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Adoption: "finding adoptive parents for children who particularly needed them and who did not have the possibility to be adopted in their own countries, rather than supplying children to parents who wished to adopt a child from a another country"¹

¹ FAM, CAAC, AC 1, No. 3, "Adoption entre pays: rapport d'un groupe d'experts européens, Genève 21-25 janvier 1957), United Nations, 1958, TAA/EG Rep.3, p.3-4.

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Executive summary and overview of main findings

This study analyses the impact of financial abuses in ICAs on children's rights and the way forward to tackle these abuses. This study covers among other elements: an historic overview of the practice of ICA (ICA), the uncovered past financial abuses and illicit practices in ICA, the financial aspects involved in ICA; the concrete impact illegal adoptions have on the realization of the rights of the child.

The present study has undertaken the task of compiling the recommendations on how to tackle financial abuses in ICA, that have been made over the past years by the HCCH and the ISS. As it becomes evident from the analysis, some governments fail to implement these recommendations. This study identifies the lack of political and own financial interests of governments in ICA as the main reasons for the inaction of certain governments. Furthermore, this study delves deeper into a specific action that has been undertaken by various states over the years and this is the introduction of moratoria. As confirmed in this study, while moratoria may be blindly considered to solve the problem as it temporarily halts the practice of ICA, this may not be considered a good enough solution, as was confirmed by the CRC Committee in its concluding observations for Romania. As a result, the present study is not aimed at promoting the inclusion of moratoria, as the main purpose of such research is not to conclude that ICA is a bad practice and that it shall be banned, rather it is about highlighting the bad practices that have prevailed over the past years in connection with the financial aspect and about focusing on the possible way forward. Therefore, moratoria cannot be considered a viable option especially if this means that children whose best option for a better life is an overseas adoption, are prevented from such a possibility.

Furthermore, while the primary focus when it comes to ICA might be on states and governmental authorities, it transpires that one shall not forget about another main stakeholder, prospective adoptive parents. While bringing about change at the governmental level may be an extremely slow process tainted by bureaucratic tendencies, the next ideal group to tackle would be the public in general, or in this case, PAPs. The main finding here that the focus must lie on societal awareness by prospective adoptive parents of the possible risks they themselves might be exposed to and more importantly, the child whom they will be adopting. This finding is based on the responsiveness societies in general have had towards other awareness-raising initiatives, such as that of Greta Thunberg over the past months. While it can be said that lack of action from states is an apathy highly affected by corruptive tendencies, the same cannot be said about lack of awareness by societies generally since in such instances it is mainly incumbent on lack of information and lack of transparency available to them to be able to make the necessary judgements on the situation.

Key words: Children's Rights - ICA – illegal - financial aspects – way forward

List of selected acronyms and abbreviations

Art.	Article/Articles
AB's	Accredited bodies
CA('s)	Central Authority('s)
CRC	United Nations Convention on the Rights of the Child
CRC Committee	United Nations Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
ICA('s)	Intercountry Adoption(s)
ISS	International Social Service
NGO	Non-governmental organisation
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
PAP's	Prospective adoptive parents
UN	United Nations
UNICEF	United Nations Children's Fund

The Impact of Financial Abuses in Intercountry Adoptions on Children's Rights and the Way Forward to Tackle these Abuses

1. Introduction

1. Finding a family for a child

Intercountry adoption (further referred to as ICA) originated as an *ad hoc* humanitarian response to rescuing children from war-torn countries in the second half of the 20th century.² Many children were left orphaned or abandoned following/during the second world war and the suffering of these vulnerable children was extensively covered by the international media, prompting families in other countries to help by adopting children from Europe and Japan.³ As Europe recovered from the devastation of the world wars, European families, in turn, adopted orphans in the aftermath of the Korean and the Vietnam war.⁴ Therefore, ICA originated as a form of humanitarian aid and resulted in the latter-mentioned adoption waves being repeated in the aftermath of various geopolitical events, such as the end of the Cold war, the fall of the Iron Curtain and the fall of Ceausescu in Romania, among others.⁵ The practice was thus that families from industrialized countries would adopt children from post-war zones. However, this later evolved to adoptions also taking place in countries with high levels of poverty as a token of solidarity.⁶ It is questionable whether these 'mass exportations of children' under the guise of humanitarian aid were always in the best interest of the child. However, what is certain is the fact that the initial idea behind intercountry adoptions was altruistic, namely to save children and to meet a vulnerable child's needs.⁷

2. Finding a child for a family

The above-mentioned altruistic aim behind ICAs changed radically during the 70s where the motivation started to shift from a child-centered to a more parent-centered approach.⁸ Declining fertility rates in industrialized countries made many couples pursue intercountry adoption because they could

² E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 33 (2019); N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption, 3.1.1. The first decades of intercountry adoption: a humanitarian response to war (2014).

³ See: R. Hoksbergen, Kinderen die niet konden blijven: zestig jaar adoptie in beeld (2011); K. Lovelock, ICA as a migratory practice: A comparative analysis of ICA and immigration policy and practice in the United States, Canada and New Zealand in the post WWII Period 908, 34 International Migration Review 3, (2000).

⁴ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 33 (2019).

⁵ Important sending states : Columbia Brazil India Child and the Philippines (80's) ; Eastern European countries after the end of the cold war and the fall of the iron curtain (90's) African countries, Guatemala, Haiti and Ukraine (00's). For an overview see : E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 33-38 (2019).

⁶ UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 2 (1999).

⁷ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 29 (2019).

⁸ See: A. Young, Developments in ICA – From humanitarian aid to market-driven policy and beyond, 36 Adoption and Fostering 2 (2012); R. A. C. Hoksbergen, Changes in Motivation for Adoption, Value Orientations and Behavior in Three Generations of Adoptive Parents, 2 Adoption Quarterly 2 (1998).

not have children of their own.⁹ By the 90s ICA agencies' primary focus shifted almost entirely from helping orphans find a family, to helping childless Western couples find a child.¹⁰

3. The law of supply and demand

Western adoptive parents' desire to adopt a child through intercountry adoption came with certain specifications. Healthy and young children were preferred, particularly babies under the age of 2. This self-centered attitude of adoptive parents is still present today which in turn means that there is no room for older children and children suffering from medical conditions to be adopted as they are considered 'unwanted'.¹¹ It follows from the principle of supply and demand that this creates competition among prospective parents. The adoption system became a complex and controversial social system in which the language of economics made its appearance.¹²

While the demand for young and healthy children rises, it cannot be said that there are more young and healthy children available for adoption. On the contrary, due to social and demographic tendencies in low-income countries such as the introduction of liberal abortion laws, the availability of contraceptive measures and the decrease of stigma around single motherhood, fewer children were in need of adoption.¹³ This thus means that there is a huge gap between an increasing demand and a decreasing supply, resulting in illicit practices being resorted to/being sought as a way to help find and supply more 'adoptable' children in order to keep the adoption industry going. It is due to the enormous financial interests involved in adoption processes that in some cases ICA has become a profit-making business. Financial gain is the primary driver for all actors involved to keep generating young and healthy 'adoptable children' through illicit practices.¹⁴ It follows that there is a tendency of market-based commodification of young and healthy children in order to fulfil the desires of Western adults rather than meeting the needs of the child. This points to a Western philosophy of a person's 'right to a child'. Parents are willing to do just about anything to fulfil their desire to have a child, because 'a child has no price'.¹⁵ The practise of adoption is often perceived as the ultimate act of love and generosity on behalf of parents, however, in certain cases this goes as far as evolving into a self-centred act, which can amount to a violation of children's rights.¹⁶ Adoptive parents' desperation,

⁹ See: E. Te Velde, D. Habbema, H. Leridon and M. Eijkemans, The effect of postponement of first motherhood on permanent involuntary childlessness and total fertility rate in six European countries since the 1970s, 27 *Human Reproduction* 4, (2012).

¹⁰ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 31 (2019); C. Fenton-Glynn, Children's Rights in intercountry adoption 15 (2014); See: A. Young, *Developments in ICA – From humanitarian aid to market-driven policy and beyond*, 36 *Adoption and Fostering* 2 (2012); R. A. C. Hoksbergen, Changes in Motivation for Adoption, Value Orientations and Behavior in Three Generations of Adoptive Parents. 2 *Adoption Quarterly* 2 (1998).

¹¹ R. A. C. Hoksbergen, Kinderen die niet konden blijven: zestig jaar adoptie in beeld 255 (2011).

¹² HCCH report by J.H.A. van Loon, Report on intercountry adoption: intentional co-operation and protection of children with regard to intercountry adoption 230 (1993).

¹³ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 31 (2019); R. Högbäck, The quest for a child of one's own: Parents, markets and transnational adoption, 39 *Journal of Comparative Family Studies* 3 (2008).

¹⁴ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 1 (2019).

¹⁵ HCCH, Note sur les aspects financiers de l'adoption internationale 10 (2014).

¹⁶ R. A. C. Hoksbergen, Kinderen die niet konden blijven: zestig jaar adoptie in beeld 255 (2011); C. Saclier for ISS, Children and Adoption: Which Rights and Whose? 12, *Innocenti Digest* No. 4, (1999).

intentionally or not, closes their eyes to the complex reality underlying ICA.¹⁷

Nigel Cantwell once said during a lecture that “the transfer of Western wealth into sending nations is the primary vulnerability of the ICA system as it provides an incentive to engage in illicit and abusive practices.” Adoption is an appealing opportunity for officials, intermediaries and professionals to turn a quick profit. Unreasonable amounts of money turn adoption procedures, which originated as a once purely humanitarian response into a profit-rendering industry. Once the profit motive is unleashed in the ICA system, it becomes very difficult to safeguard children and families from illicit child laundering.

2. Research question and the research scope

The research question to the present thesis is as follows: What is needed, within the framework of the Hague Convention on ICA, to effectively tackle financial abuses in ICAs. The sub-question is: What new approaches are there to effectively tackle financial abuses in ICAs apart from the approach as set out in the existing recommendations? It is important to note that this research focuses on international adoption from Non-Western sending countries to Western receiving countries. Intercountry adoption among Western countries falls outside the research scope because different conditions and forces are applicable in this adoption ‘market’. Lastly, it is important to mention that, although surrogacy and ICA are closely connected, the topic of surrogacy goes beyond the scope of this paper.

3. Structure

Following this introductory chapter, Chapter 2 opens this study by briefly setting out the international legal framework on intercountry adoption which consists of two main legal instruments: the Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. These two instruments form the foundation for the further analysis of this study. Chapter 3 will set out the problem of financial abuse and illicit practices involved in ICA by providing concrete examples of uncovered abuses in the past. As a matter of fact, this chapter illustrates how babies have been ‘generated’ through (a combination of) illicit practices, in order to meet the high Western demand for young and healthy babies. Chapter 4 examines the financial aspects involved in intercountry adoption and the lack of transparency on these aspects in particular. A distinction is made between donations on the one hand, and charges as part of the adoption fee which represent a contribution to the child protection services on the other hand. In particular, the debate on the legality of contributions to the domestic child protection services will be considered. It is important to note that financial abuses in intercountry adoptions happen at the literal expense of biological parents, the adopters and the child. But the main focus of this study lies on the impact of illicit practices on the rights of the child. Chapter 5 presents the concrete risks illegal adoptions pose for the realisation of the rights of the child. An analysis of the main children’s rights violations is set out with a particular focus on article 3 and 21 of the CRC on the best interests principle. Finally, Chapter 6 presents my finally concluding observations. Throughout this research, it has become apparent that the main focus and responsibility in the battle against financial abuses in ICA, lies on governments.

However, in addition to this, (almost) no attention is given to the role informed PAPs could play in this challenge. While bringing about change at the governmental level may be an extremely slow process tainted by bureaucratic tendencies, the next ideal group to tackle would be the public in general, or in this case, PAPs. The main aim conclusion here is to focus on societal awareness of the possible risks they themselves might be exposed to and more importantly, the child whom they will be adopting.

¹⁷ See: EurAdopt and the Nordic Adoption Council, Good practice in Economic Matters in ICA (2015).

4. Methodology

In order to answer this question, this research consists mainly of a thorough, library-based literature study of both national and international sources. The primary sources consulted include international and national legal instruments, various reports, concluding observations and policy documents of international bodies. The secondary resources contain academic publications, media reports, position papers and documents published by non-governmental organizations. As a way to make this research more tangible, this normative legal research is complemented by concrete examples of past abuses in among others Haiti, Romania and Guatemala. It is important to acknowledge that these case studies of irregular and abusive practices are context-dependent and therefore do not yield any generalisable conclusions. Nevertheless, these examples will especially help illustrate the weaknesses identified in the ICA system.

5. No advocacy for or against ICA

This paper might be perceived as one-sided, as the main emphasis lies on the dark side of adoption, namely the illegal practices within the system. However, this should not be interpreted as if to say that the positive side and the good things ICA has brought to both adopters and adoptees is not appreciated or acknowledged. Numerous parentless children have found a caring family and a stable home through intercountry adoption, something they would have otherwise never have had in their home country due to disabilities they might have¹⁸, conflicts, extreme poverty, cultural norms¹⁹ and policies²⁰. Extensive research shows the positive impact of intercountry adoptions on children and individuals who were not able to have children of their own.²¹ So, provided that adequate safeguards are set up and monitored, this research assumes that ICA is potentially in the best interest of the child.

6. Definitions

6.1. Child

For the purpose of this research, a child is considered a person below the age of 18 years as provided in article 1 of the United Nations Convention on the Rights of the Child (further referred to as 'the CRC').

6.2. Domestic, international and ICA

An adoption procedure is a protection and welfare measure that facilitates an orphaned or definitively abandoned child to be welcomed into a new, permanent family identified as the 'adoptive parents'. Adoptions can be divided into three main categories: Domestic, international and intercountry adoptions. As this research solely covers intercountry adoptions, it is essential to distinguish the different categories.

¹⁸ Children with disabilities are in many countries met with a negative attitude and stigma which leads to abandonment. See: The Guardian, Stigma pushes disabled children into 'dangerous' Kenyan orphanages (2018).

¹⁹ Children born to an unmarried woman are still stigmatized in many countries which results in mothers abandoning their child based on the fear of social exclusion. See: P. Bos, Once a mother : Relinquishment and Adoption from the perspective of unmarried mothers in South India (2007).

²⁰ China's one-child policy which was introduced in 1979 together with the population's desire to have a son, produced a lot of abandoned baby girls. See: J. Zhang, The Evolution of China's One-Child Policy and Its Effects on Family Outcomes, 31 Journal of Economic Perspectives 141-160 (2017).

²¹ See: C. Schoemaker, *From infancy to young adulthood: The Leiden longitudinal adoption study*, Doctoral Thesis Leiden University, (2014); F. Juffer, Adoptie als interventie (1) en (2) 17-49, 29 Kind en Adolescent (2008).

When a child (the adoptee) is adopted by adoptive parents who are residing in the same country and have the same nationality as the adoptee, this is a domestic adoption also called a national or an in- country adoption.²²

International adoption is the process whereby parents adopt a child of a different nationality than themselves, irrespective of whether they live and continue to live in the child's country of habitual residence.²³

ICA, on the other hand, has been defined by UNICEF as adoption that "involves a change in the child's habitual country of residence, whatever the nationality of the parents"²⁴. It follows that ICA involves, in any event, a child's transfer to a different country.

6.3. Sending and receiving country

Receiving country²⁵: destination country for the adopted child.

Country of origin²⁶: country where the adopted child comes from.

6.4. Simple and full adoption

Full adoption and simple adoption can be differentiated based on the evaluation of the severance or the maintenance of the ties of legal filiation with the biological family.²⁷

Full adoption 'allows for the complete and full integration of the child into the extended adoptive family, giving the child equal status with biological children. This type of adoption severs filiation ties with the family of origin, including the forfeiture of rights, responsibilities and obligations of the biological parents or guardian(s), which are then exercised exclusively by the adopters.'²⁸

Simple adoption 'maintains the legal bond with the family of origin and establishes only a limited adoptive parental relationship.'²⁹

2. International legal framework on intercountry adoption

Concerns regarding the inherent risks of ICA practices are not new, on the contrary, they originated with the practice itself. The first considerable international conference on ICA was organised by the European Office of the United Nations and was held at Leysin, Switzerland in 1960. The inadequacy of international standards to ensure the child's best interest in the context of ICA motivated the panel of experts in Leysin to develop the very first principles in this sphere, also called the Leysin

²² UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 2 (1999).

²³ UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 2 (1999).

²⁴ UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 2 (1999).

²⁵ ISS, Intercountry adoption and its risks: a guide for prospective adopters 3 (2020).

²⁶ Ibidem.

²⁷ ISS, Adoption, Factsheet n°29 Simple adoption versus full adoption: the effects of adoption 1 (2007).

²⁸ ISS, Adoption Casework, technical assistance and advocacy: advocacy statement paper, available at: https://www.iss-ssi.org/images/advocacy/Tab1-ISSAdvocacy/Fiches_Advocacy/Adoption_factsheet_ANG.pdf (last accessed: 1/06/2020); HCCH report by J.H.A. van Loon, Report on intercountry adoption: intentional co-operation and protection of children with regard to intercountry adoption 207 (1993).

²⁹ ISS, Adoption, Factsheet n°29 Simple adoption versus full adoption: the effects of adoption 1 (2007).

principles.³⁰ These principles were soon followed by the so-called Brighton Guidelines for ICA in 1982³¹ and by the 1986 United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of children with special reference to Foster Placement and Adoption Nationally and Internationally, Adopted by General Assembly in 1986.³² Despite the non-binding nature of the latter-mentioned instruments, they have nonetheless influenced the subsequent international framework on intercountry adoption.³³

As the CRC and the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption form the foundation of this study, the next sections elaborate on them. This discussion is rather brief, however extensive referencing guides towards more literature on this international legal framework.

2.1. UN Convention on the Rights of the Child

The principal international instrument concerning children's rights is the CRC, the almost universally ratified international convention with 196 contracting state parties. All children's rights enshrined in the Convention should not be considered separately as they are interrelated, interdependent and indivisible.³⁴ All rights are underpinned by four general principles³⁵ (Non-discrimination (Art. 2 CRC), the right to life, survival and development (Art. 6 CRC) and the right to be heard (Art. 12 CRC) which guide the interpretation and implementation of all children's rights.³⁶ In connection with the present study, it is worth highlighting Articles 20 and 21 CRC as they deal directly with ICA.

The first provision, Article 20 CRC explicitly recognizes adoption as a form of alternative care for children who are deprived of their family environment. The article continues by stating that a state, when considering this form of alternative care, must pay due regard 'to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.'³⁷ This explicit recognition does not entail an obligation for states parties to carry out any adoptions, but when a state decides to do so, the adoptions must be carried out in line with all rights in the CRC.

³⁰ CAAC AC 1, No. 3, "Rapport de mission rédigé par l'observateur du Conseil de l'Europe au Cycle d'études européen de Leysin sur l'adoption entre pays ", CE/Soc (60) 12 (1960).

³¹ International Council on Social Welfare, Adoption Centre, and International Social Service, *The Child's Right to Grow Up in a Family: Guidelines for Practice on National and ICA and Foster Family Care*, Adoption Centre (1997).

³² UN General Assembly, Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally : resolution / adopted by the General Assembly, 6 February 1987, A/RES/41/85.

³³ For further discussion See : Y. Denéchère. Regulating a particular form of migration at the European level: the Council of Europe and intercountry adoptions 1950-1967 p. 8-10, Communication dans le Congrès Peoples and borders: movement of persons in Europe, to Europe, from Europe 1945-2015 (2014).

³⁴ UN Committee on the Rights of the Child (CRC), General comment no. 5: General measures of implementation of the Convention on the Rights of the Child §17-18, CRC/GC/2003/ (2003).

³⁵ These four articles were initially selected as the four over-arching issues which needed to be addressed by states parties in their periodic reports to the Committee see : Committee on the Rights of the Child, General guidelines regarding the form and content of initial reports to be submitted by States parties under article 44, paragraph 1 (a) of the Convention, CRC/C/5 (1991).

³⁶ R. Hodgkin and P. Newell, UNICEF Implementation Handbook for the Convention on the Rights of the Child 35 (2007).

³⁷ Art. 20(3) CRC.

The second provision, Article 21 CRC is foresees the subsidiary character of intercountry adoption.³⁸ The CRC considers ICA as an alternative form of child care but only in instances where the child cannot be cared for in any suitable way in the country of origin of the child. This study will further elaborate on how the subsidiarity principle is often violated due to financial incentives. E.g. orphanages receive more money for children adopted through an ICA compared to domestic adoption.³⁹ This financial incentive often causes a drop in domestic adoptions which is not in line with the subsidiarity principle and which goes against the state's obligation to pay due regard 'to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.'⁴⁰

Furthermore, article 21 CRC is particularly relevant as it requires states to take the best interests of the child as the paramount consideration in adoption. Article 21 requires a case-by-case appreciation of the best interests of the child, and stands in contrast to a general approach which considers an ICA as beneficial to the child all circumstances.⁴¹ It is worth noting that article 21 CRC on adoption is the only provision in the Convention which addresses the best interests of the child as 'the', and not 'a' primary consideration. It follows that the adoption must only be undertaken as a child-centred action based on the best interests of the child which becomes explicitly and automatically the decisive element in a decision on a child's adoption.⁴² This particular emphasis on safeguarding the best interests of a child in ICA was initially not foreseen in *les travaux préparatoires* but is the result of the disturbing amount of scandals in relation with intercountry adoptions which had been uncovered during the drafting of the CRC (1980's) and more specifically during the second reading of this article which led to such a change in the phraseology.⁴³ Further elaboration on this principle is considered in section 5.2. [Art. 3 and Art. 21 CRC: Best interests of the child is the primary consideration.](#)

Concerning the legal framework on the financial aspects of an ICA, both the CRC as well as its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (further referred to as "the Optional protocol on the sale of children" or 'OPSC') are relevant. Article 21(d) of the CRC lies at the heart of this research since it demands that state parties take all appropriate measures to ensure that the placement of a child with/in a new family does not result in improper financial gain for those involved.

Article 3(1) OPSC is likewise applicable as it provides that the criminal or penal law of state parties must cover the improper inducement of consent for the purpose of adoption.⁴⁴

³⁸ Art. 21(c) CRC.

³⁹ HCCH, Note sur les aspects financiers de l'adoption internationale 11 (2014).

⁴⁰ Art. 20(3) CRC.

⁴¹ ISS, Fact Sheet N° 18. Adoption : General Principles 1 (2006) ; UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child §395-363, E/CN.4/1989/48.

⁴² N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 16 (2014).

⁴³ UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 5 (1999); N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 21 (2014).

⁴⁴ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UN Doc. A/RES/54/263, (2001).

2.2. The 1993 Hague Convention on intercountry adoption

2.2.1. General introduction

The Hague Convention was adopted on 29 May 1993 and entered into force in 1995.⁴⁵ 102 states are contracting parties to The Hague Convention which binds them as primary duty bearers to respect and protect children in ICA procedures. The Convention acknowledges the organizational and legal differences among the various state parties and therefore provides minimum standards, but states are free to apply more stringent safeguards.⁴⁶

The Convention essentially establishes a mechanism of procedural safeguards and standards for the protection of children who are adopted across national borders. The Convention particularly enhances international cooperation among states in the context of intercountry adoption. The main feature of the Convention is the fact that it clearly divides the obligations of the states involved in an adoption procedure. The responsibilities of both the sending country (=the child's/adoptee's country of habitual residence) and the receiving country (=the country where the adoptive parents reside) are carefully outlined.

2.2.2. The three main objectives of the Convention

The above-mentioned clear division of responsibilities must contribute to the attainment of the three objectives as formulated in the first article of the CRC. Firstly, the Hague Convention aims to ensure intercountry adoptions take place in a manner that is in the best interests of the child and with respect for his or her fundamental rights as recognized in international law.⁴⁷ These safeguards must be in place in order to achieve the second objective, namely preventing abuses which could amount to the abduction, the sale of, or trafficking in children.⁴⁸ Thirdly, the Hague Convention aims at ensuring the recognition of adoptions made in accordance with the Convention. It shall be noted that these objectives are very much in line with the CRC and this is not a coincidence. The Hague Convention is drafted to translate the CRC provisions into practice by adding substantive procedures and safeguards.⁴⁹ To put it in other words, the Hague Convention refines and reinforces the principles enshrined in the CRC.

2.2.3. Obligations with regard to the financial aspects of ICA.

In order to meet the guarantees and standards laid down in the Hague Convention, several professionals must be involved in an ICA procedure and it is only fair that they can charge their expenses. Article 32(2) of the Hague Convention allows any person involved in an adoption to charge lawful and reasonable costs and expenses, including reasonable professional fees for the services provided. It is however strictly forbidden for *all* persons involved in adoption to obtain improper financial or other gain from an activity related to an intercountry adoption.⁵⁰ This ban is a crucial tool to fight illicit practices on which this study will elaborate further-on.

According to article 8 of the Convention, the Contracting States and CAs are responsible for taking all appropriate measures to prevent all forms of improper or other gain in connection with an ICA and to

⁴⁵ HCCH, Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, (1993).

⁴⁶ UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 5 (1999).

⁴⁷ In line with Art. 3 CRC.

⁴⁸ In line with Art. 35 CRC.

⁴⁹ HCCH, The Implementation and Operation of the 1993 ICA Convention: Guide to Good Practice No 1 §20 (2008); UNICEF International Child Development Centre, Innocenti Digest No. 4, ICA 5 (1999).

⁵⁰ Art. 32(1) of the Hague Convention.

deter all practices contrary to the objectives of the Hague Convention.⁵¹ In doing so, CAs shall also meet their general obligation to co-operate⁵², meaning that a CA shall share evaluation reports on its experience in ICA and the implementation of the Hague Convention's standards – which are in this case the standards set on financial aspects.⁵³

However, it is important to acknowledge that the states' and CA's obligation to prevent improper gain has been complex from the start due to the absence of clear-cut/harmonized definitions on key concepts such as 'reasonable fees' and 'improper financial gain or other gain'. This is a major shortcoming of the Hague Convention which resulted in different interpretations of these key financial concepts among different states. This has led to a great deal of legal uncertainty and ambiguity.⁵⁴ The responses of Contracting States to a Questionnaire on the practical operation of the Hague Convention in 2000 revealed the consequences of this legal uncertainty.⁵⁵ States were asked to quantify the costs and expenses charged or paid in their country in respect of intercountry adoptions and their responses showed that the costs and charges paid by adoptive parents varied very widely among States and that excessive charges were asked by several accredited bodies.⁵⁶ In order to meet this issue of inconsistent terminology and the associated legal uncertainty, the HCCH Expert group on the Financial Aspects of Intercountry Adoption⁵⁷ developed a harmonized set of definitions.⁵⁸ These definitions enable the Expert Group, the Contracting States and this research to discuss the way forward based on a common understanding of the basic financial concepts. (These definitions are encapsulated in Annex n°1: Terminology relating to the financial aspects of intercountry adoption.)

A second obligation relating to the financial issues set out in the Hague Convention is the obligation of the competent authorities in the sending countries to ensure that the required consent for adoption has not been induced by payment or by compensation of any kind.⁵⁹ Depending on the age and degree of maturity of the child, this consent is given by the child itself and the persons or institution legally responsible for the child. G. Parra-Aranguren notes in the explanatory report⁶⁰ that the solution to this issue lies in article 29 of the Hague Convention which prohibits early contacts between the parties to the intercountry adoption. In other words, contact between the prospective parents and the

⁵¹ Art. 8 of the Hague Convention.

⁵² Art. 7 of the Hague Convention.

⁵³ Art. 9 d) of the Hague Convention.

⁵⁴ HCCH, Note sur les aspects financiers de l'adoption internationale 3 (2014).

⁵⁵ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §35 (2000).

⁵⁶ HCCH, Questionnaire on the practical operation of the Hague ICA Convention 6 (2000).

⁵⁷ The HCCH Expert Group has been established upon request of the Council on General Affairs and Policy in 2011 based on the concerns that practices with regard to the financial aspects differed so widely that an expert group was needed. Concerns were expressed see: HCCH Council on General Affairs and Policy of the Conference, Conclusions and Recommendations adopted (2011) and HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations (2010).

⁵⁸ HCCH Expert Group on the Financial Aspects of Intercountry Adoption, Conclusions and Recommendations (2012); HCCH Expert Group on the Financial Aspects of Intercountry Adoption, Terminology (2012).

⁵⁹ Art. 4 d) and c) of the Hague Convention.

⁶⁰ HCCH report by G. Parra-Aranguren, Explanatory Report on the Convention on Protection of Children and Co-operation in Respect of ICA (1993).

primary carers of the child should be restricted until the consent is freely given according to the Hague Convention, free from financial incentives and improper payments.⁶¹

3. Illicit and abusive practices

3.1. New-borns in high demand

As was presented in the introduction to this thesis the ICA has undergone a shift from a child-centred to a parent-centred approach. The focus lies on which child the adoptive parents want and they do not solely desire to adopt any child, but their choice comes with a number of specifications. PAP's stipulate their preferences ranging from the child's health status, gender, origin, to the child's eye colour.⁶² They prefer healthy and young children, particularly babies under the age of two. Adoption agencies respond to this preference by charging additional fees for new-borns such as New Life Link. The licensed Christian Haitian adoption agency is located in Port-au-Prince, Haiti and illustrates the commodification of new-borns.⁶³ Adoptive parents who ask to have a new-born-child which is less than a year old will have to pay an additional fee of \$2,000. Therefore, as new-borns are in high demand and very profitable, adoption agencies resort to illicit practices in order to secure sufficient supply of these particularly 'wanted' children.

3.2. Meeting the high demand with an illicit supply of children

First, it is important to address a fundamental misunderstanding. ICA is in no way an appropriate answer to what Western people think is an 'orphan crisis', because most of the babies which are placed with new families through ICA are not truly orphans nor even available for adoption.⁶⁴ Nigel Cantwell wrote that 'the superficially persuasive argument of 'orphan rescue' relies heavily for its justification on an entrenched self-perpetuating cycle of 'orphan creation'.⁶⁵ As a matter of fact, babies have been 'generated' through (a combination of) illicit practices, in order to meet the high Western demand for young and healthy babies. The malicious intermediaries involved can vary from attorneys, orphanage directors, recruiters, nurses, government officials to adoption agents.⁶⁶

These intermediaries exploit the legal and procedural loopholes in the adoption system of the sending countries. Every time new regulations are introduced to stop these practices, new, creative ways are found to circumvent the new norms. This cat and mouse game makes it difficult to provide an exhaustive list of the past abuses in intercountry adoptions as the methods have been changing over time. The most common illicit practices will now be briefly listed.⁶⁷

⁶¹ HCCH, Note sur les aspects financiers de l'adoption internationale §15(2014); HCCH report by G. Parra- Aranguren, Explanatory Report on the Convention on Protection of Children and Co-operation in Respect of ICA §497 (1993).

⁶² R. Richard Banks, The Color of Desire: Fulfilling Adoptive Parents' Racial Preferences Through Discriminatory State Action, 107 Yale Law review (1998).

⁶³ See: <http://www.newlifelink.com/>.

⁶⁴ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 38 (2019); Save the Children UK, Keeping Children out of Harmful Institutions, (2009); Lumos, Video on the 5 things you should know about orphanages, available at: <https://www.wearelumos.org/>.

⁶⁵ ISS, Monthly review N°230 : Is intercountry adoption the way to 'rescue orphans' from institutions? (2019).

⁶⁶ HCCH report by J.H.A. van Loon, Report on ICA §79, Prel. Doc. No 1 of April 1990 (1993).

⁶⁷ For an extensive discussion on the various illegal practices see : D. M. Smolin, Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children, 52 The Wayne Law Review 1 (2006).

3.2.1. Buying a child

Vulnerable and poor mothers are particularly easy prey when it comes to recruiters/scouts who convince the mother to give up her child for adoption while promising that her baby will have a better life with a wealthier family.⁶⁸ In addition to this psychological pressure, financial or material compensation is offered to an extremely poor mother in exchange for her baby, which makes it an actual purchase of a baby.⁶⁹ Some mothers are even approached before they have left the maternity clinic. Other cases reveal that it is proposed to impoverished families to relinquish their child in exchange for a debt settlement.⁷⁰ Women are not only pressured into giving up their child, but there are likewise cases where women get offered financial or material compensation to conceive a child specifically for the purpose of intercountry adoption.⁷¹

3.2.2. Inducing consent. Does the end justify the means?

Furthermore, there are cases in which intermediaries do not kidnap or buy the child but instead have obtained the birthparent's consent to give their child up for adoption. However, this consent is often obtained illegally from often isolated and impoverished mothers. Intermediaries induce parents to relinquish their parental rights by deliberately lying about the far-reaching and permanent implications of a full adoption.⁷² This method violates the requirement of duly informing the birthparents of the effects of their consent, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin as laid down in article 4 of the Hague Convention. The concept of 'full' adoption by which one permanently gives up his or her parental rights, is a Western concept which is foreign/unknown to some birth parents.⁷³ The intermediaries take advantage of this lack of awareness and they make the birthparents believe that they will maintain a parental connection with their child or that they will keep hearing or seeing their child once the adoption is completed but that is a promise which in the case of a full adoption is never kept.⁷⁴ As a measure to keep the adoption business going, it is not only birthparents who are lied to, however, even adoptive parents are frequently and deliberately provided with false information. One such example being that there are instances where intermediaries present allegedly healthy children to prospective parents even though they know the child is gravely ill.⁷⁵ The show must go on... at all costs?

⁶⁸ For an extensive discussion on the various illegal practices see : D. M. Smolin, *Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 *The Wayne Law Review* 1 (2006).

⁶⁹ HCCH, *Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2* §77 (2012); D. M. Smolin, *Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children* 118, 52 *The Wayne Law Review* 1 (2005).

⁷⁰ *Ibidem*.

⁷¹ HCCH, *Note sur les aspects financiers de l'adoption internationale* 9 (2014); UNICEF *International Child Development Centre* 6, ICA (1998).

⁷² UNICEF *International Child Development Centre* 6, ICA (1998); D. M. Smolin, *Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children* 121, 52 *The Wayne Law Review* 1 (2005).

⁷³ N. Cantwell, *UNICEF Report on the best interests of the child in Intercountry adoption* 54 (2014).

⁷⁴ D. M. Smolin, *ICA and poverty: a human rights analysis* 443, 36 *Capital University Law Review* (2007).

⁷⁵ UNICEF *International Child Development Centre* 6, ICA (1998).

3.2.3. Child kidnapping/abduction

Research has shown that in some cases parental consent was not even sought or induced prior to children being put up for adoption. Some examples of this are that children are abducted from the local market place, the streets or their even their homes by 'a baby-sitter'.⁷⁶ A scandal from Honduras in 1992 illustrates this. Over one hundred children from poor families were reportedly abducted and 'disappeared' at the hands of senior officials. The children were hidden in 'fattening homes' from where they were sold for five thousand dollars each to foreign adoptive parents.⁷⁷

In other incidents, children were kidnapped from care institutions and orphanages. Due to extreme poverty, families often feel the need to send their child(ren) for a certain period to care institutions until the time they are financially capable of taking the child(ren) back into the family.⁷⁸ It is crucial to note that parents entrust their children to these institutions temporarily, without ever meaning to give up their parental rights over the child and is thus based on a level of misinformation being fed to parents by intermediaries and institutions.

Furthermore, numerous cases have been uncovered whereby parents were told that their new born babies were stillborn or have died shortly after birth, leaving them grieving over their loss, while the new born is kidnapped for the purpose of adoption.⁷⁹

3.2.4. Falsifying documents

A child's legal status is often illegally changed into 'orphaned' or 'abandoned' which makes a child legally suitable for adoption. Official documents are forged in fraudulent cooperation with government officials, notaries and judges who accept a bribe or lavish gifts.⁸⁰ Protecting children's rights in ICA is not only a challenge as a result of the various actors involved and the diverse illicit existing practices but also because at the end of the day the resulting adoption bears all hallmarks of a completely legal process.⁸¹

Both the CRC as well as the Hague Convention stipulate that ICA should only be opted for when there is no domestic alternative care solution available for the child.⁸² State officials in sending countries are bribed to authorize an adoption, even though the domestic care alternatives have not been explored.

⁷⁶ D. M. Smolin, Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children 122, 52 *The Wayne Law Review* 1 (2005); UNICEF International Child Development Centre 6, ICA (1998).

⁷⁷ Amnesty International, Disappearances in Honduras: A wall of silence and indifference (1992), available at: <https://www.amnesty.org/download/Documents/196000/amr370021992en.pdf>.

⁷⁸ D. M. Smolin, Child laundering: How the ICA System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children 120, 52 *The Wayne Law Review* 1 (2005).

⁷⁹ UNICEF International Child Development Centre 6, ICA (1998).

⁸⁰ Everychild, Adopting better care: improving adoption services around the world 15 (2012); International Policy Conference on the African Child (IPC), The fifth IPC conference: Draft Guidelines for Action on ICA of Children in Africa §64 (2012).explain why

⁸¹ N. Cantwell, 'Adoption as a Protection Measure: Where the Responsibilities Lie', statement made at the International Conference on Protecting Children through Adoption, held in Bucharest, 16-17 October 1995, UNICEF, Geneva.

⁸² Art. 20-21 CRC and Art. 4(b) Hague Convention.

So officials are frequently bribed by adoption agencies to circumvent the subsidiarity principle or to accelerate an adoption procedure.⁸³

3.3. Enabling factors for illicit practices

Financial incentives find fertile ground in states where no adequate structures prevent illegal practices from taking place. This is the case in states where no legal/administrative framework is in place or when that system is weakened due to exceptional circumstances such as a crisis or a conflict. It is evident from reported cases that actors operating in a weakly regulated adoption system are sensitive to illicit practices motivated by financial incentives.

3.3.1. No legal framework and judicial oversight

ICA needs to be properly regulated by domestic and international law to ensure that adoption takes place in line with the rights of the child. Especially former communist countries such as Poland, Lithuania, Latvia and Albania lacked legal provisions on ICA in the early '90s.⁸⁴ Due to this legal void, these countries were a favourable climate for illegal adoption practices.

To combat illicit practices in the context of intercountry adoption, a country needs to complement its legal framework on ICA with legal provisions on a variety of topics which might seem unrelated to intercountry adoption. Firstly, the introduction of laws making birth registration compulsory is of vital importance to combat child trafficking in the context of intercountry adoption, because children who do not legally exist are particularly vulnerable to illicit practices.⁸⁵ However, this inherent vulnerability is not only present for non-registered children, but even abandoned children are easy prey to malicious intermediaries when their legal status is not well defined or regulated.⁸⁶

A robust legal framework on ICA is crucial, but it is not sufficient in itself. This framework must ideally be complimented by legislation on abandonment, birth registration and also on poverty, hospitals and child care arrangements. Therefore, a clear legal framework with well-defined boundaries is fundamental to deter all actors within the ICA system from turning to illicit practices. However, some countries already possess a strong legal framework but there is no effective judicial oversight in place. Some judicial systems are either overburdened or they lack specific competence, so much so that a decision on an ICA is simply reduced to a rubber-stamping exercise.

This is especially regrettable since a judge is particularly well-positioned and mandated to subject the adoption procedure to rigorous scrutiny. Effective judicial oversight could uncover irregularities and sanction improper financial gains. However, as it stands, judges intentionally do not disclose these irregularities because they have been bribed to remain silent or are part of a criminal ring. Needless to say, things get out of hand when the judiciary themselves prefer financial incentives over the best interests of the child.

⁸³ E. Loibl, *The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems* 40 (2019).

⁸⁴ UN General Assembly, *Promotion and Protection of the Rights of Children: Sale of children, child prostitution and child pornography: provisional report prepared by Mr. Vitit Muntarbhorn Special Rapporteur of the Commission on Human Rights on the sale of children 9, child prostitution and child pornography, A/49/478* (1994).

⁸⁵ UNICEF, *A passport to protection : A guide to birth registration programming* 18 (2013).

⁸⁶ UNICEF International Child Development Centre 8, *ICA* (1998).

3.3.2. A weakened governmental structure due to conflict or a natural disaster

From the above, it is clear that illicit practices thrive when no robust legal and judicial system is in place to prevent abuses of intercountry adoption. This is even more palpable in countries where these structures are gravely weakened or (partly) destroyed due to a conflict or a natural disasters such as the earthquake in January 2010 in Haiti.⁸⁷

Such emergencies are a breeding ground for illegal adoptions based on the heightened vulnerability of children who, as a result of the emergency, are often separated from their families. This, in combination with the weakened or fragile governmental structures gives profit-driven criminals free rein to 'lift' young children from the emergency sites for the purpose of illegal adoptions.⁸⁸

A crisis is not only an enabling factor for profit-driven criminals in intercountry adoptions, also Western governments have violated international children's rights in the past by adopting or 'rescuing' children on a large scale from emergency situations.⁸⁹ These operations, like the 'Baby lift' between 1963 and 1976 out of Vietnam⁹⁰, took place under the pretext of humanitarian aid.⁹¹ Today, guidelines on the Alternative Care of Children⁹² and the World Disasters Report⁹³ explicitly condemn the practice of rapid evacuations of children from their country of habitual residence and provide guidance in this specific context.

3.3.3. Private and independent adoptions

Although adoptions which have been concluded through accredited bodies (Further referred to as 'AB's') cannot claim to be completely corruption-free, they provide considerably more safeguards than private and independent adoptions.⁹⁴ Both private and independent adoptions are not defensible from a children's rights point of view. Firstly, because approved non-AB's are not bound to only pursue non-profit objectives. Secondly, since the majority of these procedures are 'private' and thus non-disclosed, it is hard to enforce any safeguards or oversight by authorities.⁹⁵

Moreover, they have deliberately been excluded from the Convention since it was already recognized, at the time of its drafting, that the risks for children's rights violations increase in the context of non-

⁸⁷ P. Selman, ICA after the Haiti earthquake : Rescue or robbery? 42, 35 Adoption and Fostering 4 (2011) ; ISS report issued by M. Dambach and C. Baglietto, 'Expediting' intercountry adoptions in the aftermath of a natural disaster... preventing future harm 22 (2010).

⁸⁸ UNICEF International Child Development Centre 9, ICA (1998).

⁸⁹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography §62-63, UN Doc A/ HRC/19/63 (2011).

⁹⁰ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 28 (2014); See: V. Strong-Boag and R. Bagga, Saving, Kidnapping, or Something of Both? Canada and the Vietnam/Cambodia Babylift, Spring 1975, 39(3) *American Review of Canadian Studies* (2009).

⁹¹ 'UNICEF International Child Development Centre 9, ICA (1998).

⁹² UN General Assembly, Guidelines for the alternative care of children, UN Doc. A/RES/64/142, (2010).

⁹³ International Federation of Red Cross and Red Crescent Societies, World Disasters Report (2012).

⁹⁴ Agency involvement in ICA is not a guarantee in itself. There is a need for stricter accreditation and authorisation of agencies involved in ICA. See: HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2, (2012).

⁹⁵ HCCH, The Implementation and Operation of the 1993 ICA Convention: Guide to Good Practice No 1 chapter 8.6.6. (2008).

agency adoptions.⁹⁶ The CRC Committee has pointed this out while urging states 'to take immediate action 'to centralize the authority for ICA and not to leave it 'in the hands of profit-seeking lawyers'.⁹⁷ Likewise, the Special Commission has urged states to ban all private and independent adoptions.⁹⁸ Several states like Ireland⁹⁹, Italy¹⁰⁰, Norway¹⁰¹, Panama¹⁰² Haiti¹⁰³ and Guatemala¹⁰⁴ have explicitly outlawed private adoptions and require the involvement of ABs to limit the risk of abuses.¹⁰⁵ Likewise, the Council of Europe's former Commissioner for Human Rights called upon states to 'ban non- regulated and private adoptions from any country of origin'.¹⁰⁶

One of the risks linked to private adoption is that PAP's who are not deemed suitable adoptive parents through the official ICA system, turn to private adoptions which enables them to adopt a child without having to worry about assessments about their suitability as parents.¹⁰⁷ It is obvious how diminished safeguards are in place and the financial interests prevail over the best interest of the child.

4. Financial aspects involved in ICA

Information on the financial aspects involved in ICA is often not up-to-date, hard to access or not disclosed. PAPs often have no clear indication of what constitute obligatory or voluntary contributions. This lack of clarity is not only persistent in relation to the total amount of money involved but also regarding the intended use of these large sums of money which amount is often unspecified or hidden.

This lack of transparency on the financial side of ICA is extensively addressed in the HCCH note on financial aspects of intercountry adoption, wherein various reasons contributing to the lack of transparency of the various actors concerned are encompassed.¹⁰⁸ The latter-mentioned reasons identified in the HCCH note are, among others, the lack of data collection by governments and CAs or their unwillingness to share this information. Information sharing is also hindered because the financial

⁹⁶ Council of Europe, Issue paper by the Commissioner for human rights on Adoption and Children: A human rights perspective 18 (2011).

⁹⁷ Committee on the Rights of the Child, Committee on the Rights of the Child, Summary record of the 168th meeting: Paraguay §48, CRC/C/SR.168 (1994).

⁹⁸ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations 1.g (2010).

⁹⁹ Since the Adoption Act of 1998 Ireland outlawed private adoption, except within families.

¹⁰⁰ See the legislation and procedure as set on the website of the Italian CA for the application of The Hague Convention, <http://www.commissioneadozioni.it/for-an-adoptive-family/the-path-of-adoption/the-adoption-procedure/>, latest accessed on 23 June 2020.

¹⁰¹ Art. 16 (b) Adoption Act of Norway 28 February 1986.

¹⁰² Art. 14 General Adoption Law of Panama (2008). See : The Irish Times, Why the State decided to ban private adoption, <https://www.irishtimes.com/culture/why-the-state-decided-to-ban-private-adoption-1.223685>, last accessed on 23 June 2020.

¹⁰³ La loi reformant l'adoption en Haïti, (2013).

¹⁰⁴ Art. 10 Adoption Law of Guatemala (2007).

¹⁰⁵ HCCH, Note sur les aspects financiers de l'adoption internationale 14 (2014).

¹⁰⁶ Council of Europe, Issue paper by the Commissioner for human rights on Adoption and Children: A human rights perspective (2011).

¹⁰⁷ UNICEF International Child Development Centre 8, ICA (1998).

¹⁰⁸ HCCH, Note sur les aspects financiers de l'adoption internationale: Chapter 5.2.A. Problem: Lack of transparency (2014).

aspects involved in ICA are being identified as a taboo, PAP's are reluctant to disclose financial issues due to discretion, pride and sometimes shame. Other reasons contributing to the lack of transparency are the use of cash and the absence of receipts which makes the tracking of the monetary flow virtually impossible.

¹⁰⁹

4.1. Donations

Donations to the biological parents of the child or the orphanage where the child comes from are often very high, not fixed and not related to the local cost of living. The existence of care institutions like orphanages is often dependent on these donations which are highly problematic in itself. It follows that institutions will guarantee a permanent supply of adoptable children, indifferent of the best interests of the child – thus, indifferent to the subsidiarity principle.¹¹⁰ Furthermore, donations to the biological parents of a child should be banned, regardless of whether the donations are given before or after the adoption is finalized. This latter practice is problematic as it may establish expectations of financial or other compensation and prompt other parents to give up their child in exchange for a payment.¹¹¹

It, therefore, follows that these donations are contrary to article 32 of the Hague Convention. However, this does not necessarily apply to donations or contributions to the child protection system in the country of origin. Experts note that it is important to make a distinction between donations on the one hand, and charges as part of the adoption fee which represent a contribution to the child protection services on the other hand.¹¹²

4.2. Contributions to the child protection services in the country of origin

According to Melita Cavallo, the ex-president of the CA in Italy, it is an open secret that foreign CA's solicit humanitarian aid contributions from agencies as a conditions to operate.¹¹³¹¹⁴

The question whether required contributions to child protection services in the country of origin are permitted has been the subject of much debate during the meetings of the Special Commission on the practical operation of the Convention. This Special Commission is established by the HCCH to evaluate the implementation and the practical operation of the Convention and has come together every five years, since 1994.¹¹⁵

¹⁰⁹ *Ibidem*.

¹¹⁰ Donations are legal before the adoption has been concluded: Armenia, Georgia, Latvia: Donations are legal after the adoption has been completed: Poland, Czech Republic, Lithuania

Donations are outlawed: Romania, Slovakia, Estonia and Portugal. Sources for information on these countries: Hague Conference, 'Country profiles' at www.hcch.net.

¹¹¹ HCCH, Note sur les aspects financiers de l'adoption internationale 9 (2014).

¹¹² HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §42 (2000).

¹¹³ M. Cavallo, ex-President of the Italian Central Authority (CAI), Presentation on Humanitarian aid and children placed outside their family of origin and not proposed for adoption at the colloquium Intercountry Adoption Today, Agence Française de l'Adoption, Paris (2007).

¹¹⁴ Albania: compulsory contribution to the Albanian Adoption Committee of 1.000. Romania: An example how the financial advantages of intercountry adoptions corrupted the system. ICA was an official source of finances to the child care system. Vietnam: donations to orphanages distort the supply of adoptable children.

¹¹⁵ For reports on all Special Commission Meetings See: <https://www.hcch.net/en/instruments/conventions/publications/1/?dtid=57&cid=69>.

On the one hand, there is an understanding that receiving countries want to support programmes to improve child protection services within the sending countries, and this is in line with the subsidiarity principle.¹¹⁶ On the other hand, there is a lot to say for banning or at least disconnecting these contributions from intercountry adoption. Firstly, experts feel contributions which are not specifically related to the cost of adoption are contrary to the principle laid down in Article 32 of the Hague Convention, and should not in any way be condoned.¹¹⁷ Secondly, these contributions pose serious risks for child protection services in sending countries to become dependent on income derived from intercountry adoptions.¹¹⁸ Furthermore, it must be said that there is not enough transparency concerning the use of these contributions. In other words, there are not sufficient safeguards to guarantee that the money is spent domestically on the child protection system for which it was meant. The Commission agreed that a system of contributions could be in accordance with the Hague Convention, provided that it is subject to a number of safeguards in relation to transparency and accountability. The Permanent Bureau suggested four requirements that contributions, if asked for, would have to meet. In the end, these four concrete parameters¹¹⁹ were never formally adopted as a recommendation; instead, a more general recommendation was formulated: "Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, (...). However, this support should not be offered or sought in a manner which compromises the integrity of the ICA process, or creates a dependency on income deriving from intercountry adoption. In addition, decisions concerning the placement of children for ICA should not be influenced by levels of payment or contribution."¹²⁰

It is notable how the Commission's stance has changed over time on contributions aimed at improving the national child protection services in the sending countries. The Special Commission, in 2005¹²¹, did not reaffirm the above-cited statement made in 2000. Additionally, the Special Commission, in 2010, took a narrower stance and highlighted that clear separation of ICA from contributions, donations and development aid is an essential feature to prevent the abduction, sale and traffic in children and their illicit procurement.¹²²

¹¹⁶ Ibidem.

¹¹⁷ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §44 (2000).

¹¹⁸ Ibidem.

¹¹⁹ The four suggested principles "a) the amount of the contribution should be fixed and notified in advance to the prospective adopters; b) the intended use to which the contribution is to be put should be made clear; c) contributions should always be made by a transaction which is recorded and accounted for; d) detailed accounts should be maintained of income derived from contributions of this kind and of the uses to which such income is put." See: HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §45 (2000).

¹²⁰ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §47 (2000).

¹²¹ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations (2005).

¹²² HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §1 h) and §14 (2010).

5. What are the issues from a children's rights perspective?

5.1. Introduction

Financial abuses in intercountry adoptions happen at the literal expense of biological parents, the adopters and the child. This chapter assesses the impact of illegal intercountry adoptions specifically on the child and his or her rights. Fighting financial abuse within the ICA system is not just a matter of ethics, but one of protecting children from potentially harmful consequences of the illicit practices.¹²³ While the presence of illicit acts in an adoption procedure does not harm the child per se, it increases the risk of children's rights violations. This analysis looks at the impact of illicit adoption on the rights of the child as enshrined in the CRC.

5.2. The best interests of the child as the primary consideration

Article 3 CRC, one of the four guiding principles of the CRC, requires states to take the best interests of the child as a primary consideration in all actions concerning the child. Article 3 CRC implies a case-by-case appreciation of the interest of the child, and stands in contrast to a general approach which considers an ICA as beneficial to the child all circumstances.¹²⁴ A state's obligation to respect the best interest's principle is even stronger in article 21 CRC on adoption which addresses the best interests of the child as 'the', and not 'a' primary consideration as explained in section 2.1. [UN Convention on the Rights of the Child](#). Based on article 3 and article 21 CRC there is an unmistakable consensus on the need to respect the principle of the best interests of the child in the context of adoption, but there is no clear consensus on the interpretation of best interests principle.¹²⁵ This notion has deliberately been left undefined in order to be adaptable to different socio-cultural contexts and 'to be responsive to the situation of individual children'^{126, 127}

In 2008 there was a first attempt at international level to provide guidance on this principle in the UNHCR Guidelines on Determining the Best interests of the Child.¹²⁸ Today there are several other instruments that are very useful to conceptualise the best interests principle in the context of ICA: the Guide to Good Practice on the Implementation and the Operation of the Hague Convention¹²⁹, the h- Handbook for implementing Guidelines for the Alternative Care of Children¹³⁰, the UNICEF report on The Best Interests of the Child in Intercountry Adoption by Nigel Cantwell and in particular the General Comment No° 14 issued in 2013 by the CRC Committee on the right of the child to have his or her best interests taken as a primary consideration. In General Comment No° 14 the Committee urges states to

¹²³ UNICEF International Child Development Centre 7, ICA (1998).

¹²⁴ ISS, Fact Sheet N° 18. Adoption : General Principles 1 (2006).

¹²⁵ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 5 (2014).

¹²⁶ Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) §34, CRC /C/GC/14 (2013).

¹²⁷ J. Zermatten The Best Interests of the Child: Literal analysis, function and implementation 16 (2010); G. Van Bueren, Pushing and pulling in different directions: the best interests of the child and the margin of appreciation of states 32 in G. Van Bueren (ed.) Rights in Europe: convergence and divergence in judicial protection (2007).

¹²⁸ United Nations High Commission for Refugees, Guidelines on Determining the Best Interests of the Child (2008).

¹²⁹ HCCH, The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1, (2008).

¹³⁰ UN General Assembly, Guidelines for the alternative care of children, UN Doc. A/RES/64/142, (2010).

subject their policies and decisions to a systematic Child Rights Impact Assessment (CRIA) which should predict the impact of any proposed measure on the enjoyment of the rights of the child.¹³¹ All of the above mentioned sources include lists determining different, but yet very similar elements which need to be considered as a minimum to assess on a case-by-case basis whether or not an ICA is in the best interests of a child.¹³² It also ensures that a family is found for a child and not a child for a family.¹³³ Next to the elements analysed by this assessment, it is of crucial importance that this assessment is conducted by mandated, ethical and multidisciplinary teams of professionals who are qualified to take the different dimensions like social, medical, legal, material and psychosocial of a child into account.¹³⁴ In addition it provides a clear idea on whether the adoption will meet the needs of the child. Unfortunately, it is exactly this crucial assessment which is not conducted in the context of an illicit adoption as the financial interests are preferred over the interests of the child. (See examples in Chapter 3 [Illicit and abusive practices driven by profit](#))

The CRC Committee recognized that the lack of guidance in the past on the interpretation of this principle has led to situations where governments abused the concept to justify wrongful actions.¹³⁵ A clear example is the removal of children of parental care living in material poverty to put them up for adoption by couples of better standing as it was considered to be in their best interests based on the so called 'poverty argument'.¹³⁶ One example is the forced adoption policy in Australia based on which an estimated 150 000 children between the early 50s and the early 80s born to poor families were forcibly adopted by couples of a better social standing.¹³⁷ Indigenous children in both the US and Australia¹³⁸ and children from the Jenisch travelling population in Switzerland¹³⁹ were likewise forcibly removed from their parents in the second half of the 20th century and adopted which was at that time based on an ill-founded perception of the best interests of the child.

Today, the Guidelines for the Alternative Care of Children and CRC General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration explicitly state that 'financial and material poverty should never be the only justification for the removal of a child from

¹³¹ Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) §99, CRC /C/GC/14 (2013).

¹³² See: N. Cantwell, UNICEF Report on the best interests of the child in Inter-country adoption 58-59 (2014) for a table/overview of the scope and thrusts of the best interests assessment in ICA.

¹³³ C. Fenton-Glynn, Children's Rights in intercountry adoption 15 (2014).

¹³⁴ Art. 11 b) Hague Convention; HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2 §53-61, (2012).

¹³⁵ Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) §34, CRC /C/GC/14 (2013).

¹³⁶ See: ISS, Investigating the grey zones of intercountry adoption by F. Fuentes, H. Boéchat and F. Northcott (2012); D. M. Smolin, Intercountry adoption and poverty: a human rights analysis, 36 Capital University Law Review (2007).

¹³⁷ Australian senate, Community affairs references committee: Commonwealth contribution to former forced adoption policies and practices (2012). Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/20_10-13/commcontribformerforcedadoption/index.

¹³⁸ See: V. Haskins and M.D. Jacobs, Stolen generations and vanishing Indians : The removal of indigenous children as a weapon of war in the United States and Australia 1870-1940, in J. Marten, Children and War : A historical anthology (2002).

¹³⁹ N. Cantwell, UNICEF Report on the best interests of the child in Inter-country adoption 8 (2014).

parental care, but should be seen as a signal for the need to provide appropriate support to the family'.¹⁴⁰ The Committee on the Rights of the Child has been very critical upon states who maintain such a 'poverty policy' as was the case for Nepal. The Committee urged the government in 2005 to abolish the provision that allows poverty of the parents of a child to be a legal ground for adoption.¹⁴¹

The CRC and the safeguards set out in the Hague Convention draw in this way boundaries to the range of actions that can be envisaged in the name of the best interest's principle. Taking this principle as a primary consideration is now a full-fledged right in the CRC and its realisation is completely interdependent with all other children's rights set out in the CRC.¹⁴² As all children's rights are interrelated, interdependent and indivisible the following section will elaborate on other provisions which risk being violated in case financial interests are preferred over the best interests of the child.¹⁴³

5.3. Various children's rights at risk

5.3.1. Right to be cared for by both of your parents and not to be separated from them
Examples of abusive practices as set out in chapter 3 illustrate how children are illegally taken from or bought from their parents. Moreover, malicious intermediaries involved in ICA are not likely to make serious efforts to find a child's birth family when finding an unaccompanied child, knowing that these institutions are gaining money by putting children up for adoption. The issue here does not only relate to the money being gained, but the funding of these institutions is often directly proportional to the number of 'orphans' adopted, thus creating a likely situation where more children are forcefully taken from their parents and fed into the system to support these money-making practices.¹⁴⁴ These illicit practices are a direct violation of articles 7, 9 and 18 CRC which ensure the right of a child to be cared for by both of your parents and not to be separated from them.

5.3.2. Right to acquire a nationality
Secondly, illicit adoptions which are completed by private adoption agencies outside the framework of The Hague Convention pose serious risks to the right of a child to acquire a nationality as enshrined in article 7 CRC. Because the Convention works on the principle of mutual recognition which means that an ICA recognized in one state party is also recognized in all other states parties.¹⁴⁵ However, children adopted through illegal practices, outside of the Hague Convention's framework, do not benefit from the protection of mutual recognition and risk losing their nationality and ending up stateless. This is the case when a child loses their original nationality based on the adoption procedure in his or her home country, while the receiving state does not grant the child legal citizenship. Such a refusal is often based on irregularities in the adoption procedure which leaves the child as a foreigner in what he or she recognizes as his or her new home country.¹⁴⁶

¹⁴⁰ Committee on the Rights of the Child, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) §62, CRC /C/GC/14 (2013); UN General Assembly, Guidelines for the alternative care of children §15, UN Doc. A/RES/64/142, (2010).

¹⁴¹ Committee on the Rights of the Child, Concluding observations : Nepal §54, CRC/C/15/Add.261.

¹⁴² Art. 3 and 21 CRC.

¹⁴³ UN Committee on the Rights of the Child (CRC), General comment no. 5: General measures of implementation of the Convention on the Rights of the Child §17-18, CRC/GC/2003/ (2003).

¹⁴⁴ UNICEF International Child Development Centre 7, ICA (1998).

¹⁴⁵ Art. 24 CRC and C. Fenton-Glynn, Children's Rights in intercountry adoption 17 (2014).

¹⁴⁶ See: HCCH, The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1, 8.4.5 What is the effect of a Convention adoption on a child's nationality? In particular, in what

5.3.3. Right to preserve his or her identity

Regardless of which illicit practice was resorted to during the adoption process, the intermediaries involved make sure that they cover their traces. Covering traces often implies changing or destroying evidence of a child's ethnicity, family history and medical information.¹⁴⁷ This can be achieved by providing children with new, false birth certificates. It follows that most children who have been obtained through illegal practices will never know who their birth parents are which is a direct violation of a child's right to preserve his or her identity as provided in article 8 CRC.¹⁴⁸

This right is also violated in cases where children's nationality is fraudulently changed into a more 'favourable' nationality. A disturbing case in the early 1990s illustrates this practice. A criminal network transferred expecting mothers from Albania, Yugoslavia and Romania to Budapest, Hungary.¹⁴⁹ The intermediaries sent the women specifically to Hungary to take advantage of the lax national adoption policy at that time. The new-borns' national identities were artificially modified for the purpose of adoption resulting in an unlikelihood that these children will ever find out their true origins.

Extensive research has shown that a child needs at least non-identifying information on its origin and family history for the child to be able to build stable personalities and to develop its identity.¹⁵⁰ Children adopted through illegal and unethical ICA may experience an emotional upheaval once they discover the truth about the circumstances surrounding their adoption.¹⁵¹ Moreover, it is important to note that abusive practices in ICA have been shown to impact not only illegally adopted children but also children who were adopted through a legal and ethical procedure as they start to question their adoption when discovering the malpractices occurring in ICA.¹⁵²

5.3.4. The right of the child to the enjoyment of the highest attainable standard of health, the right for special care for disabled children and the right not to be discriminated

Mentally and physically disabled children are often left behind in ICA and likely to live in institutional care until adulthood. This is mainly due to the fact that children with special needs are unwanted by PAPs, as has been explained in the first chapter. Not only do children with special needs face discrimination which is a violation of article 2 CRC, they also risk facing insufficient special care as provided for in article 23 CRC.

circumstances does the adoption lead to acquisition of a new nationality for the child or the loss of an existing nationality? (2008).

¹⁴⁷ UNICEF International Child Development Centre 7, ICA (1998).

¹⁴⁸ Art 8 CRC "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

¹⁴⁹ R. Mc Creery, 'Inter-country Adoption of Romanian Children: Summary of Background Paper and Commentary', unpublished report and communication to S. Kessler, CEE Unit UNICEF, 93/NY/GUA/20 (1993).

¹⁵⁰ ISS, Monthly Review. Post adoption: The search for origins (part 1) (2006a); C. Fenton-Glynn, Children's Rights in intercountry adoption, Chapter 9. Who Am I? The Child's Right to Identity 185-210 (2014); See: Evan B. Donaldson Adoption Institute, Beyond Culture Camp: Promoting healthy identity formation in adoption (2009); S. Besson, Enforcing the child's Right to Know Her Origins: contrasting Approaches Under the Convention on the Rights of the child and the European convention on Human rights 140, 21 International Journal of Law, Policy and the Family 137.

¹⁵¹ Ibidem.

¹⁵² HCCH, Note sur les aspects financiers de l'adoption internationale 9 (2014).

Money in sending countries goes into the adoption system instead of into the national health services and qualified personnel is attracted by the adoption system instead of national services. Jonathan Dickens' article on the Romanian experience as a sending country illustrates this issue very accurately. The author explains that the consequences on the domestic welfare system in sending states are not to be overlooked, as there is a diversion of financial and human resources from the child protection system into ICA.

That being said, the children with special needs who do end up getting adopted through ICA also face severe violations of their right to health care and special care as provided in articles 23 and 24 CRC. Based on article 5(b) Hague Convention 'PAP's should be counselled as may be necessary' which helps manage the expectations of the parents. This measure is often not in place in illegal adoptions which leaves PAP's often insufficiently informed and supported with regard to the conditions their adopted child suffers from. Research by the Donaldson Adoption Institute shows that it is not uncommon for parents to discover that the adopted child is sick or disabled only after the child arrived in the country of destination. As a result, the child in need of special care risks being rejected by its adoptive parents. A very recent case shows this terrible fate some children in need face: A video- blogging couple from Ohio adopted a boy, Huxley, with special needs from China in 2017. The boy's adoption has been filmed and broadcasted on the couples monetized YouTube channel for two years. Recently, in May 2020 the couple announced that his special needs have proved to be too much to handle.

This chapter has set out the main risks for children's rights. It is however important to add that various other rights of the child are at risk such as: the right not to be taken out of the country illegally, right to be protected from abduction/sale and trafficking¹⁵³; the right to participate, although it is important to acknowledge that it is hard to ensure a child's participation in ICA, even when highly trained professionals are involved, since children adopted through ICA are often so young that they are unable to grasp the reality of an ICA and to form an informed opinion¹⁵⁴; the right to be protected from all forms of violence, abuse or exploitation¹⁵⁵ and obviously the right to safeguards in alternative care.¹⁵⁶

6. Concluding observations

As a result of the discussion undertaken throughout the present thesis, it is very clear that illegal adoptions violate multiple children's rights. Therefore, there is an obvious need to effectively legislate, control and monitor the financial aspects of ICA in order to ensure the full realization of children's rights as provided by the CRC. It is impossible to formulate a single recommendation to solve the problem of financial abuse in ICA because, as highlighted in Chapter 3 on [Illicit and abusive practices driven by profit](#), the nature of the problem is complex. Based on previous recommendations formulated by the HCCH and the International Social Service (ISS), an extensive multi-faceted toolbox of recommendations is available on how to regulate the financial aspects of intercountry adoption.

¹⁵³ Art. 11 and 23 CRC.

¹⁵⁴ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 20 (2014).

¹⁵⁵ Art. 19 CRC.

¹⁵⁶ Art. 20 and 21 CRC.

Therefore, when it comes to formulating recommendations on how to tackle financial abuses in ICA, there is no need to reinvent the wheel. Hence, section 6.1 will briefly set out a list of recommendations based on publications made by the ISS and HCCH, which recommendations are carefully set out and ready to be implemented. However, section 6.2 will then focus on the fact that political commitment is here identified as a *conditio sine qua non* to effectively implement these recommendations or to do so at a quicker pace. Additionally, the same section will further that it is precisely this political commitment which lacks in several states as a result of the underlying financial interests of some governments in illegal ICAs. Section 6.3 addresses the issue of moratoria (=temporary suspension of ICA's). The goal of a moratorium is for a country to benefit from a time period to put the necessary safeguards in place under which adoptions can resume in respect of all children's rights.¹⁵⁷ This is, therefore, the perfect time for a state to take on the list of recommendations. However, this section reflects on why moratoria are no guarantee on the improvement of children's rights in ICA.

It is clear that a top-down approach, which puts all responsibility for change on governments solely, is not viable in all states. This is why Section 6.4 will address the battle against financial abuses from a different angle, wherein prospective adoptive parents, 'the consumers', lie at the heart of the solution, rather than governments. Awareness-raising and the wide dissemination of information would allow PAPs to make informed choices and to opt for adoption procedures the respect which

The main message of this concluding chapter is that the impact of an informed consumer should not be underestimated in the battle against illegal adoptions. Therefore, while one approach to tackle abuses in ICA is to inform governments and hold governments accountable, sometimes, an even more powerful alternative to ensuring the full realization of the rights of the children involved in ICA, is to count on the power of the informed consumer.

6.1. Existing recommendations

As encompassed above, this section will commence by laying down some of the recommendations brought to the forefront by the ISS and HCCH over the years. This non-binding list of good practices summarises the main recommendations formulated by the HCCH Expert Group on the Financial Aspects of Intercountry Adoption¹⁵⁸, the Note on Financial Aspects of Intercountry Adoption issued by the HCCH¹⁵⁹, the Guides to Good practice number one and two on the Hague Convention¹⁶⁰ and the Handbook Responding to Illegal Adoptions published by the ISS.¹⁶¹ It is important to note that this list will be complemented in the near future with the most recent project by the HCCH Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption.¹⁶² The Working Group is currently developing a promising 'toolkit' which will cover among other elements (1) a list of practical examples of illicit practices, (2) fact sheets on illicit practices, inadequate policies, risky activities and promising

¹⁵⁷ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption, 3.4.1 Moratoria and 5.2.4 (2014).

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¹⁵⁹ HCCH, Note sur les aspects financiers de l'adoption internationale (2014).

¹⁶⁰ HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2, (2012); HCCH, The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1, (2008).

¹⁶¹ ISS, Responding to illegal adoptions: a professional handbook (2016).

¹⁶² The mandate of the Group is "to consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse. See: HCCH, Conclusions and Recommendations adopted by the Special Commission §2 (2010) and HCCH, Conclusions and Recommendations adopted by the Council on General Affairs and Policy §24 (2011).

practice, (3) a model procedure to respond to specific cases of illicit practices and (4) a spectrum of responses to general patterns to be carried out.¹⁶³

The list, as it is today, includes first and foremost the recommendation for all actors to use the list of harmonized terminology adopted by the Expert Group on the Financial Aspects of ICA (See: Annex 1).

Secondly, it is crucial to enhance transparency with regard to financial aspects. The first step in providing transparency is to collect disaggregated financial data from both sending and receiving states. This is exactly what the HCCH Expert Group is currently doing by designing a table on the costs involved in ICA.¹⁶⁴ The Expert Group has thus reached out to all sending and receiving states to provide financial data in order to design a Table of costs involved in ICA.¹⁶⁵ This Table of costs is a great initiative that will reflect the current practice of States and which aims to be a reference point for what constitutes reasonable costs.

Along with the Expert Group, the CAs also play a crucial role in providing transparency by gathering and verifying information from several actors (the adoptive parents, the ABs working on its territory and other CAs). ABs working on a CA's territory shall be required to share accurate and up-to-date information on costs, fees and contributions with the CA. This information enables CAs to determine what can be considered as reasonable practices and to identify possible abuses.¹⁶⁶ In addition, in order to uncover the actual amount paid during an ICA procedure, the PAPs are a valuable source which must not be overlooked. They must be encouraged to report the actual amount of money they spent and possible financial abuses and illicit practices they complied with. Easy, accessible and anonymous methods to report must be put in place to enhance the cooperation from the PAP's side.

Once the financial data is gathered and detailed information on the financial aspects is determined, wide publicity is the next crucial step. PAPs should ideally have a clear idea of all financial aspects before the commencement of the adoption procedure. A timetable could thus serve as a great tool for this purpose. Therefore, this information should be made public and widely accessible on websites and via brochures of CAs and ABs, preferably in several languages.¹⁶⁷

The next fundamental point is that expenditure related to an ICA must be restricted to the actual costs of the adoption services provided and nothing more. Adoption fees must be limited and acceptable ranges for remuneration must be determined in relation to the services provided. Several experts have raised concerns about lawyers' fees charged which often do not correspond to the quality of the service provided. State Parties could tackle this issue by establishing a list of lawyers qualified to provide advice at fixed scales of fees.¹⁶⁸

¹⁶³ HCCH, Conclusions and Recommendations of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption §20, meeting of 21-23 May 2019 (2019); HCCH, Conclusions and recommendations of the working group on preventing and addressing illicit practices in intercountry adoption §22, meeting of 13-15 October (2016).

¹⁶⁴ HCCH, Tables on the costs associated with intercountry adoption (2014).

¹⁶⁵ For the State's responses to the Table on Costs associated with Intercountry Adoption see: <https://www.hcch.net/de/publications-and-studies/details4/?pid=6455&dtid=33>.

¹⁶⁶ HCCH, Tables on the costs associated with intercountry adoption 19 (2014).

¹⁶⁷ HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2 §307 (2012).

¹⁶⁸ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §39 (2000).

As the total expenditure of an ICA must be limited to the actual costs, it follows that contributions, donations and development aid should be kept strictly separate from the costs of the adoption process. The recommendations regarding donations are clear-cut: they should never be sought, offered or made by PAPs to bodies or people involved in the adoption process.¹⁶⁹ However, the recommendations regarding contributions are more nuanced. In the case that contributions are allowed by a State, it is important that the contributions demanded by a receiving state are fixed and publicised by the State (not by institutions or intermediaries). States must provide transparency regarding the amount of the contribution but also on the final use by way of a detailed and public financial report. Another very practical and efficient way to enhance transparency regarding the financial aspects involved in ICA is by securing the financial transactions, making it essential to outlaw payments in cash. Furthermore, payments should not be made directly by PAPs but always through the ABs involved, and official receipts and detailed invoices must be issued for all payments.

In furtherance to the above, since a substantial part of the money flows 'through' ABs, it is recommended that the accreditation of adoption agencies should be subject to the requirement that they provide evidence of a proper financial basis and a sound internal system of financial control and external auditing.¹⁷⁰ ABs shall be expected to maintain accounts and must provide a detailed list of the average costs and charges linked with various categories of adoptions.¹⁷¹ Moreover, it is important to note that not every agency which meets the accreditation criteria should be accredited since too many ABs operating on the same territory creates a competitive climate, which may lead to them lobbying for more children to be procured for ICA and consequently, negate efforts to respect the best interests of the children concerned. So, it is important to limit the number of ABs authorized to operate in a sending country and the number of ABs must correspond to a realistic assessment of needs. For example, this is what Vietnam has done by reducing the number of ABs working on its territory of more than fifty in 2014, to 'only' thirty today.¹⁷²

6.2. Recommendations remain without bearing without political commitment

Now that the first part has addressed the list of non-binding good practices on the financial aspects of ICA based on the recommendations formulated by the HCCH¹⁷³ and the ISS¹⁷⁴, the next part continues with the role of the government in the implementation of these recommendations. Metaphorically, these recommendations are a perfect line of domino blocks carefully laid out. However, an external driver, the government, is needed to set this line in motion.

Political ownership is an essential requirement for change. Without a strong political commitment to tackle financial abuses and to fully realize children's rights, these recommendations will remain without bearing. Political commitment opens doors as it leads to the allocation of sufficient resources to tackle

¹⁶⁹ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §42 (2000).

¹⁷⁰ HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations §41 a) (2000).

¹⁷¹ *Ibidem*.

¹⁷² HCCH, The list of accredited international adoption agencies in Vietnam, available at: <https://www.hcch.net/en/states/authorities/details3/?aid=933>; ISS report issued by H. Boechat, N. Cantwell and M. Dambach, Adoption from Viet Nam: Findings and recommendations of an assessment (2009).

¹⁷³ HCCH, Note sur les aspects financiers de l'adoption internationale (2014); HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2, (2012); HCCH, The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1, (2008).

¹⁷⁴ ISS, Responding to illegal adoptions: a professional handbook (2016).

the issue of financial abuses in ICA, the signature and ratification of the Convention, the effective implementation of the Convention's safeguards on a national level, the conclusion of bilateral agreements on ICA which explicitly regulate financial aspects of ICA and the systematic prosecution of financial abuses.¹⁷⁵ Political ownership can be created through extensive training and by informing government officials, parliamentarians and politicians on the harmful consequences for the victims of financial abuses in ICA. This approach has proven to be successful to secure support for new legislation on ICA and the rights of the child.¹⁷⁶

However, there is a legitimate fear that several factors make a government very hard to manipulate in the right direction. There are documented indications that government policies on ICA have been determined unduly by financial interests that have no relation whatsoever with the best interests of the child.¹⁷⁷ First, influential adoption lobby groups put dubious economic and political pressure on authorities from sending countries to stop them from regulating intercountry adoptions, or in case there is a framework in place, to ease the procedures.¹⁷⁸ Second, it is challenging to get governments on board to tackle financial abuses where corruption and bribery are common practice in a state. Cases in the past have uncovered how government officials themselves profit from illegal adoptions, which makes them the last persons to count on for the necessary change to take place.¹⁷⁹

Third, governments might be hesitant to regulate, decrease, or stop ICA practices in their country due to the various (hidden) economic interests involved in ICA. Especially in sending states, many people rely on the ICA 'business' such as marketing firms, hotels, insurance companies, travel agencies who facilitate the travel and the stay of PAPs.¹⁸⁰ Guatemala's national industry around ICA which was estimated to bring in approximately \$100 million per year, became notorious through a blunt quote by an author which expressed that this 'makes orphans the country's second-most lucrative export after bananas'.¹⁸¹

6.3. Moratoria are no guarantee for the recommendations to be realised

From the previous section, it is clear that the lack of political will to improve financial transparency and control is, among other reasons, due to underlying economic interests of governments themselves in illicit ICAs. This section will set out yet another reason why states do not fully commit to taking on the proposed recommendations to improve their ICA systems in place. It must be noted that the extent of this lack of willingness to bring about improvements has been taken as far as to completely eliminate the ICA practice in some countries rather than taking on the challenge of improving it. This is especially incumbent on the fact that in the early 1990s several sending and receiving states lost their

¹⁷⁵ HCCH, Note sur les aspects financiers de l'adoption internationale 13 (2014).

¹⁷⁶ Ibidem.

¹⁷⁷ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption 51 (2014).

¹⁷⁸ HCCH, Note sur les aspects financiers de l'adoption internationale 13 (2014); See: R. Wolfe Murray, Child welfare reforms threatened by international adoption lobby (2005) available at: http://www.childrights.ro/media_article_cotidianul.htm.

¹⁷⁹ Everychild, Adopting better care: improving adoption services around the world 15 (2012); International Policy Conference on the African Child (IPC), The fifth IPC conference: Draft Guidelines for Action on ICA of Children in Africa §64 (2012).

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¹⁸¹ ABC News article by H. Martinez and R. Goldman, US adoptions fuelled by Guatemalan Kidnappings (2008).

trust in ICA¹⁸² due to the various scandals uncovered in the context of ICAs. Therefore, the reputation of ICA itself can be considered another victim of the financial scandals.¹⁸³

In some receiving states, ICAs are for example limited by requiring PAPs to be 'permanent', 'legal' or 'habitual' residents in the country. This is the case in, among others, Switzerland, Australia, Malta, Denmark and Sweden.¹⁸⁴ These far-reaching limitations are almost tantamount to the prohibition of ICA.¹⁸⁵ Some sending countries have also introduced limitations or completely banned the ICA practice because governments recognize that the systems they have in place are not able to safeguard the rights of children given up for adoption.¹⁸⁶ Romania serves as a good example in this regard as it banned all ICAs by law in 2005 due to countless adoption scandals which took place after December 1989, when the totalitarian regime of dictator Nicolae Ceausescu fell.¹⁸⁷ In the early nineties, thousands of children came from Romania to Western Europe and North America through ICAs riddled with irregularities.¹⁸⁸

Such a suspension on ICA is also known as a 'moratorium' and serves as a temporary and general 'time-out' and can be imposed by either sending or receiving countries. There are two rather different main reasons for setting a moratorium.¹⁸⁹ The first is that a country reacts to systemic problems and malpractice which violate the rights of the children involved in ICAs. Togo is a good example for this category as it suspended in 2008 all ICAs after, inter alia, evidence came to light that children were being wrongly placed for ICA due to inadequate adoptability checks. Two years later, the suspension was lifted once a number of (legal) reforms were in place.¹⁹⁰ Secondly, other countries impose a moratorium to ensure compliance with the Hague procedures. South-Africa is a very topical example as the government announced on May 11th 2020 a moratorium for all intercountry adoptions to prevent children's rights violations due to the current situation of the COVID-19 pandemic experienced in the country and globally.¹⁹¹ The goal of a moratorium is for a country to benefit from this period to

¹⁸² UNICEF, Guidance Note on Intercountry Adoption in the CEE/CIS Region 8 (2009a).

¹⁸³ HCCH, Note sur les aspects financiers de l'adoption internationale 10 (2014).

¹⁸⁴ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption, 3.4. Prohibition or severe limitation of intercountry adoption (2014).

¹⁸⁵ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption, 3.4. Prohibition or severe limitation of intercountry adoption (2014).

¹⁸⁶ N. Cantwell, UNICEF Report on the best interests of the child in Intercountry adoption, 3.4. Prohibition or severe limitation of intercountry adoption (2014).

¹⁸⁷ HCCH, Country profile of Romania on the 1993 Hague Intercountry Adoption Convention, available at: <https://assets.hcch.net/docs/27b92a62-06eb-489f-9e10-de2353cf8727.pdf>; J. Dickens, *The paradox of inter-country adoption: analysing Romania's experience as a sending country*, 11 Int J Soc Welfare (2002).

¹⁸⁸ See: R. Vermot-Mangold, Report – Disappearance of newborn babies for illegal adoption in Europe, Explanatory Memorandum, 7 december 2007, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11461.htm>; R. Post, Romania – for export only. The untold story of the Romanian 'orphans' (2007); A. Zugravescu en A. Iacovescu, The adoption of children in Romania 41-42 in J. D. Jaffe, Intercountry adoptions: laws and perspectives of Sending countries, Dordrecht, Nijhoff, (1995).

¹⁸⁹ ACPF report by N. Cantwell, Intercountry Adoption: An African Perspective 14 (2012).

¹⁹⁰ ACPF report by N. Cantwell, Intercountry Adoption: An African Perspective 13 (2012).

¹⁹¹ Intercountry adoption news and notices on the US department of state – bureau of consular affairs, South Africa announces temporary moratorium on intercountry adoptions, available at: <https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/south-africa-announces-temporary-moratorium-on-intercountry-adop.html>.

put the necessary conditions (resources, legislative reform, capacity) in place under which adoptions can resume in respect of all children's rights.¹⁹² This is, therefore, the ideal time for a government to take on the list of recommendations which can make a difference by providing practical and specialized guidance.

Research on the concluding observations of the Committee on the Rights of the Child shows that the Committee endorses moratoria when done 'in response to widespread trafficking and sale of children'¹⁹³ and 'in response to the lack of sufficient monitoring of such adoptions'.¹⁹⁴ This is a similar approach to that taken by the UN Special Rapporteur on the Sale of children, Child Prostitution and Child Pornography in 2014.¹⁹⁵ However, it is important to note that moratoria are controversial in the sense that they are meant to be temporary and research has shown that states who have imposed moratoria do not actually reconstitute ICA as an option for children in need.¹⁹⁶ Thus, a moratorium potentially runs counter to the rights of those children who would benefit from the opportunity of adoption abroad. The Committee on the Rights of the Child has pointed this out in its concluding observations for Romania in 2009. The Committee urged Romania to withdraw the existing moratorium as the Committee considered it as a barrier to the full realization of article 21 CRC since new adoption laws and sufficient safeguards had been put in place.¹⁹⁷ Moratoria are thus, even when well-intended, not always a guarantee for improving the realization of children's rights in the country.¹⁹⁸

6.4. Bottom-Up Policy change

6.4.1. States are the main actors in the battle against financial abuses in ICA Throughout this research, it has become apparent that the main focus and responsibility in the battle against financial abuses in ICA, lies on governments. This makes sense as both the CRC and the Hague Convention focus primarily on a top-down regulation,¹⁹⁹ whereby states are the main duty bearers called upon to take action against financial abuses in the context of ICA.²⁰⁰ Correspondingly, the recommendations formulated by the HCCH and the ISS listed in section 6.1 focus primarily on the role of governments to encourage and bring about future change. So, the government's prominent role to take on such changes becomes very evident from the latter sections. However, in addition to this, (almost) no attention is given to the role informed PAPs could play in this challenge. As set out in

¹⁹² N. Cantwell, UNICEF Report on the best interests of the child in Inter-country adoption, 3.4.1 Moratoria and 5.2.4 (2014).

¹⁹³ Committee on the Rights of the Child, Concluding observations : Paraguay §44, CRC/C/PRY/CO/3.

¹⁹⁴ Committee on the Rights of the Child, Concluding observations : Tajikistan §46, CRC/C/TJK/CO/2.

¹⁹⁵ United Nations Economic and Social Council, Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography §44-46, E/CN.4/2005/78/ Add.1 (2004).

¹⁹⁶ See: Joint Council on International Children's Services, A statement on the true character of reform efforts (2010).

¹⁹⁷ Committee on the Rights of the Child, Concluding observations : Romania §54-55, CRC/C/ROM/CO/4.

¹⁹⁸ HCCH, The Implementation and Operation of the 1993 Inter-country Adoption Convention: Guide to Good Practice No 1 §457-§464, (2008).

¹⁹⁹ The distinction between a top-down and bottom-up approach is a widely used concept in the policy implementation literature. See: OECD report by L. Cerna, The Nature of Policy Change and Implementation: A Review of Different Theoretical Approaches (2013).

²⁰⁰ Art. 4 CRC ; UN Committee on the Rights of the Child (CRC), General comment no. 5: General measures of implementation of the Convention on the Rights of the Child 1, CRC/GC/2003/ (2003).

sections 6.2 and 6.3, it is clear that relying on governments, especially those of sending countries is not enough. Therefore, this study proposes to explore the role PAPs in receiving countries may have in helping combat the prevailing financial abuses in ICAs.

6.4.2. The role of informed PAPs in the battle against financial abuses in ICA

When comparing ICA with a free market economy, while children are obviously no commodities! , PAPs can be considered to be the consumers on the side of the demand and the authorities in the sending countries would be responsible for the supply. When policy change in favor of more ethical or sustainable standards in a market is sought, there are two ways to go about it, either you regulate the supply chain, or you inform the customers in order to generate change in their consumption behavior.

Therefore, while we wait for governments in sending countries to regulate the 'supply chain' of adoptable children, informed consumers, in this case, PAPs, could also make a difference. Extensive information campaigns on the financial aspects of ICA and the risks involved could enable PAPs to make informed decisions, thus, resulting in PAPs being more likely to sway towards ethical and transparent adoption authorities and agencies over malicious ones. The malicious actors and agencies involved in ICA would have to respond to this change in demand by either quitting their practices as no or only few PAP's would want to work with them or they could turn to more transparent and ethical practices in order to continue their work with PAP's. This is the reason why this study strives for maximum transparency and to inform PAPs as widely as possible on what this study calls 'sustainable adoption'.²⁰¹ The next section will illustrate why the power of an informed consumer should not be underestimated and shall be seen as worth considering based on a comparison with the impact of a bottom-up approach in the context of environmental sustainability.

This study will end by setting out the best ways to translate this approach into practice. More concretely, the best means to inform PAPs on the financial aspects of ICA and the risks involved will be explored.

Young people and potential PAPs are not sufficiently aware of all the aspects set out in this study. PAPs are not aware of the illegal practices often involved in ICA, they do not see the risks involved in working with private adoption agencies and they often have no clear picture on the financial aspects involved. Professor David Smolin, an authority figure in the field of ICA research, was himself once a trusting and uniformed PAP who only uncovered malpractices in ICA after he had adopted two girls from India.²⁰² Although he loves his daughters very much, he explained that he would have made more informed choices, had he been properly and timely informed of the risks. Therefore, serious efforts must be made to duly inform people in receiving countries on 'sustainable adoption options' in order for them to be able to make informed decisions.

6.4.3. A growing global awareness on suitability

Although environmental sustainability and sustainable ICA are different, both issues fall under the broader term of sustainability²⁰³ on which the general public was rather ignorant at the beginning of the 21st century. Nowadays, information and awareness campaigns on environmental sustainability are omnipresent and this has much to do with the 'Greta Thunberg Effect'. Greta Thunberg is a

²⁰¹ Sustainable adoption is a term used for the purpose of this study to indicate ICA's where no financial or other abuses have taken place and which has been processed in conformity with the Hague Convention and the Rights of the Child as provided in the CRC.

²⁰² Information based on a skype meeting with Professor David Smolin in the context of this research.

²⁰³ A traditional definition of sustainable development is development that meets our own needs without compromising the ability of future generations to meet their needs. See: <https://www.sustainable-environment.org.uk/>.

Swedish national and climate activist. She started as a solo school striker, which led to the largest youth climate strike in history and she ended up becoming a very influential public figure that has opened a fierce debate on the inaction of governments and figureheads towards climate change.²⁰⁴

Greta sparked a remarkable global awareness on climate change which then transformed into wide-scale calls for policy change and pressured governments and companies to answer through new ambitious legislation and commitments on a regional and national level.²⁰⁵ Aside from governments, even companies' sustainability has become increasingly crucial as they face intense scrutiny from diverse stakeholders which has been considered a key component of the social contract between companies and society.²⁰⁶ Global awareness has given birth to a new, overwhelming demand for sustainable goods and services.

This example illustrates two points. Firstly, the time is right to call for 'sustainable adoption' as young people, or 'millennials' have responded to advocacy for sustainability as well as for human rights in a way that no other generation has done before.²⁰⁷ Secondly, this example illustrates perfectly why this study proposes to devote more time and resources into creating this kind of global awareness in the context of ICA. Global awareness on illegal practices in ICA's is, as the global awareness on climate change, able to demand and enforce more ethical policies from key actors which otherwise would not feel pressured to change their policies. Another great advantage of the global awareness on environmental sustainability is the change in consumer behaviour.²⁰⁸ Sustainable goods and services are preferred over other ones even when they cost more or take more time before it reaches the consumer.²⁰⁹ In drawing the parallel with ICA, duly informed PAP's would choose to engage with accredited agencies instead of working with private adoption agencies who promise speedy procedures. This is because informed PAP's would understand that the waiting lists, the safeguards and procedures in place are there for a good reason, which is protecting the rights of the children involved in ICA.

²⁰⁴ The New York Times, Greta Thunberg's Message at Davos Forum: 'Our House Is Still on Fire' (2020). Available at: <https://www.nytimes.com/2020/01/21/climate/greta-thunberg-davos.html>.

Edie Newsroom, Timeline: The rise and impact of Greta Thunberg (2019); Business Insider, How 16-year-old Greta Thunberg became the face of climate-change activism (2019).

²⁰⁵ On a European level: European Commission, Striving to be the first climate-neutral continent. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en; An example on a national level: Greening Government Commitments: Actions UK government departments and their agencies will take to reduce their impacts on the environment. Available at: <https://www.gov.uk/government/collections/greening-government-commitments>.

²⁰⁶ M. Gong, Y. Gao, L. Koh, L. Sutcliffe and J. Cullen, The Role of Customer Awareness in Promoting Firm Sustainability and Sustainable Supply Chain Management, 10 International Journal of Production Economics (2019) with reference to: S. Gold, A. Trautrim and Z. Trodd, Modern Slavery Challenges to Supply Chain Management, 20 Supply Chain Management: An International Journal 5 (2015).

Forbes article by S. Landrum, Millennials Driving Brands To Practice Socially Responsible Marketing (2017).

²⁰⁸ Sixty-six percent of consumers say they are willing to pay more for sustainable brands—up from 55% in 2014 and 50% in 2013. See: Nielsen, Global corporate sustainability report: The sustainability imperative New insights on consumer expectations (2015).

²⁰⁹ K. White, D. J. Hardisty and R. Habib, The elusive green consumer, Harvard Business Review 124–133 (2019); Forbes article by S. Townsend, 88% Of Consumers Want You To Help Them Make A Difference (2018); See: Unilever, Report shows a third of consumers prefer sustainable brands (2017).

6.4.4. Transparency on ICA : the first step in the right direction

It is important to acknowledge that almost all existing publications holding recommendations on how to tackle financial abuses in ICA address the need to duly inform PAPs on the adoption procedure they will have to follow along with any risks they should be aware of.²¹⁰ However, the approaches set out to inform PAPs and the broader public are very conventional and are often limited to brochures and websites. However, before delving into alternative tools, the use of websites by CAs shall be reviewed.

Financial information should be made public and shall be widely accessible to PAPs on the websites of CAs and ABs.²¹¹ Therefore, ABs should disclose financial information and they should be required to communicate this information with their CA which, in turn, could publish a list on its website on the financial aspects of all ABs working on its territory. This information must ideally identify the different categories of adoption-related fees and costs, both in the sending and receiving countries and indicate whether these sums are obligatory or optional.²¹² The CA of Belgium and Colombia serve as good examples as they provide a detailed list of costs and fees that PAPs face in an ICA procedure, presented per ABs responsible for a partner country of origin.²¹³ However, not all CAs provide detailed financial information, most CAs like the CA of Ireland²¹⁴ and the CA of Norway²¹⁵, provide a general estimation or a range in between which the total cost per country of origin lies and some Central Authorities provide hardly any indication on the costs and fees related to adoption services.²¹⁶ Other CAs like the one in South-Africa, do not provide cost indications themselves but refer to their ABs for more information on the cost of an ICA.²¹⁷

From the above, it is clear that websites which are the first source of information in this digital era, are a mishmash of financial information. It is consequently impossible for PAPs to compare information and to make an informed decision on which AB to work with since they do not all follow the same criteria for reporting. ABs working on the same territory should as a minimum have uniform methods to calculate or present their costs related to ICA.

Apart from websites, brochures are another conventional but valuable way of informing PAPs. The most recent publication by the ISS this year is a highly useful and comprehensive brochure which is called 'A guide for prospective adoptive parent(s), adoptive families and older adoptees. Avoiding

²¹⁰ HCCH, Note sur les aspects financiers de l'adoption internationale (2014); HCCH, Summary list of good practices on the financial aspects of intercountry adoption (2014); ISS, Responding to illegal adoptions: a professional handbook (2016); HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2, (2012); HCCH, The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1, (2008).

²¹¹ HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2 §307 (2012).

²¹² HCCH, Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2: Chapter 8 (2012); HCCH Special Commission on the practical operation of the Convention, Conclusions and recommendations: recommendation 8 (2010).

²¹³ See on the website of the CA of Belgium <https://www.kindengezin.be/adoptie/herkomstlanden/> and the CA of Colombia:

²¹⁴ See on the website of the CA of Ireland <https://aai.gov.ie/en/who-we-are/inter-country/country-information.html>.

²¹⁵ See on the website of the CA of Norway on the total cost of an ICA 'The costs vary, but are usually around NOK 200,000.' <https://www.agence-adoption.fr/>.

²¹⁶ See on the website of the CA of France <https://www.agence-adoption.fr/>.

²¹⁷ See on the website of the CA of South Africa: <https://www.gov.za/services/adopt-child/adopt-child-convention-country#Cost>.

unintended risks associated with well-intentioned acts'. This guide takes a new, practical approach as it highlights in red the danger signals that PAPs could potentially encounter at each stage of the adoption process, and also highlights in orange hypotheses relating to the situations in which PAPs need to act with prudence. Conclusively, various questions are then listed relating to what PAPs should ask themselves, their CA or the AB involved in connection with their specific adoption procedure.

6.4.5. Global awareness on ICA

Informative websites and practical brochures provide transparency but they are not sufficient to raise awareness among PAPs and the broader population. Greta Thunberg, for example, got inspired by the documentaries about the natural world made by broadcaster Sir David Attenborough as they inspired her and which, she says, "opened her eyes to what was happening with the environment".²¹⁸

In order to open PAP's eyes on what is happening in the ICA 'industry', different media can be used. This section will thus consist of a number of possible alternative methods for awareness-raising towards PAPs. Making a movie is one option to deliver the message, however, it is not the ideal medium as it has a tendency of being perceived as being a fictitious story and thus circumventing the main purpose. Moreover, another option is that of making a documentary by a renowned journalist which could bring a comprehensive and informative story covering statistics, personal stories and testimonials. Paper Orphans, an episode of Foreign Correspondent from ABC News in Australia is a good example of the latter as it accurately dispels the 'orphan-myth'.²¹⁹ However, another possible avenue may be the making of a specific documentary on the impact of financial abuses in ICA on children's rights, ideally produced by a popular platform such as Netflix which could result in a worldwide audience since Netflix has more than 160 million subscribers.²²⁰ This is especially based on the fact that sensitive topics tackled in Netflix documentaries are often picked up by the media which is a catalyser for global awareness.

Other opportunities in the 21st century are presented by communicative dynamics of contemporary media.

²²¹ In traditional media contexts, certified competence is an essential requirement for establishing the authority and appeal of public figures. On social media, authenticity and spontaneity are seen as fundamental elements, as the success of YouTubers, vloggers and bloggers illustrate.²²² Their involvement in ensuring wide-spread awareness shall be considered by various stakeholders as it could make a huge difference²²³ and it would be even more favourable if a celebrity or public figure shares his or her experience with ICA, regardless whether it is a positive or negative experience – both are informative.

²¹⁸ R. Hutt for the World economic forum, The Greta effect? Why businesses are more committed to climate action in 2020 (2020).

²¹⁹ E. Loibl, The transnational illegal adoption market: A criminological study of the German and Dutch ICA systems 38 (2019); Save the Children UK, Keeping Children out of Harmful Institutions, (2009); Lumos, Video on the 5 things you should know about orphanages, available at: <https://www.wearelumos.org/>.

²²⁰ The New York Times, *Everyone You Know Just Signed Up for Netflix* (2020) available at: <https://www.nytimes.com/2020/04/21/business/media/netflix-q1-2020-earnings-nflx.html>.

²²¹ Euro Science Open Forum (ESOF) 2020 Trieste, The Greta Thunberg Effect : some reflections on communication (2019).

²²² Euro Science Open Forum (ESOF) 2020 Trieste, The Greta Thunberg Effect : some reflections on communication (2019).

²²³ Euro Science Open Forum (ESOF) 2020 Trieste, The Greta Thunberg Effect : some reflections on communication (2019).

7.5 Conclusion

The present Chapter has thus undertaken the task of compiling the recommendations that have been made over the past years by the HCCH and the ISS in Section 7.1, while nonetheless focusing on the best way forward in the remaining parts of the Chapter. As it becomes evident from the above discussion and analysis, even though the HCCH and the ISS are reputable organizations, this has not made much of a difference in ensuring that governments and other stakeholders make the necessary changes in order to bring an end to the prevailing financial abuses in ICA. As a matter of fact, this was confirmed in Section 7.2, wherein the lack of political will to bring about change is highlighted.

Furthermore, Section 7.3 delves deeper into a specific action that has been undertaken by various states over the years as an alternative to tackling financial abuses, and this is the introduction of moratoria. As confirmed in this latter-mentioned section, while moratoria may be blindly considered to solve the problem as it temporarily halts the practice of ICA, this may not be considered a good enough solution, as was confirmed by the CRC Committee in its concluding observations for Romania. As a result, the present study is not aimed at promoting the inclusion of moratoria, as the main purpose of such research is not to conclude that ICA is a bad practice and that it shall be banned, rather it is about highlighting the bad practices that have prevailed over the past years in connection with the financial aspect and about focusing on the possible way forward. Therefore, moratoria cannot be considered a viable option especially if this means that children whose best option for a better life is an overseas adoption, are prevented from such a possibility.

Furthermore, while the primary focus when it comes to ICA might be on states and governmental authorities, it transpires that, as confirmed in Section 7.4, one shall not forget about another main stakeholder, PAPs. While bringing about change at the governmental level may be an extremely slow process tainted by bureaucratic tendencies, the next ideal group to tackle would be the public in general, or in this case, PAPs. The main aim here is to focus on societal awareness of the possible risks they themselves might be exposed to and more importantly, the child whom they will be adopting. As confirmed in Section 7.4, this is based on the responsiveness societies in general have had towards other awareness-raising initiatives, such as that of Greta Thunberg over the past months. While it can be said that lack of action from states is an apathy highly affected by corruptive tendencies, the same cannot be said about lack of awareness by societies generally since in such instances it is mainly incumbent on lack of information and lack of transparency available to them to be able to make the necessary judgements on the situation.

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