association of cantonal central authorities on adoption
AdoptO	Ordonnance of 29 June 2011 on Adoption
AdoPO	Ordinance of 28 March 1973 on Placements with a View to Adoption
BGA	Bureau genevois d'adoption
CAPA	Child and Adult Protection Authority
CC	Swiss Civil Code
CCA	Cantonal Central Authority
CCDJP	Conference of Cantonal Justice and Police Directors
CDSS	Conference of Cantonal Directors of Social Services
CLACA	Conference of cantonal central authorities on adoption for the French- and Italian-speaking parts of Switzerland
COPMA	Conference for Child and Adult Protection
CRC	Convention of 20 November 1989 on the Rights of the Child
FCAO	Ordinance of 19 October 1977 on the Placement of Children in Foster Care
FDFA	Federal Department of Foreign Affairs
FDJP	Federal Department of Justice and Police
FOCS	Federal Office of Civil Status
FOJ	Federal Office of Justice
FOS	Federal Office of Statistics
HCAA	Federal Act of 22 June 2001 on the Hague Convention on Adoption and on Measures to Protect Children in International Adoption Cases
HCA93	Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption
HC96	Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children
ISS	International Social Service
NRP	National Research Programme
PACH	Pflege- und Adoptivkinder Schweiz
PILA	Federal Act of 18 December 1987 on Private International Law
SCC	Swiss Criminal Code
SEM	State Secretariat for Migration
SERI	State Secretariat for Education, Research and Innovation
SFAO	Swiss Federal Aliens Office (from 1980 to 2003)
SNSF	Swiss National Science Foundation
UN	United Nations
UNICEF	United Nations Children's Fund
VSA	Federal Act of 23 March 2007 on the Provision of Support to Victims of Crime
ZHAW	Zurich University of Applied Sciences