

INVESTIGATING THE GREY ZONES OF INTERCOUNTRY ADOPTION

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INTERNATIONAL REFERENCE CENTRE
FOR THE RIGHTS OF CHILDREN
DEPRIVED OF THEIR FAMILY

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FOREWORD

INVESTIGATING THE GREY ZONES OF INTERCOUNTRY ADOPTION illuminates the contemporary paradoxes of intercountry adoption (ICA). While theoretically regulated by the 1993 Hague Convention on Intercountry Adoption (THC-93), in fact almost two-thirds of contemporary intercountry adoptions are not legally governed by the treaty. While purportedly addressed at least in broad terms by the fundamental 1989 Convention on the Rights of the Child (CRC), a large proportion of intercountry adoptions in fact arise in circumstances where there have been severe violations of the rights of both children and adults, due to poverty and/or discrimination based on disability, gender, race, or ethnic group. Thus, where children's rights and human rights are respected and successfully implemented, there are very few children legitimately in need of adoption. Further, while adoption is theoretically a means to ameliorate rights deprivations and to implement the best interests of the child, as actually practiced it easily becomes driven by the desire of adults for children, and by financial incentives. Thus, there is a severe temptation to create systems which use ICA to address problems such as poverty and discrimination, when from a child rights and human rights perspective it should be mandatory instead to remedy the underlying rights and equality violations. At the same time, vulnerable children clearly cannot wait for poverty, discrimination and underlying structural problems to be alleviated in their societies before receiving appropriate interventions, providing some ambiguity in practical terms as to the proper implementation of the subsidiarity principle. These paradoxes indeed create "grey zones."

The Report goes beyond addressing "grey zones" to describe the zones of clearly illicit and illegal activity: children kidnapped and sold for ICA; fraud and money being used as inducements to obtain relinquishments; false documentation being supplied to cover up these means of illicitly obtaining children. Concern with such illegal conduct was a precipitating concern of the THC-93 as reflected by the text and work of preparation; that these abusive practices remain persistent and widespread is demonstrated by the fact that the HCCH Special Commission of 2010 devoted the first day to "the abduction, the sale of, or traffic in children" in the context of intercountry adoption. Unfortunately the most powerful actors in ICA, including

governments, adoption agencies, and adoptive parents, have powerful incentives to deny or minimize the extent of these illicit practices. Thus, it is extremely welcome that such an internationally significant organization as ISS has in this Report provided such a detailed documentation and analysis of these illicit practices. Hopefully, all involved in ICA will carefully consider the facts, analysis, and recommendations contained in this report.

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January 2012

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ABBREVIATIONS

AAB	Adoption Accredited Body
CRC	UN Convention on the Rights of the Child
GGP1	Guide to Good Practice n°1 under the THC-93
GGP2	Guide to Good Practice n°2 under the THC-93
ICA	Intercountry adoption
IRC	International Reference Centre for the rights of children deprived of parental care
PAPs	Prospective Adoptive Parents
THC-93	The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

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ACKNOWLEDGEMENTS

We warmly thank the Principality of Monaco for its financial support for the realisation of this study. As the authors are collaborators at the General Secretariat of the International Social Service in Geneva (where the IRC programme is run), parts of this study have been taken from various papers published by the IRC, such as editorials of the Monthly Review and position papers. The latter being the fruit of the work of the whole ISS/IRC team, the authors express their warm thanks to them. They are particularly grateful to Ms Mia Dambach for her thorough review of this study.

1. CONTEXT

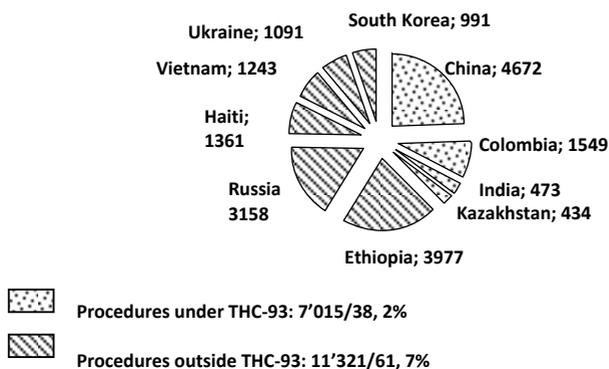
1.1. CONTEMPORARY PRACTICE OF ICA

Adopted in 1993, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (hereafter: THC-93) was a major step forward in improving the protection of children adopted internationally. By setting a system of cooperation and shared responsibilities among receiving States and States of origin, the convention allowed for a better control of the adoption process, particularly by defining competencies of the actors involved and setting minimum procedural standards. The Convention has been very successful and has been ratified by 85 States, among which 50 are considered as States of origin meaning that 35 of the ratifying States are receiving countries¹. In theory, this means that the safeguards put in place by the Convention are present in both countries of origin and receiving countries.

However, in practice, when analysing the increase of ICA in the 10 main countries of origin² and the 5 larger receiving countries (the United States, Italy, France, Spain and Canada) in 2010, one must note that the procedures required under THC-93³ are still far from being enforced in the majority of cases.

The table below shows that for the year 2010, only 38,2% of adoption cases undertaken by the 10 main receiving countries were conducted under the requirements of THC-93. In 2009, this proportion was 33,9%, and in 2008, 29,2%. Thus, these figures clearly show although the number of states ratifying THC-93 is already excellent, in practice, two thirds of the adopted children world-wide are still not benefiting from the international standards set forth in the Convention.

**Number and origin of adopted children from the ten first countries of origin: Canada, France, Italy, Spain and the USA
Year 2010**



Great efforts are being made by several actors to reverse this trend. The UN Committee on the Right of the Child, for example, has systematically recommended the ratification of THC-93 to States that have not yet done so⁴. This recommendation is most often supported by international organizations, Governments, NGOs and experts, with lobbying taking place at different levels and in different ways. For instance, over the last several years, there have been tremendous efforts to push countries of origin to both ratification and implementation of THC-93. Guatemala and Cambodia are notable examples of countries that have ratified but failed to implement THC-93. Projects were launched in these two countries of origin to set up systems in conformity with THC-93. In addition, the ratification by China (2006) and by the United States (2008) gave the convention an even greater force, for the simple reason that they are the largest country of origin and the largest receiving country in terms of annual figures.

THC-93 is seen, with reason, as a requirement by professionals interested in ICA. The convention not only revolutionized adoption practices but also brought the issue of ICA to the forefront of child protection. However, after eighteen years of practice, it seems that THC-93 has started to suffer from “too good a reputation.” In fact, its ratification, especially by a country of origin, is too often seen as a “guarantee of good practice” by many actors. Because receiving countries often assume that a

Hague adoption procedure encompasses all the necessary guarantees for the child and his/her family's safety, receiving States are often tempted to not look beyond what is said in the child's file. Daily routine, difficulties in cross-checking information about the child, the speed of the process once the matching is proposed can make people in charge less attentive to risks when dealing with a contracting State.

In addition, the discrepancy between the number of applications for adoption and the number of children declared adoptable world-wide has led to some unfortunate consequences. Indeed, in any case where the demand for something is greater than the supply, prices increase. This is true for ICA, and the most vulnerable countries face, and are, still facing, serious abuses, fueled by foreign money. As the NGO Terre des Hommes says: *"international adoption follows the common laws of the market: the offer searches the demand and the demand tracks the opportunities"*⁵.

The THC-93, as a private international law instrument, does not aim to cover all issues surrounding the adoption process, especially the different steps taking place before the child enters the adoption system. For instance, if official documents declare that a child is an orphan, but in reality, the child was stolen from his/her parents, the THC-93 is of no use in this case, as it does not cover the questions of birth registration and civil registry.

ISS/IRC field missions (Moldova, Kazakhstan, Kyrgyzstan, Azerbaijan, Vietnam, Ivory Coast, Guatemala, Laos, etc.) have also shown how difficult it can be to obtain accurate information about the different ways a child may enter the adoption process. When the child protection system of a country of origin does not have the capacity to monitor each case, individuals and criminal organisations will use any means to exploit the loopholes of these system, to make money within the adoption process. In some cases, the latter are so well organised that the criminal act will never appear in the final child adoption dossier, like fraud, corruption or insufficient child protection controls.

Thus, there are many so called "grey zones" where illicit activities take place, and where international or national protection instruments are unable to tackle them. It is therefore important to document these "grey zones" first to better identify them, and second reflect on the possible ways to combat them.

The aim of this paper is not to denounce abuses in some countries of origin, but rather to illustrate what may have happened before the adoption process started, by

collecting documented cases where abuses were clearly identified and condemned. It is hoped that this study will help professionals in charge of ICA, AAB and prospective adopters to gain a better understanding of these risks, and to give a much more nuanced view of the realities of ICA world-wide.

In the same scope, a very practical booklet entitled “*Intercountry adoption and its risks: a guide for prospective adopters*” has been produced by ISS/IRC to raise awareness and inform PAPs, providing them with tools that enable them to identify problems that may potentially arise in relation to their choice. It describes the different phases of the adoption process and raises key questions that prospective adopters have to face to avoid abusive and/or bad practices⁶.

1.2. METHODOLOGY

The study is based on the collection of data on cases that involved individuals being condemned for illicit activities related to ICA world-wide. Information was classified according to the following criteria:

- the reliability of the information (ability to crosscheck the information with several sources),
- the period (from 1950 to present),
- the location (necessity to have a geographical representativeness),
- the type of abuse.

The main sources of data were articles excerpted from specialized reviews, articles from various newspapers, statistics, websites dedicated to ICA issues, ISS/IRC documents (especially reports from field missions), etc. One important objective was to deliver a representative analysis in terms of receiving and sending countries. However, this study does not purport to be an exhaustive list of abuses and risks occurring in the area of ICA. Once the raw material was analysed, a classification of abuses was established, based on the following questions:

- *Who is the perpetrator of the abuse?*
- *When did the abuse happen (before/after the abduction, the sale, the laundering process...etc)?*
- *What is the proven and incontestable aspect of the abuse?*

The study is divided into five main chapters:

- 1/ the general causes behind the grey zones which contextualizes the overall picture of contemporary ICA;
- 2/ “child production” that illustrates the first level of criminal activities, where children are “produced” to answer the demand for ICA;
- 3/ “forced relinquishment and abandonment” that addresses cases where the parents are abused and their children wrongfully placed in the ICA process;
- 4/ “child abduction in emergency situations” addresses ICA in a context affected by natural disaster or conflict;
- 5/ “child laundering” explains how the illicit primary situation turns into something “legal” through falsification of documents.

1.3. VOCABULARY

There are many ways to make a child adoptable when he/she neither needs nor wants it. The following overview of those is provided in “*The adoption market*”⁷:

- Abducting babies by a variety of methods, including organised kidnapping ;
- Identifying vulnerable mothers - from poor families, unwed or single - and inducing them to give up their babies. Pressure may be exerted before the birth, at the maternity clinic or hospital, or in the adoption agency, which may house the mother until delivery;
- Falsely informing the mother that her baby was stillborn or died shortly after birth so as to spirit away the infant;
- Buying children from poor families;
- Accepting financial or material rewards for the adoption agency in exchange for children;
- Offering women financial incentives to conceive a child specifically for adoption abroad;
- Providing misleading information to the biological parent(s) on the consequences of adoption to obtain their consent. This includes assuring them, or allowing them to believe, that they will be able to maintain links with, or receive news of, the child after the adoption;
- Providing false information to prospective adopters.

Considering the great variety of actions that may lead to a fraudulent adoption, it is necessary to use the correct vocabulary for each of them.

The working definition of "sale of children" adopted by the Special Rapporteur on the sale of children, child prostitution and child pornography is "*the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation.*"⁸

Thus, "sale" is much too restrictive as it does not reflect the very specific position of the adopters which, in their great majority, do not consciously "buy" the adopted child. In addition, selling does not take into account the important role of different intermediaries active in an illegal adoption process.

The term "traffic" is not adequate either, as, according to the Palermo protocol (see 3.2.2.), it implies a "subsequent exploitation of the child," which is not necessarily the case in the adoption sphere.

Therefore, the generic term of "trade" seems to be more appropriate as it includes child abduction, selling, buying, producing and stealing⁹. In other words, trade encompasses all acts and behaviours aimed at selling, purchasing and stealing children. The following instances demonstrate that biological parents, obviously, rarely consent to sell their own child.

In practice, child trade is highly organized and can include various steps: child "production" in baby farms (see part 3.1.1); child harvesting¹⁰, (the active search of birth parents and children for the adoption market, see part 3.1.2). Child harvesting includes forced relinquishment for economic or "political" reasons (i.e. it may be linked to national policies on number of children- see part 4.1). The supply of children can also happen in emergencies situations such as a post-war or natural disaster context (see part 5.1).

"*Child Laundering*" refers to a process that involves making the child appear adoptable by falsifying documentation (see part 6.1). This allows, the child to be adopted and enter the receiving country with an orphan visa (see part 6.3).

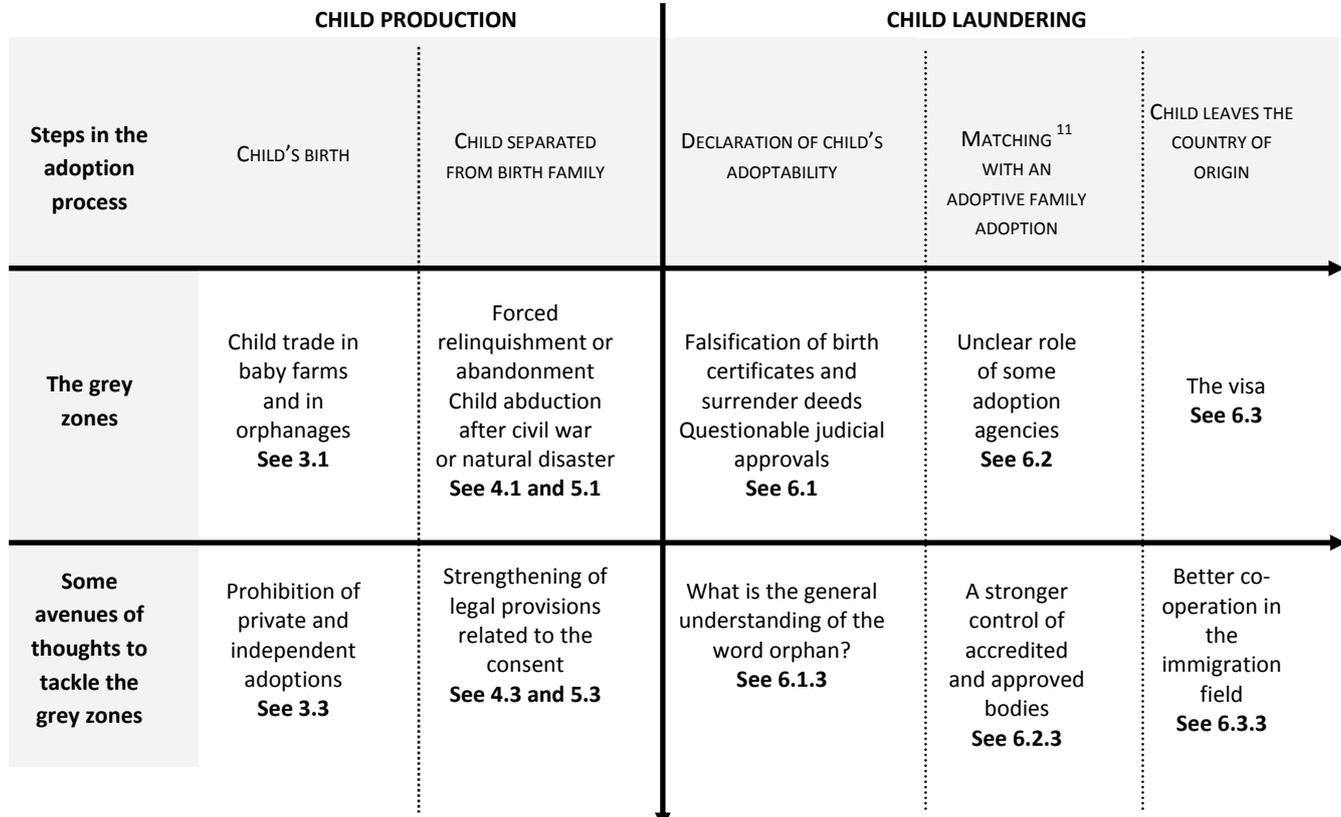
"*Criminal networks*": a generic term to define all individuals involved in a structured organisation that kidnaps and sells children for the purpose of having them adopted.

“Baby farms” and *“baby factory:”* are facilities where pregnant women go (freely or under pressure) to deliver their infants and surrender them for adoption. The women remain in these facilities and “wean” the baby. When the baby is taken, the birth mother may receive a sum of money, which is commonly very low in comparison with the final profit made from the adoption.

“Officials”: the people involved in the administrative process of adoption who have the capacity to deliver the necessary documents for the continuation of the adoption procedure, or facilitate the adoption, including illicit means such as the forgery of official documents, corruption, etc.

“Relinquishment/Abandonment”: the difference between relinquishment and abandonment is based on whether or not the identity of birth parents is known. When parents relinquish their parental authority, they are known to the competent authority where the child is given in care. In the case of abandonment, the child is found somewhere in a public place, without any information about his/her identity.

The table below illustrates the different steps and ways where illicit activities can affect an adoption:



2. GENERAL CAUSES BEHIND THE GREY ZONES

The causes of the different types of abuses described above are of course manifold. Poverty, weak state structures, illiteracy, and uncontrolled opportunities to make a profit can all play a role in diverting ICA from its original aim. It is, of course, far too ambitious to address all of them. However, this chapter proposes a broad overview of the causes that can be termed “general.” They may not be “primary” causes as such, but they nonetheless play a role in the development of the grey zones and are important for understanding the contexts in which ICA can operate. The following chapters address the illicit activities as objective causes of abuses in ICA.

2.1 SOCIETAL CAUSES

As almost every State has ratified the CRC, it is worth recalling Article 2(non-discrimination principle) which says that: *“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*

In addition, the UN Guidelines on the Alternative Care of Children,¹² which further develop standards that shall be applied to children without parental care, emphasizes that:

✓ *“Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses, whether physical or mental, birth out of wedlock, and socio-economic stigma, and all other statuses and circumstances that can give rise to relinquishment, abandonment and/or removal of a child”*(§10).

✓ *“Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.” (§15)*

✓ *“States should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have relationship with both parents. These policies should address the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, inter alia, the right to birth registration, and access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse.” (§32)*

Despite its apparently general nature, the principle of non discrimination does play an essential role in the understanding of an adoption system. Indeed, in many countries, race (ethnic minorities in Vietnam and Bulgaria for example), colour (over representation of black skin children in institutions in central American countries), sex (majority of children in China are female), poverty (still the main reason in many countries for taking children from biological families), disability (alternative care being the only measure for children with disabilities in many countries), are still wide spread practices and are very much linked to ICA procedures. Thus, even if the non-discrimination principle is difficult to put into practice, it nevertheless constitutes the ultimate argument for questioning the adoption process in many countries.

There are still major obstacles in addressing the causes behind abuses affecting ICA, among which the following should be seen as “societal causes”.

2.1.1 Poverty

Currently, poverty which is rampant throughout the world should be considered as the main factor for abandonment. In this case we consider the term “poverty” in its wider sense, including direct consequences such as illiteracy, lack of access to primary healthcare and conditions for economic survival. However, although poverty is indeed a cause, it should not in itself justify the adoptability of a child, or his/her removal from his/her family environment. Parents’ inability to care for a child may lead to his/her abandonment or placement; this could be seriously mitigated by increasing states’ ability to support alternative forms of care. Nonetheless, ethics compels us to combat this *de facto* situation. It is essential to put an end to the reasoning that poverty alone is sufficient for relinquishment, abandonment and finally, for an adoption. In too many cases, relinquishment and abandonment wrongly turn into adoption, with or without the proper consent of birth parents¹³.

Moreover, economic incentives are also a driving force that takes advantage of poverty situations. For example, biological parents may be convinced that their children would be better off in an institution in a nearby city for a temporary period, to get an education and be provided with food (an option that saves money for the rest of the family); but children may then be proposed for an adoption without biological parents’ consent. Cash incentives may also convince parents to give their children up for adoption.

2.1.2 Birth control policy

Birth control policy and the long-standing patriarchal status of social structures have led to the abandonment of baby girls in countries like China and India. In South Korea and in many other countries, unwed mothers are socially marginalized or ostracized. This phenomenon helps

explain the large number of children relinquished, abandoned or sold for adoption. Jane Jong Trenka, a South Korean adoptee has studied irregularities in the ICA process,¹⁴ and she highlights the questionable relinquishment process by unwed mothers. She illustrates how these unwed mothers were persuaded by adoption agencies to relinquish their children and, then when the mothers wanted to reestablish contact, she documents how they were prevented from contacting their children.

2.1.3 Illiteracy

Illiteracy can explain why parents relinquish their children without being aware of the consequences of their actions. They may sign paperwork relinquishing their parental rights and may not understand its content. Birth parents from rural areas are the most vulnerable because they do not have access to education. In Nepali rural areas, for example, where numerous ICA abuses have been documented (see 4.1.3), the illiteracy rate exceeds 48% among the adult Nepali population¹⁵. Therefore, while the adoption process can be considered as “legal” because the surrender deeds have been “legally” signed, there is no evidence that birth parents’ consent was given “in a duly informed” manner (art. 4 THC-93).

2.1.4 The demand greater than the supply

For many years, the demand for adoptable children has been greater than the number of children declared adoptable across the world. As stated earlier, when there is an imbalance between supply and demand, prices will rise. This leads to abuses by those who either want to benefit financially from an adoption, or those who are ready to pay to get a child in any possible way. This leads to conditions that encourage illegal or unethical practices.

This imbalance raises two concerns: the question of the “true orphan status” (see 6.1) and of the wishes of prospective parents who want young and healthy babies. As stressed by Nigel Cantwell: *“There are various indications that the number of persons seeking to adopt a child*

considerably outnumbers that of children who have previously been identified as requiring adoption and who correspond to the PAPs' desires."¹⁶ Moreover, according to E.J. Graff: *"The pattern suggests that the supply of adoptable babies rises to meet foreign demand."*¹⁷ Unfortunately, this increasing demand obscures the very positive reason why supply is actually decreasing: better living conditions in countries of origin and increased domestic solutions¹⁸. Finally, it is crucial to remember that the main demand for children is for healthy babies and toddlers, while most of the children truly in need of adoption today are much older or with special needs.

As highlighted by Vité and Boéchat: *"[...] what has been clearly demonstrated is the West's tendency to use ICA as an answer to the lack of children in Western societies, which is not at all its primary goal. ICA must be a measure to protect children who are faced with little or no opportunity in accessing a safe domestic environment within their countries of origin"*¹⁹.

2.1.5 A biased picture

ICA undoubtedly still suffers from misconceptions that still consider countries in the "South" as inexhaustible sources of adoptable children. Too many applicants still live with the illusion that, given the state of the world, adoption will be simple and fast. However, as recalled by Nicolas About: *"An effort is needed to change public opinion and combat the belief in a right to adopt. Adoption must – first and always – be a solution for the child. The idea that international adoption often disregards children's rights needs to gain acceptance, and work must be done to get it across to the public"*²⁰.

This evolution is still necessary, and it is the responsibility first of receiving countries to give a clear message to prospective parents, adoption agencies, and other ICA stakeholders about public opinions. Second, sending countries and receiving countries must promote the adoption of children who are in need of it, meaning more and more children with

special needs²¹. Unfortunately, when the media speak about ICA, they often project a distorted image of this special family bond.

The complexity of the procedures of ICA, the rigour of the process, the risks involved in adoption, the importance of the preparation of the child and his/her prospective parents and, in particular, the needs and rights of children are generally "forgotten" aspects of cases reported in the news. The media prefer to present adoptions by celebrities as wonderfully simple and fast love stories, carefully concealing and preventing any critical considerations. This biased picture, however, has an impact on the audience at large and on PAPs in particular. For the latter, who have been faced with a much more difficult and complex reality, this discrepancy in experiences raises a feeling of injustice and discouragement, often further exacerbated by the media's double talk. Indeed, if adoption by celebrities is idealised, when it comes to ICA by "ordinary men and women" things are very different. The news coverage about the average family adopting internationally focuses on the problem of endless waiting periods PAPs are subjected to and the red tape they are faced with, despite institutions in the countries of origin being full of children.

2.1.6. The role of lawyers

In many countries, lawyers play a far too important role in the ICA process. When the ICA system puts lawyers in the centre of the adoption process or gives them too much power, we can expect that abuses will arise. This is true because the temptation to make profit from adoption is too great. Experiences in Guatemala and Haiti for instance, demonstrate that the participation of the private sector has to be properly controlled, especially in regards to the fees that may be charged. In Kenya, for instance, the Innocenti Research Centre quoted in 2006 the following: *"since intercountry adoption was allowed in this country in 2001, lawyers have been laughing all the way to the bank"*²². Moreover, in Guatemala, in 2010, Ofelia Calcetas Santos, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography pointed out that the remuneration of lawyers and notaries was not subject to regulation, and allowing them to

profit from adoptions. The Rapporteur noted that *“given the cost of international adoptions, an attorney can afford to offer incentives or commissions to recruiters and their contacts in the courts and various administrative bodies, to facilitate the adoption”*²³.

2.1.7 Official and corrupted network

The various examples above clearly demonstrate that the corruption of officials is often necessary to circumvent the legal system. The Galindo’s case (see 6.1.1) illustrates how an informal network operated and can lead to illegal adoptions (an orphanage director acted as intermediary as he had privileged relations with Cambodian officials.) These entry points into the ICA process enable the main actor of the laundering process to control the whole procedure, from the child surrender at the beginning to the adoption pronounced by a judge.

2.2 LEGAL CAUSES: RATIFICATION AND IMPLEMENTATION OF THC-93

2.2.1 A prepared ratification

While a receiving State may progressively establish relations with States of origin, the reserve is not true, as the latter that have ratified the THC-93 must rapidly deal with the pressing demands of the receiving states.

There are many countries (whether receiving, or countries of origin), which have faced the difficult experience of announcing the entry into force of the Convention, whilst the necessary administrative services were not in place to manage the procedures. Of course, the Central Authority is not the only entity affected by the introduction of new practices. Adoption agencies, PAPs, local child welfare agencies and other actors engaged in ICA must receive appropriate training and information. In concrete terms, it is appropriate to train the professionals (staff of institutions, social services, etc) on the principles governing the different stages of an adoption process, in particular in relation to: 1) the modalities of declaration of a child’s adoptability, 2) his/her preparation for adoption, 3)

the matching process, 4) the post-adoption follow-up, and 5) issues relating to AABs. The new Central Authority must have time to organise itself before officially informing the Hague Conference of its contact details. On this subject, the GGP1 under the THC-93 is an essential document helping States in undertaking these steps.

In general, exchanges with adoption professionals worldwide show that, although the fundamental theoretical principles enshrined in the CRC and in the THC-93 are increasingly better known (the child's best interests, the principle of subsidiarity, etc.), their concrete implications still remain vague in many actors' minds. In particular, the identification of the number and profile of children in need of ICA remains a major challenge. Indeed, this problem requires considerable effort on the part of the responsible authorities. These individuals must deal with the introduction of an effective mechanism of birth registration, and the promotion of domestic adoption, including that of children with special needs. In the absence of a perfect system, an assessment of domestic needs should, at least, be able to draw a general picture of the children's general characteristics, and take specific measures at the procedural level to better protect these children (quotas, reversal of flows, etc).

It is worth remembering that ratifying the THC-93 does not compel new Contracting States to carry out adoptions with all the other Contracting Parties. Each State is free to define the collaboration which best suits its needs. The same is true with regards to the number of adoption intermediaries that can be accredited²⁴.

Since cooperation is a basic pillar of the THC-93, each Signatory State must, to the extent of its capacity and its willingness, support newcomers (of course, this must not be linked in any way to the number of adoptions potentially undertaken in the future).

When these steps are not properly taken and implemented there is room for abuse. As Smolin says, the systemic problem "*is principally due to*

*inadequate implementation of the Convention, rather than due to the imperfections in the Convention itself*²⁵. In addition the necessary period of time to implement the THC-93 can be under estimated; in some worst case scenarios an older adoption system remains in place at the same time the THC-93 is theoretically in force. Dealing with transition cases may become a nightmare if no proper interim system is in place. Commonly, the authorities responsible for ICA have put in place a system of exceptions, which raises new problems. Indeed, when The Hague process is strictly applied, countries may put as many dossiers as possible on the pending cases lists and increase the number of pending cases. This was typically the case in Guatemala, for instance.

Ratification can also happen later or more slowly. As recalled by Smolin: *“Most of the implicated sending nations had not ratified/implemented the Convention during the relevant periods.”* For instance, the United States of America ratified THC-93 on April, 2008 but data show that ICA numbers were already declining, and the majority of States of origin were non-ratifying States. *“Thus, the first fifteen years of the Hague era passed with most intercountry adoptions falling outside of the Hague system, since the United States is involved in more than half of all intercountry adoptions (...). Ironically, then, the United States is entering its own initial period of Hague implementation at a time of numeric decline for intercountry adoption”*²⁶.

In another example, India, the situation can be partially explained by the very slow implementation of THC-93. Indeed, while India ratified THC-93 in 2003, its *“Guidelines for adoption from India”*²⁷ were published in 2006, yet bad practices still remain. The situation in India is quite complex since official and unofficial processes coexist. Madagascar has experienced similar problems, since ratification of the THC-93 in 2004 and since is still having difficulty in getting its adoption system back on tracks.

2.2.2 Application of Convention principles to non-Convention countries

As illustrated by the figures presented at chapter 1.1., the number of ICA completed outside of the scope of the THC-93 remains the majority (66, 1 % in 2009, 61,7 % in 2010). Even if the grey zones affect both Hague and non-Hague adoption procedures, the probability of their occurrence remains higher in the latter.

It is the responsibility of the receiving states that have implemented THC-93 to ensure the same guarantees of the safety and well-being of all children regardless of whether the child comes from another Convention country or non-Convention country. Similarly, the countries of origin that are party to THC-93 must protect the rights of children being adopted whether the child is going to another Convention country or a non-Convention country. When a non-party State is unable to furnish such guarantees on its own, they should be implemented jointly by the AABs, their representatives and local partners. In this case, the supervision of ICA from/to those countries must be particularly strict, especially regarding the number of authorisations for adoption that are delivered.

Recommendation #11 (2000)²⁸:

“Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are “convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children”, the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention. (para. 56) ».

From a receiving country's point of view, ratifying THC-93 means that its general principles (rather than procedures) have to be applied even when the country of origin has not ratified the convention. It would be contrary to the non-discrimination principle to apply these general principles to the procedures under THC-1993 and not apply them in non-Convention countries²⁹.

Some major inter-governmental bodies have already expressed this concern. In its 2 December 1999 report, the Parliamentary Assembly of the Council of Europe *"calls on the Committee of Ministers of the Council of Europe to give a clear indication of its political will to ensure that children's rights are respected, by immediately inviting the member states to ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it"*³⁰. It was also recalled at the first Special Commission ICA in 2000 (see box above).

2.2.3 Cooperation

a) Shared responsibility

THC-93 is based on shared responsibilities between States of origin and receiving States, and is applicable to all actors, whatever their level of participation in the process. In its preparatory report on a new convention on ICA, the Permanent Bureau of The Hague Conference already emphasised *"the need for cooperation between the children's States of origin and those receiving them. Efficient working relations, based on mutual respect and compliance with strict ethics and strong professional standards, would contribute to building relations of confidence between such countries"*³¹. The system put in place by the THC-93 is based upon the joint responsibility of States of origin and receiving States. The conclusions of the 2005 Special Commission stress *"the importance of enhancing cooperation and exchange of information between Central Authorities, public authorities, AAB and any bodies and persons under article 22(2),*

*notably with a view to promoting good practice and to ensuring that illegal and unethical procedures prior to the adoption of a child are effectively and systematically combated*³² .

This principle means that every decision that exerts influence upon the countries of origin must be done in the spirit of co-responsibility. Analysing and respecting each State of origin's specific implementation procedures is a necessary step to promote the exchange of information and cooperation between receiving states and states of origin. In this regards, cooperation could take on more complex forms: if it is not the role of the central authority of the receiving country to put a system of child protection in place in a country of origin, it can try however, to identify in cooperation with the country of origin, which children are in real need of ICA. Obviously this requires a profound knowledge of the countries in question and the development of special relationships among its authorities in order to decide solutions in the best interest of the child. In many countries, it appears that groups of children have little or no chance of being adopted (assuming that adoption is the measure needed), either domestically or internationally. The reasons for this may not be linked with the capacity of these children to benefit from an adoption. For instance, children with disabilities are too often, perceived as "not adoptable" only because the people in charge of their care think that foreigners only want to adopt young and healthy children.

It is further incumbent upon receiving countries to regulate the number of AAB wanting to engage in ICA in countries of origin, in order to limit the number of adoptions and to coincide with the number of legally adoptable children available. The receiving countries must also limit the number of files of candidates for adoption and assure themselves that profiles of the PAPs correspond appropriately to the wishes of the countries of origin. As underlined by D. Dehou from the Belgian francophone Central Authority at the 2010 Special Commission: *"Yet what could be more logical than to restrict the number of adoption applications sent to a country of origin if*

we are seeking to bring the number of adoptions into line with the needs?”³³.

Some receiving countries already have developed a practice in this direction, by requiring that PAP wait to be authorised to adopt before they can be matched with a child from a country of origin. Again, it is incumbent upon the receiving countries to limit the number of authorisations for adoption each to match the number of legally adoptable children in any given country of origin. This system was introduced in The Netherlands, in order to achieve a balance between the supply and demand of adoption, and to reduce the pressure on AAB with long waiting lists while the possibility for PAP's to adopt was limited³⁴.

As detailed below, the question of costs of ICA should also be better managed by the receiving countries. In fact it is for them to better control the fees requested from future parents by demanding greater transparency both from the adoption agencies and from the Central Authority or its equivalent in the countries of origin. Thus they participate in an effective struggle against the business aspects of adoption.

b) Among and within States

Receiving countries are sometimes reluctant to cooperate among themselves. For example, it has always been difficult for receiving countries to share a common position on imposing a moratorium on a specific country of origin. The direct consequence of this fragmentation is that if only one receiving country continues to adopt, then, the abuses will continue as well. This was well illustrated by the situation in Vietnam in 2009.

“The mixed signals sent to Viet Nam by the receiving countries not only constitute a practical problem for that country to respond appropriately but also demonstrate a disturbing lack of common vision on the part of States Parties to the Hague Convention. This is not new. Neighboring Cambodia has experienced similar disarray, with the USA stopping ICA from

there as of 2001, an increasing number of European countries following suit, one by one, over the succeeding years, and a current situation where, notably, France and Italy have been carrying out adoptions while the USA and others have maintained the moratorium. The reverse was seen in the case of Guatemala where, over time, all European receiving countries finally suspended adoptions from the country, with the USA being the very last to take that step. In Viet Nam, despite reportedly regular consultations among themselves and the existence of an Adoption Working Group that has been meeting with the Ministry of Justice, diametrically opposed views among receiving countries are put forward as to the appropriateness of pursuing or initiating agreements on ICA at the present time. This divergence would seem to reflect individual governments' political stance towards ICA as much as – or perhaps more than – just an objective consideration of whether or not ICA can currently be carried out with adequate safeguards and in the best interests of the children concerned. [...]. It cannot be expected, of course, that all "receiving countries" will always see eye-to-eye on the functioning of adoptions from a given country. That said, experience from Viet Nam once more demonstrates the urgent need for far greater efforts to develop common basic criteria on which a more coherent joint approach could be founded in the face of alleged or proven problems"³⁵.

One can also note that cooperation within the receiving countries is not always adequate. For instance, we have seen in many cases that the Embassy of a country may be very critical about the adoption system of the country in which it is based, while the central authority of the same receiving country has a much more "laissez-faire" approach. This, of course, is detrimental to the efficiency of an adoption control.

Experience shows that common positions on specific issues among States of origin can be very important and successful. For instance, in 2010, the Hague Permanent Bureau, in co-operation with the South African Government and UNICEF, organised a seminar about child protection

across borders, with an emphasis on ICA. Angola, Botswana, Ghana, Kenya, Madagascar, Malawi, Mauritius, Namibia, South Africa, Swaziland, Uganda, Zambia and Zimbabwe, as well as the African Committee on the Rights and Welfare of the Child attended at the seminar. The conclusions and recommendations are important lobbying tools as they emphasise among other things, the importance of co-operation among States in the region, regulation of costs to eliminate abuses, the need for professional social workers, and the promotion of the principle of subsidiarity through awareness campaigns and domestic adoptions³⁶.

c) Cooperation, development aid, humanitarian programmes

The concept of cooperation can cover a wider spectrum of activities and may, sometimes, become difficult to tackle. Receiving States and their AAB are often putting in place large scale projects for the benefit of children in the countries of origin. However, it is not always clear whether these projects are linked to the process of ICA, which can be another source of confusion and abuses. In many countries of origin, “aid programmes” are developed by foreign entities (private or public), without clear supervision or articulation of their goal, local impact, accountability or influence on the ICA process. Because the majority of these programmes are governed by good-will, they are rarely called into question. They are often seen as a way to do something beneficial for children in the country of origin. However, this very optimistic view should not hide the reality, that when the transfer of money, goods or services that benefits any stakeholder in the adoption process occurs, there is a distinct possibility that the legality of the ICA could be called into question.

It has to be made clear that technical assistance or cooperation means here the support provided to countries of origin in the frame of ICA, and under the guidelines set up by the GGP n° 1 and 2. Indeed, for some time, it has been noted a sort of slipping away from the concept of cooperation in adoption towards what appears to be more like traditional development programmes. This confusion is fuelled by the fact that countries of origin

ask the receiving countries to “finance certain projects” (most often without specifying what kind) when they want to carry out ICA. The receiving countries on their side, respond to these requests in a diverse fashion, either through their programmes of development, by supporting their NGOs active in the countries of origin, or by supporting directly their AAB that are running projects.

It is important to underline that this mixture of activities is extremely delicate, and possibly dangerous. Let’s recall first that ICA is not a response to poverty, while cooperation for development certainly is. Attention must be paid, therefore to the words one uses to avoid confusion. According to Nancy Birdsall, development is based on *“two implicit but critical underlying assumptions: that wealthy nations can materially shape development in the poor world and that their efforts to do so should consist largely of providing resources to and trading opportunities for poor countries. These assumptions ignore key lessons of the last four decades -- and of economic history more generally. Development is something largely determined by poor countries themselves, and outsiders can play only a limited role”*³⁷ .

The 2000 Report of The Hague Special Commission offered an initial framework of reflection: *‘Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. 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 ICA. In addition, decisions concerning the placement of children for ICA should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted’*³⁸ .

Then in the current context of ICA around the world, certain countries of origin have well understood that they are in an increasingly strong position to impose their will and to use ICA as a means to “make foreign currency.” In some cases this is accomplished by applying “taxes” (as in Nepal intended to request US\$10.000 from each agency seeking to work there), by requesting money for humanitarian projects (like Vietnam in its former bilateral agreements) or simply by choosing to privilege the receiving State that have developed “the best relations” with the country of origin.

Let’s recall too the risks when an orphanage benefits from external financial support and its functioning becomes dependent on this to support itself and is tied to ICA. In the end the institution will be practically obliged to carry out adoptions so as to continue to receive help from the outside (be it donations or technical and material support). This assures the continuation of its operations, to pay its staff and to take care of the children who are not adoptable.

To address this issue, the GGP n°2 underlines that *“the question of the participation of accredited agencies in the projects of cooperation of human nature is always sensitive. At best it is an activity that is authentically altruistic that can bring great benefits for children deprived of parental care in the state of origin. At worst, it is only the means to direct vulnerable children to particular institutions with a view to ICA. It is this last kind of cooperation that must be stopped, since it is in total contradiction with an approach of ICA based on the rights of the child, and has a tendency to put the interests of adoptive parents before those of the child. The projects for cooperation that have a direct link with ICA do not present an example of sound practice”*. The GGP provides examples of ethical cooperation projects. The Swedish AAB, *Adoptionscentrum*, supports projects such as training of staff at institutions and other professionals in Ecuador in order to improve the quality of care and finding alternative placements for children, building capacity of social workers in the Philippines to work more efficiently with child care and guidelines for institutional care in India, etc.

Some States of origin have also expressed deep concern about this topic: Colombia, for instance, proposed *“to promote co-operation and participation with Central Authorities through: developing adoption policy based on the present needs of Colombian children; joint accreditation and supervision of adoption bodies; creating a joint system for managing and handling complaints; and regulating co-operation in the area of humanitarian assistance”*³⁹.

In conclusion, whatever the nature of projects may be, it is important to stress that if, in one way or another, money continues to play a role in the development of ICA, then the risks of abuse and bad practices will remain. Furthermore, it would be extremely regrettable that after struggling for years against bad adoption practices where money changed hands in order to secure an adoption, if these financial transfers come from the States themselves, under the cover of cooperation.

2.3 MONEY: A DEEPLY ROOTED CAUSE OF ABUSES

There is reason to fear that financial abuses will continue to exist, not only in non-ratifying States, but also in States party to THC-93. It does not always appear certain that all the authorities of the receiving States are in a position to effectively control the financial transactions of their AAB or of their PAPs in the States of origin. In the same way, not all of the Central Authorities of the States of origin are in the position to effectively control the financial transactions of their AAB, those of the receiving States, those of the PAPs or those of other persons intervening in the adoption process in their respective States.

2.3.1 Out of the scope of THC-93

This study tends to demonstrate that many of the abuses affecting ICA happen before adoption process begin, per se. The crucial point remains the way a child enters the adoption process. Basically there are

often hidden illegal actions motivated by financial gain are taking advantage of the loopholes in weak child protection systems in order to make children appear legally adoptable. Of course, it is not the intent of the THC-93 to regulate every step and every actor involved in, or concerned by, an ICA. The complexity of the problems (birth registration, organised crime, corruption, etc.), makes it difficult to tackle them in a coordinated and efficient way. Despite the broad range of problems facing the process of ICA, it is clear that the underlying cause can be traced to one root cause: money. The financial incentives to by-pass international conventions and domestic laws regulating best practices in adoption are all too real. Thus, would it be possible to imagine ICA completely free of charge? Is there a possibility to implement ICA systems that do not charge PAPs? Or a system where nominal fees are charged? Some countries already have set up adoption procedures free of charge (Honduras⁴⁰ and Colombia⁴¹), or with very limited costs.

2.3.2 In the scope of THC-93

The rapid increase of money earned during the ICA processes, coupled with the emerging trends of the commercialization of adoption were among the concerns raised by NGOs and countries of origin that paved the way to the drafting of THC-93. Article 32 details the prohibition of improper financial gain in the process of ICA. It states: *“only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid”* and that *“the directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”*

The recommendations adopted at the Special commissions (2000⁴², 2005⁴³, and 2010⁴⁴) also provide clear instructions on this matter. However, it is important to note that confusion still exists about what is allowable and what is not. As Judith Masson states: *“Although such payments may appear quite distinct from payment for the child or for the adoption, there is room for confusion: a payment for a home study may become payment*

to be approved as an adopter; financial support enabling a mother to keep her other children may appear as compensation for loss of the child or reward for her agreement; and further, the payment to the orphanage for the child's care may not reflect local care costs but support other orphans and encourage those in charge to support adoption"⁴⁵.

This is highlighted by the Council of Europe⁴⁶: *“Over and above the issue of illicit and “unofficial” cash payments during the adoption process –neither their existence nor the need to react effectively to them is in doubt – two questions in particular need to be addressed. First, the costs involved in an adoption must be clearly stated and justified. In the receiving country, one important condition of accreditation – and re-accreditation – of agencies offering adoption-related services must be transparency in relation to the cost of the services they provide and the fees and any other charges that they will cover in the country of origin. Publicly accessible information as to the charges, fees and costs of agencies in CoE countries is generally wholly insufficient. In addition, total costs quoted by European agencies for adopting from any given country can vary considerably, highlighting the need to be able to determine the validity of the reasons for the differences. Equally, the official amounts charged to foreign adoptive parents by countries of origin can vary by a factor of ten or more, and the disparities do not necessarily reflect purchasing power considerations. The bases on which such charges are determined need to be clarified.*

The second area of concern on the financial front is that of donations and contributions which prospective adopters or their agencies may be expected, “invited” or required to make to the facility from where they adopt, or to the wider child protection system. There may seem to be a justification in requesting foreign adopters, directly or indirectly, to support the “children left behind” or “preventive” services in the country of origin, and many do so more than willingly. However, the sums involved are often quite considerable, and can constitute a motivation, within the country of origin, to respond by all means to requests to adopt. This is a concern clearly espoused, at the outset, by the Special Commission on the HC.

Certainly support to child welfare services in countries of origin is necessary, but this must be assured by other channels of bilateral and multilateral assistance, not by those involved in an intercountry adoption – including prospective parents and their agencies”.

Moreover, the money issue remains incredibly intransigent at both national and international levels. Receiving countries, which must bear a strong responsibility in this matter because the money is “coming” from them, tend to keep out of the discussion about the financial gain in ICA. The result is that there is no collective movement by receiving countries to limit the abuses that result from the financial incentives to produce children for ICA. It is particularly difficult when a country of origin well-known for this kind of abuse faces only limited repercussions in the form of moratoria imposed by a few receiving countries. In some of these countries of origin there may be a sense that corruption, related to adoption, is so widespread that the whole child protection system has been detrimentally affected. In such contexts, it becomes almost impossible to gather the necessary cooperation and build the capacity to make necessary changes. It is important to understand that the changes necessary to end the corrupt and money-driven ICA practices must be made domestically in both receiving countries and countries of origin, and internationally in a cooperative and mutually supportive way. Means to do so exist, but the political will is still lacking. As Smolin says about India: “(...) *the Indian Supreme Court as far back as 1984 emphasized the necessity to do so to avoid child trafficking, and the Indian government has for several decades published monetary limitations. Yet, the evidence is clear that those limitations have been systematically ignored by mainstream Indian and foreign actors in intercountry adoption. Both India and the United States have lacked the political will to enforce India’s published limitations on fees and donations; without such political will, the formal and external features of the Hague Convention may facilitate, rather than limit, child trafficking*”⁴⁷.

The publication of fee scales in all countries would be a strong first step in preventing financial abuses and some do exist. For instance, the “Country profile fact sheets” published by the Hague Permanent Bureau provide some information about costs, both in countries of origin and receiving countries. Furthermore, these fact sheets propose a clear division of the different costs including expenses incurred in the receiving state, expenses incurred in the state of origin, contributions to humanitarian aid projects and donations, travel costs, and post adoption expenses. This information can go a long way in educating PAPs by highlighting instances when fees are being charged for items or activities that should be free or when exorbitant fees are being charged.

For example a false birth certificate costs money, but a legitimate birth certificate is usually free of charge. If PAPs know this, they may be in a position to contest or to report the request for additional costs. It is therefore essential that Hague Country profiles are updated on a regular basis, and be made available to the professionals in charge.

In addition, some States have developed hard-and-fast rules dealing with fees; these too rare examples show that such regulations are possible and can work. The Australian Government Attorney-General's Department has developed an Adoption Fees Matrix comparing each state and territory⁴⁸. In Colombia, the proceedings relating to adoption, which take place at the ICBF, are totally free of charge. The costs charged by authorised bodies in Colombia for undertaking the adoption process are updated on a regular basis and may be easily consulted⁴⁹. Eventually, the Malagasy Law n°2005-014 and its decree n°2006-596 that defines amounts of the financial contributions to domestic and ICA can be quoted⁵⁰.

Similarly, the Adoption Authority of Ireland informed all adoptive parents who have undertaken an ICA that, effective immediately; it will pay particular attention to all payments made to entities and/or persons in connection with the administration and finalisation of the foreign adoption. According to this new procedure for the registration of the foreign adoption, the Authority will reserve the right to seek evidence, by

way of documentary proof, of the amounts of such payments. In cases where it becomes apparent that unreasonable costs have been incurred, the Authority can reserve its express statutory rights to refuse to grant an entry into the 'Register of Intercountry Adoptions'⁵¹.

3. CHILD PRODUCTION

Steps in the adoption process	Child's birth	Child is separated from birth family	Declaration of child's adoptability	"Matching" with an adoptive family	Child leaves the country of origin
Grey zones	Child production and harvesting	-Forced relinquishment / abandonment -Child abduction	False orphan status, questionable judicial approvals	Unclear role of adoption agencies	Orphan visa

3.1 DOCUMENTED CASES

3.1.1 Child production in baby farms

BRAZIL	1986	Brazilian federal agents in the southern state of Santa Catarina discovered, in the home of a lawyer, a maternity hospital and a number of clandestine nurseries. Police found 20 children, from newborns to 3-year-olds, arrested seven suspects and detained 22 Israeli couples who were seeking to adopt children ⁵² .
HONDURAS	1993	Since 1985, “fattening houses” have been reported in Honduras. Named “ <i>casas de engorde</i> ,” these are, in fact, private homes where children are kept until adoptive parents are found ⁵³ .
GREECE	2006	A baby factory functioned and flourished in Greece under the control of Bulgarian and Romanian Mafias. The women were impregnated by mafia racketeers and then, housed, fed and clothed for the next nine months. After the birth, the birth mother took care of her child for 40 days before the child was adopted by a foreign couple in exchange for a large sum of money. ⁵⁴
NIGERIA	2008	Uzuoma Clinic is one of several illegal “baby farms” in south eastern Nigeria. Infants are sold to people desperate for children and ready to pay to avoid the red-tape of the country’s domestic adoption laws ⁵⁵ .

THE PHILIPPINES	2009	In Jala Jala, a baby farm (called an orphanage, but not registered with the competent authorities) provided babies to foreigners who had paid a “processing fee” of at least \$ 12,500 per baby. ⁵⁶
VIETNAM	2010	Mrs Cai’s baby farm in North Vietnam sells babies to foreigners. Each baby costs \$10,000 and the price for a baby is even higher at a nearby orphanage. ⁵⁷

Focus: The “*Adoption History Project*” explains that term “baby farming” was common in late 19th and early 20th century cities. However, by around 1920 most states had taken action against the commercial practices, and the term was on the decline. “Baby farming” referred to placing-out infants for money as well as to the sale for profit of infants. Many of the birth mothers were unwed mothers, prostitutes, and destitute or deserted wives who needed help with their children while they worked for wages. Although most baby farms amounted to what we now call family day care, it developed a terrible reputation when horrific abuses and horrible death traps were uncovered.”⁵⁸ While baby farms existed in Great Britain, Canada⁵⁹ and the USA during these early decades of the 20th Century, they have begun to develop in countries of origins. Baby farms have two alleged goals: answering the PAPs’ demand for adoptable children and offering a shelter for unwed or destitute mothers, by providing a way to surrender their children.

3.1.2 Child harvesting by criminal networks

CHINA	1992-2003	A Chinese woman was sentenced to death in 2003 for buying and selling 13 children as part of nationwide network of baby trade between 1992 and 2002 ⁶⁰ .
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UKRAINE	1995	Police officials in western Ukraine detained two doctors on suspicion of selling newborn infants to foreigners for large sums of cash ⁶¹ .
UNITED STATES	1999	Two Long Island women were charged with smuggling at least 17 Mexican infants into the USA with promises of easy and legal adoptions, and selling them to unwitting adoptive parents for up to \$22,000 ⁶² .
UKRAINE	2001-2003	Ukrainian activists say the number of newborns who disappeared between 2001 and 2003 could be in the hundreds. These newborns were stolen in order, <i>inter alia</i> , to be adopted ⁶³ .
PAKISTAN	2002	A gang was arrested for buying or kidnapping babies from poor parents to sell them in Malta. The Police found 11 children ranging in age from 2 weeks to 2 years, in the port of Karachi ⁶⁴ .
ALBANIA	2003	An Albanian couple sold their son to an Italian to get a TV ⁶⁵ .
CHINA	2003	95 people were arrested in connection with the illegal sale of at least 76 babies in Huhhot city. These babies had been purchased from private clinics and hospitals ⁶⁶ .
CHINA	2004	A criminal gang bought baby boys in Yanjin County and sent them to Changting where they were sold for 1,810 \$ to 2,180 \$. Up to 53 babies were sold ⁶⁷ .
IRAN	2005	A baby-trafficking network that had stolen 63 newborns from hospitals in and around Teheran sold them to infertile couples was broken up. In some instances, members of the network worked in maternity wards and told parents their babies had been stillborn and refused to hand over the bodies ⁶⁸ .

VENEZUELA	2005	Two women from Dominican Republic were arrested by Venezuelan police for trying to sell a baby for adoption to Australians. The plan was discovered when the biological mother changed her mind about selling her baby. She had been paid \$ 465 for her baby ⁶⁹ .
INDIA	2005	A 5 member gang was arrested for kidnapping and selling about 350 children to an adoption agency in the Chennai on behalf of Malaysian Social Service orphanage. Kidnappers were paid \$236 per child ⁷⁰ . According to Chennai's police, Malaysian Social Service "arranged" more than 150 adoptions between 1991 and 2003. Major receiving countries were the US, the Netherlands and Australia. Total fees for this period totalled roughly \$ 250 000 ⁷¹ .
VIETNAM	2009	A couple was suspected of buying more than 20 babies in Dong Nai province since 2007 ⁷² .
SOUTH KOREA	2009	For several years, a new kind of trade is flourishing on the internet. These websites allow pregnant women to sell their unborn children ⁷³ .
MEXICO	2009	3 staff members were suspected of stealing at least two newborn babies from a private hospital in Mexico City. They told the mothers their babies were stillborn so that the mothers would not look for the babies. The buyers said they had paid around \$US1000 each for the babies and their documents ⁷⁴ .
INDIA	2010	The Bombay High Court gave its Registry one week to produce the 35-year-old record of a psychologist of Indian origin who alleged she had been kidnapped and given through adoption to a Dutch couple in 1975 ⁷⁵ .

BULGARIA	2010	Bulgarian women deliver their babies in receiving countries such as France ⁷⁶ and Greece ⁷⁷ in order to avoid the adoption paperwork obstacles.
GUATEMALA	2010	Several women testified their children have been abducted by gangs who took advantage of them because they were poor and their status of single mother ⁷⁸ .
CYPRUS	2011	A « flesh trade » may be in operation in Cyprus involving pregnant migrant women whose babies are adopted ⁷⁹ .

3.1.3 Child trade in orphanages

CHINA	2002- 2005	In Hunan's province, six orphanages were found to have purchased nearly 1,000 babies and sent them abroad to adoptive families. ⁸⁰
LIBERIA	2006	The National Child Rights Observation Group reported in 2006 that some institutions, while purporting to help orphans, were charging huge sums of money for adoptions. ⁸¹ At the same time, the human rights section of the UNMIL expressed concern about conditions of orphans in a report saying that poor administration in many orphanages exposed children to abuse. ⁸²
INDIA	2007	Denmark suspended all adoptions from India after a news report claimed that some of the children from the Pune orphanage who have been adopted could have been abducted. ⁸³
INDIA	2010	Investigations into ICA conducted by the Central Bureau of Investigation revealed that 42 children were directly transferred to Preet Mandir from an orphanage at Pandharpur bypassing a child welfare committee. ⁸⁴

Focus: How children end up being placed in orphanages remains quite obscure in high risk countries. Orphanages can be used as a way to legalize the adoption of stolen children. Once the child has been placed in an orphanage, the collective belief is that the child is an orphan and, therefore, eligible for adoption. Thus, most PAP's go to orphanages confident that every child is legally available for adoption. The orphanage may be the instigator of the child theft or it may only become involved once the child has been "found." In the latter situation, the orphanage pays to place the child in its institution and present him/her for adoption.

3.1.4 Child trade by officials

ARGENTINA	1976 - 1983	Argentine dictators oversaw a systematic plan to steal babies born to political prisoners. Proceedings are ongoing ⁸⁵ .
VIETNAM	2007 - 2010	Police investigate claims that in 2006, officials took thirteen children from Ruc hill tribe families with promises to educate them in the nearby provincial capital. When one mother tried to visit her daughters, she couldn't find her, and claims she was adopted overseas. Adoptive parents in Italy and the U.S.A pay as much as \$10,000 in fees per child ⁸⁶ .
SPAIN	2010	Hundreds of people are convinced children have been stolen from their birth parents in order to be adopted. According to some authors, this child trade would be a consequence of Franco's regime. A woman from Valencia claims she bought her daughter in 1979 for one million pesetas (approximately 6 000 €) ⁸⁷ .

3.2 LEGAL CAUSES

By legal causes, we mean those that directly result from insufficient, or ineffective domestic laws to protect the rights of both children and biological parents. These national inadequacies include, among others, a lack of the birth registration and the legal framework to protect children against exploitation.

3.2.1 Birth registration

Birth registration is one of the key elements for a proper child protection system in any State. As mentioned in article 7 of the CRC *“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”* This essential condition was further emphasized by various actors including the EU Parliamentary Assembly in its Recommendation 1828⁸⁸ and Resolution 1624⁸⁹. But still, far too many countries have not managed to move forward with universal birth registry. In some instances a registration system is in place but additional barriers to global birth registration still exist. For instance in Mexico, 11% of children under 5 are currently not registered because many of the families living in rural areas are not able to pay the registration fees⁹⁰.

There may be numerous reasons why this situation persists including weak State control over public administration, insufficient funds to support the needed personnel and technology to record every birth or even direct efforts by influential individuals to prevent universal birth registration. Some of these are complex, difficult problems with no easy solutions. There are others, however, that are more easily overcome. Birth parents are not always compelled to possess a child’s birth recorded, or to declare the child at the registry office. Sometimes, they simply have no access to civil register. If the obligation to declare the child’s birth does exist, or there are other obstacles preventing the registration of the child’s birth,

there should be support to strengthen and facilitate this in practice. For example, birth registration could be made free of charge. Some positive changes can be cited in this regard (see 3.4.2.).

3.2.2 Inappropriate definition of “traffic” in the ICA field

Despite the fact that various international conventions protect children from different forms of trafficking, it appears that none of them have a definition precise enough to cover the very specific case of abuses in the ICA context.

- The Inter-American Convention on International Traffic in Minors specifies: *"International traffic in minors" means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means*⁹¹.
- The Palermo protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, includes the purpose of exploitation in its definition: *"Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"*⁹².
- According to article 35 of the CRC: *States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form*⁹³.
- The Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines sale of children as: *"Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration"*⁹⁴.

However, the existing international legal framework is still functionally inefficient in regard to the ICA abuses described above. In fact, they are not specific enough to properly address the very nature of ICA because of the heterogeneous international definition of trafficking. Indeed, the “illegal purpose” criterion is frequently required to fulfil the qualification of “trafficking.” However, in the case of ICA, the only purpose of the act of trafficking is the adoption of the child illegally taken from his/her family. The adoption of the child does not fulfil the definition of “illegal purpose” despite the fact that there may have been a number of illegal actions taken prior to the adoption being finalized. These could include illegally taking the child from her parents, falsifying documents to make the child appear eligible for adoption or bribery of judges or other officials.

Many domestic criminal laws are also not adequate to address the issue of trafficking for ICA as they exclusively criminalize trade/traffic of human beings for the purpose of exploitation. Thus, the trafficking or trade in children is often inadequately addressed by the law and the judicial system in both sending and receiving countries, especially in relation to ICA⁹⁵. Examples of the inability of domestic laws to deal with trafficking for the purpose of ICA can be found in Albanian⁹⁶ and Indian⁹⁷ (see the 2010 questionnaire prepared by The Hague Conference for the 2010 Special Commission « *Abduction, Sale of or Traffic in children* »)⁹⁸.

3.3 SOME AVENUES OF THOUGHTS

The 2010 Special Commission reviewed the “essential features” to ensure ICA take place in an ethical and strictly legal framework⁹⁹:

ABDUCTION, SALE AND TRAFFIC IN CHILDREN AND THEIR ILLICIT PROCUREMENT IN THE CONTEXT OF INTERCOUNTRY ADOPTION¹⁰⁰

In order to prevent, , the abduction, sale and traffic in children and their illicit procurement during the process of intercountry adoption, the Special Commission draws the attention of States to the following essential features of a well regulated system:

- a) effective application of Hague Convention procedures and safeguards including, as far as possible, non-Convention adoptions;
- b) independent and transparent procedures for determining adoptability and for making decisions on the placement of a child for adoption;
- c) strict adherence to the requirements of free and informed consent to adoption;
- d) strict accreditation and authorisation of agencies, in accordance with criteria focusing on child protection;
- e) adequate penalties and effective prosecution through the appropriate public authorities to suppress illegal activities;
- f) properly trained judges, officials and other relevant actors;
- g) prohibition on private and independent adoptions;
- h) clear partition of intercountry adoption from contributions, donations and development aid;
- i) regulated, reasonable and transparent fees and charges;
- j) effective co-operation and communication between relevant authorities both nationally and internationally;
- k) implementation of other relevant international instruments to which States are parties;
- l) public awareness of the issues.

3.3.1 Prohibition of private and independent adoptions

Independent adoptions are those where PAP's are being prepared and declared suitable to adopt before being permitted to go directly to the State of origin to find a child themselves and adopt it without any assistance of the Central Authority or AAB. Private adoptions are arranged directly between adoptive and biological parents.¹⁰¹ The risks of abuse during these kinds of adoptions are obvious, as a private adoption between birth parents and adoptive parents can easily turn into a financial transaction. The fine line between a legal adoption and a financial transaction can become very thin if PAPs want to adopt "anyway." The GGP n°1 *"makes a clear distinction between the two but supports neither."*¹⁰² Moreover, the 2010 Special Commission reaffirmed that private adoptions are not compatible with the Convention and has recommended forbidding it¹⁰³.

Indeed, private adoptions arranged directly between birth parents and adoptive parents may fall within the scope of the Convention if the conditions set forth by the articles 2, 4 and 5 are fulfilled. However, the ambiguity lies in the fact *"that these adoptions should comply with the Convention standards and requirements, but it's not possible without losing their "private" nature."* (§524). The GGP n°1, therefore, recommends eliminating these forms of adoption *"which undermine the safeguards established by the Convention,"* (§627). This concern has also been expressed in the conclusions and recommendations of the 2009 Francophone seminar relating to the Hague Convention: *"Because of a concern for improved protection of the rights of children and families, it is recommended that receiving States and States of origin reinforce the skills of AABs and supervision by the Central authorities, and work towards the elimination of private and independent adoptions not overseen by an AAB or Central Authority"*¹⁰⁴.

Despite the potential for illegal or unethical practices in private and independent adoptions, there are still many countries that allow them. This heterogeneous landscape of adoption laws is a source of confusion, especially for the countries of origin. The countries of origin are supposed to know what rules govern the different foreign files, but with so many diverse domestic rules in the various receiving countries, this is nearly impossible.

3.3.2 Definition of trafficking

From a strict legal point of view, the absence of a uniform definition of “*trafficking*,” and the absence of interactions between civil and criminal law in the ICA process lead, *inter alia*, to a very weak protection of vulnerable children. The 2010 Hague Special Commission confirmed the lack of consensus concerning the definition of “trafficking”¹⁰⁵.

To illustrate the debate David Smolin recalled that the term “trafficking” appeared in the 1990 J.H.A Van Loon “Report on Intercountry Adoption,”¹⁰⁶ which characterizes illegal practices, such as buying children for ICA, to be, in itself, a form of child trafficking¹⁰⁷. Under this definition one can argue that illegal adoption constitutes, *ipso facto*, a form of exploitation of the child. This view is also shared by the NGO “All Together Against Child Trafficking” who says: “*exploitation forms related to child trafficking include (...) illegal adoption*”¹⁰⁸. Benyam D. Mezmur shares this point of view in his study “The Sins of the Saviours: Child Trafficking in the Context of ICA in Africa.” He utilizes a broader definition of the term trafficking that “*...covers not only trafficking as understood in the Palermo Protocol, but adopts a wider notion of the term including practices that may lead to abduction, sale or trafficking in children in the context of adoption*”¹⁰⁹.

On the other hand, Nigel Cantwell argues that “*while the THC-93 speaks of the prevention of “the abduction, the sale of, or traffic in children” (Art 1.b), the concept that links these three crimes – and indeed many other questionable, illicit and/or criminal acts with the same objective – is that of*

the procurement of children for ICA,” indicating that the adoption itself does not fall under the definition of trafficking¹¹⁰.

According to ISS/IRC, the concept of “procurement” is much more appropriate than “trafficking” because the “illegal purpose” criterion, that is usually required by international standards to fulfil the qualification of “trafficking,” doesn’t exist in the context of ICA when the only purpose is the adoption of the child illegally taken from his/her family without further exploitation. More importantly, it is essential to come to a consensus on the classification to be given to the illegal acts that result in the introduction of a child into the adoption market and make him afterward adoptable via the laundering process described above. This is not only a simple legal detail but an effective means of protecting the children against these kinds of practices. If this classification can be discussed and adopted in the recommendations of the Special Commission for example, there is no doubt that the protection of children’s rights will be strengthened. This initiative would allow contracting States to modify, or to refine, their legislation to fight more effectively against the trade in children.

3.4 SOME GOOD PRACTICES TO STRESS

3.4.1 Limitation in ICA by systems of quotas

To break the cycle of supply and demand in ICA, some countries of origin have introduced limitations in ICA through a system of quotas:

- **Brazil:** The country has implemented processes that include *reversing the flow of files* in the State of Rio Grande do Sul. To respond to the difficulties raised by the large number of files of PAPs received by the Court of Justice in this Brazilian State, the court decided that it would no longer accept the files of PAPs, but would in the future send the files of children who are adoptable at the international level to the AAB in the receiving country. The latter are, therefore, the entities responsible for

choosing the adoptive families in response to the needs of the adoptable children rather than the Brazilian authorities.

- **China:** In 2001 CCAA started a quota system, to slow the rising number of incoming applications for ICA. The system gave each adoption agency an annual quota of applications that did not exceed their average annual number of adoptions in the previous three years. Of this number, no more than 5% of files could come from unmarried applicants, making it harder for singles to adopt from China. During 2002 the backlog of files was reduced. In November 2002 CCAA lifted its quota on adoption applications, except for singles. CCAA said applications from unmarried applicants should not exceed 8% of the total applications submitted by each adoption agency in 2003 (up from 5%). The 8% quota means a lengthy wait for singles wanting to adopt from China.

- **South Korea:** PAP's who are considering adoption should be aware that the Korean government has expressed its intent to eliminate the need for ICA of Korean orphans by 2012 by encouraging domestic adoption of all Korean orphans. In support of this policy, the Korean government has established specific numerical quotas for ICA that are currently being reduced by 10 percent each year.

- **Thailand:** For many years, Thailand has allocated quotas on the number of children that each receiving country can adopt. Thailand decides with whom it wants to cooperate, and how many children may be adopted. These quotas do not apply to children with special needs. According to the Thai Central Authority, special needs children include amongst others those that are older than 4 years old, children with a health problem and those who have a mother who suffered from mental illness or intellectual deficiency.

- **Ukraine:** In 2007, the State Department for Adoption and Protection of the Rights of the Child (SDAPRC) of the Ukrainian Ministry of Family, Youth, and Sport announced changes affecting the processing of ICA cases in Ukraine. In order to manage intake of applications and prevent backlogs, Ukraine established a quota of 2000 ICA cases for 2007.

As for receiving countries:

- **Australia** has developed some guidelines for its own prospective adopters to deal with quotas imposed by countries of origin¹¹¹.
- **The Netherlands**, in which the preparation of PAPs is mandatory, has developed a practice, in which the waiting period for PAPs is arranged at the beginning of the procedure for obtaining an authorisation, in principle, to adopt a first child¹¹². By doing so, Dutch candidates wait to start the national procedure, instead of waiting for a child proposal coming from the countries of origin.

3.4.2 Regional initiatives concerning birth registration

There are some regional initiatives worth highlighting concerning the birth registration issue. The Inter-American programme for universal civil status registration and the 'right to identity', which was adopted in 2007 are two positive examples. The Organisation of American States is also working to strengthen the institutions in charge of civil status registration. This technical assistance project includes, among other things, mobile registration units, and registration campaigns in hospitals and schools. Significant progress has already been observed. In Haiti, for example, over 4.2 million Haitian citizens have been registered in the civil status registry thanks to a local project. Similarly, in Honduras, 400,000 certificates of the National Registry of Persons have been digitally recorded, and in Guatemala, significant registration efforts have been undertaken with indigenous populations. Similarly, an increasing number of conferences are being held on this issue, in order to raise awareness and disseminate the main principles and the pitfalls to avoid¹¹³.

3.4.3 Examples of countries that forbid private and independent adoptions

Some countries strictly forbid private and independent adoptions such as Norway¹¹⁴ and Bolivia¹¹⁵. As summarized by Nigel Cantwell: *“Some receiving countries, such as Italy or Sweden, require all ICAs to be conducted through accredited agencies, regardless of the Hague status of the country of origin. In contrast, others such as France and Switzerland currently put few restrictions on independent adoptions by their citizens; provided that they have certificates of fitness to adopt and that the country of origin in question has not ratified the HC and also allows this practice. Yet others fall in between: Belgium, for example, has a system of “independent” adoptions that are in principle supervised by its Central Authority »*¹¹⁶. In Australia, private adoptions are prohibited in the majority of States and Territories with criminal sanctions (eg: section 11 NSW Adoption Act 2000) and the New-South Wales Community and Family Services specify that *“community services will not support applications to independent adoption agents in another country”*¹¹⁷.

4. FORCED RELINQUISHMENT AND ABANDONMENT

Steps in the adoption process	Child's birth	Child is separated from birth family	Declaration of child's adoptability	"Matching" with an adoptive family	Child leaves the country of origin
Grey zones	Child production and harvesting	-Forced relinquishment / abandonment -Child abduction	False orphan status, questionable judicial approvals	Unclear role of adoption agencies	Orphan visa

4.1 DOCUMENTED CASES

4.1.1 Forced relinquishment and abandonment for economic reasons

MARSHALL ISLANDS	2003	Offering a pittance and promises, recruiters solicit Pacific Islanders to fly overseas and give up their newborns for the lucrative American trade. Because the Marshall Islands is a former U.S. trust territory, the women do not need visas to enter Hawaii, and agencies enroll them in Medicaid to pay for medical expenses. Reportedly, the mothers often do not understand they are permanently relinquishing their children, while PAP pay about \$25,000 to adopt ¹¹⁸ .
MOLDOVA	2007	Poor women are convinced to relinquish their babies in orphanages; but when they decide to take back their children, they are told they have been adopted ¹¹⁹ .

4.1.2 Forced relinquishment and abandonment due to national policies

SOUTH KOREA	2010	Unwed mothers are persuaded by the adoption agencies to relinquish their children and, then, are prevented from keeping in contact with them ¹²⁰ .
CHINA	2011	Corrupted family planning officers, instead of fining families who have additional babies, convince them to relinquish them for adoption ¹²¹ .

4.1.3 Forced relinquishment and abandonment based on an improper consent¹²²

AUSTRALIA	1940 - 1980	On October 2010, the West Australian government formally apologized to unwed mothers who were forced to relinquish their children between the 1940's and the 1980's. According to one official, the tactics included demanding consent for relinquishment while the mother was still drugged from giving birth, not allowing mothers to see or hold their babies, and telling mothers their babies had died ¹²³ .
SIERRA LEONE	1996 - 2004	Sierra Leonian police investigated claims by 40 parents stating that their children were trafficked to the US from the northern city of Makeni, and accusing the NGO "Hanci" of being responsible ¹²⁴ .
KENYA	2008	Elizabeth Rioba was told her youngest son would enjoy a foreign education; however, he was adopted by a Polish couple who claim the procedure was fully legal. Though Mrs Rioba signed papers, she didn't understand them ¹²⁵ .
ITALY	2009	The European Court of Human Rights condemned Italy for allowing the adoption of twins, 27 days after their birth, without listening to their mother. She had not recognized the children and wanted a time of reflection before the court hearing ¹²⁶ .

NEPAL 2010 While Rajan and Kumar Nepali had been told their children would be cared for by the children's home, they were, in fact, put up for adoption abroad. Indeed, Rajan and his wife filled documents they could neither read nor understand because of their illiteracy. The couple filed an official complaint with the help of a local charity and succeeded in getting their children back¹²⁷.

Focus:

- Regarding the Kenyan case, the author of a newspaper article reminds the reader that *"such tragic misunderstandings are common in part of the world where adoption is a foreign concept (...)"* Indeed, *"there is no word for adoption in Rioba's Swahili language (...)"*. However, it is common for Africans to send orphaned or impoverished children to live with richer relatives. Thus, the Nairobi-based UNICEF expert says *"networks of traffickers are exploiting the confusion between African custom and Western concepts of adoption."* This explanation also holds true for Asian countries like Nepal, Thailand, etc.
- In the Italian case, the Court noted that the Defendant State had ratified the European Convention relating to adoption, according to which the consent of a parent in the adoption of their child should be accepted only after the expiry of a period that *"must be less than six weeks"*¹²⁸. Italy was condemned for a violation of the article 8 which protects the private life. The European judges explained that *"it was essential for the applicant to be able to express herself before the court and challenge the choice of abandoning her children,"* and that *"the State had an obligation to ensure that the consent given by the applicant for the abandonment of her children had been clarified and accompanied by adequate safeguards »*. The judges in Strasbourg considered that too short a time had elapsed between the birth of twins and

the decision of the Court on the adoptability children (27 days). With this decision, the European Court of Human Rights emphasized the importance for the birth parents of a time to think the possibility for them to retract their decision.

4.2 IDENTIFIED CAUSES

4.2.1 Consent to adoption

Biological mothers are at the centre of social and financial pressure to give up their children for adoption¹²⁹. They are often the easy prey of go-betweens, organised crime or adoption agencies. As for the latter, their role sometimes turns out to be ambiguous, especially when they are offering shelter to birthmothers but also placing their children for adoption. In these cases, there is an obvious conflict of interest on the part of the adoption agencies, particularly at the financial level. On the one hand, the mothers feel indebted to the institution which has made funds available to them which they are not able to reimburse. On the other, their consent may be obtained by deceit if they are illiterate or feel pressured to repay the agency. These situations are unfortunately not unusual and result in life-long abusive and traumatic separation of the child and birth mother. The *Terre des Hommes*' report on Nepal¹³⁰, an ABC News report on in Ethiopia¹³¹ and the case of Ruc children in Vietnam (see 3.1.4) highlight the trauma these birth mothers experience and their words convey only shame, unhappiness and tears.

Depending on the country they live in, birth mothers also suffer moral and social disapproval. Many of these women come from impoverished backgrounds and are subjected to strong cultural, family, and religious pressures (for example, by rejecting pregnancies that are out of wedlock). The way that society and professionals look at them is, consciously or not, largely accusatory and judgmental. How can we expect that these women can speak freely under such conditions? The responsibility weighs heavily on professionals who accompany these women. A large part of the birth mothers' decision to relinquish custody of their child rests upon the professionalism, multi-disciplinarity and humane quality of the staff that surround them. The question arises as to the capacity of the latter to encourage these mothers to express their feelings freely in relation to the circumstances of their pregnancy as well as the fears that surround them and her possible rejection of the child.

Article 4 of THC-93 sets very clear conditions regarding the way biological parents shall give their consent to adoption. They must have been counselled and duly informed of the effects of their consent, especially "*whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin*". The consent is to be given freely, in the required legal form, expressed and evidenced in writing and not induced by payment or compensation of any kind. Central authorities have then the obligation to ensure that these conditions are respected (article 16 THC-93).

"1. I freely consent, without threat or coercion, to the adoption of this child.

2. I understand that my child may be adopted by spouses or a person residing abroad.

3. I understand that the adoption of this child will create a permanent parent-child relationship with the adoptive parent(s).

4. I give my consent for the purpose of an adoption that terminates the pre-existing legal parent-child relationship between the child and his or her mother and father.

5. I have been informed that I may withdraw my consent until.... and that after that date my consent will be irrevocable.

I declare that I have fully understood the above statements."

Guide to Good Practice, sample of statement of consent, annex 7-2.

When financial assistance is given to parents who relinquish a child for the purpose of adoption, it can be perceived as an incentive for adoption. As David Smolin highlights: *«Under these circumstances, it is very hard to draw a clear line between lawful relinquishment and illicit purchase of a child. Where there is no clear line between lawful adoption and illicit child buying, even notorious systems of explicit child buying seem difficult to prosecute or prevent»*¹³².

Despite significant progress, forced relinquishment remains a significant cause of abuse in ICA, as highlighted in this chapter. Alleged difficulties in tracing biological parents in case where there are doubts about the circumstances of the relinquishment should never be a sufficient reason to ignore the problem. In practice, however, this happens quite frequently.

4.2.2 Retraction right

The right to confirm relinquishment once consent to an adoption has occurred is also foreseen by article 4 THC-93, which states that the consent has to be given only after the birth of the child and that consent has not been withdrawn.

There are at least two ways to set a period of time for the retraction of consent by a parent: a fixed period of time is set by law after the consent to adoption is given or judicial procedure leading to the adoption itself, allowing biological parents to withdraw their consent until the court decision is pronounced (or until its decision becomes final). Fixed periods can vary from 30 days to one year, depending on the country¹³³. The judicial procedure option presents the disadvantage of being dependent on the judicial calendar, which is very often overloaded. This can lead to long waiting periods and leave the child and the adoptive parents in an insecure situation.

The existence of a time frame for reflection is important given the gravity of the adoption decision. In particular, it spares parents the trauma of having to give their consent during the emotionally and physically

challenging time surrounding the birth of the child. However, the allowance of a time of reflection is too often not adequately implemented and sometimes non-existent. In addition, counseling, when it is available, may be poor and access to information about alternative options not sufficiently explained.

4.3 SOME AVENUES OF THOUGHTS

The following points should frame the expression and/or withdrawal of birthparents' consent:

- (a) The consent to adoption shall never be expressed before the child's birth;
- (b) The minimum period of time before biological parents may express their consent to their child's adoption should be reasonable and should take place in conjunction with support to the biological parents to the create attachment between the parents and the child and to provide information on the implications of their consent. Ideally, these activities should not be undertaken by the same organisations as those active in adoption. It is suggested that the minimum period before expressing consent to an adoption should therefore be of between two and three months after birth.
- (c) Legislation may provide an additional timeframe and deadline, at the end of which the consent provided by the biological parents becomes effective. It is suggested that if consent has not been withdrawn within one or two months, it becomes final. This may give parents an additional time of reflection after their original consent is given. From a psychological perspective, the objective is that parents may better realise the consequences of their decision once the consent is formally given. Having some more time to reflect upon their decision may constitute an additional safeguard in ensuring that their decision is final. In addition, it may prevent children from remaining in a legal limbo which is in their best interests.

- (d) Finally, the consent to adoption should be expressed before any adoption proceedings are initiated, in order to prevent proceedings in which the adoptability of the child is decided simultaneously with the child's adoption.

When one addresses the issue of consent to adoption, and its withdrawal, one should also question its link to the termination of parental authority. The termination of parental rights and responsibilities, as a child protection measure, is designed to protect the child's best interests whilst legally maintaining him or her as a member of his or her family of origin (son or daughter). In comparative law, it is a temporary and reviewable measure, whose ultimate objective is, as a priority, the reintegration of the child in his or her family of origin. Although, after revision of the measure; it may end up in adoption. On the other hand, adoption is a permanent solution, when all efforts to reintegrate the child into the family of origin have failed, and which permanently modifies the child's legal filiation. Thus, one should ensure that the withdrawal of parental rights is not automatically linked with the consent to adoption.

4.4 SOME GOOD PRACTICES TO STRESS

4.4.1 Concerning the consent to adoption

A close observation of ICA shows how countries are becoming more and more aware of preventing abandonment by supporting mothers of origin. These supports should meet the individual needs of the mother and take into account their personal, social and economic situation. This principle is clearly set forth in the UN Guidelines on Alternative Care of Children (Section IV). For example, support programmes have been set up in Chile, where nurseries in schools have been created encouraging adolescent mothers to continue their studies.

The legislative advances in this matter are worth noting since the THC-93, as well as numerous domestic laws that recognise the rights and the interests of birth mothers. For example, the “Guidelines for Adoption from India” state that *“the surrender document should be executed at the free will of the biological parents/parent with no compulsion, payment or compensation of any kind by the adoption agency”*¹³⁴ . Moreover, section 233 of the Children’s Act of South Africa provides for the consent requirements for adoption. Before consenting, parents and a child who is 10 years or older should be counseled by an adoption social worker¹³⁵ .

In the majority of countries, there is, as an alternative, or an add-on, time frame for mothers and fathers of origin to give their consent to adoption. In numerous countries’ legislation, the time for reflection after the birth varies between 14 days and 3 months. For example, the Indian Guidelines state that: *“The parent/s should be informed by the agency of his/her/their right to reclaim the child within 60 days from the date of surrender. He/she/they should be made aware that after the period of 60 days the surrender documents will become irrevocable and the child will be considered free for adoption and the RIPA will be free to place the child in adoption or guardianship within or outside India”*¹³⁶ .

Similarly, the Danish practice concerning the authorization of accredited bodies foresees that *“one of the conditions they set up before granting an accredited body permission to mediate children from any given country of origin, is that the procedures taken to insure the required consents is highlighted in great detail.”*¹³⁷ Receiving countries’ legislations in this respect have no applicability in the decision on adoptability of the child in his/her country of origin. However, there are measures that may be taken by receiving countries to ensure additional guarantees. Belgium practice requires that ICA may not be recognised until the adoption appeal period – as provided for in the country of origin’s legislation - has been concluded¹³⁸ . This is a way to ensure that birthparents, or any other person of interest, will not appeal the final decision.

5. CHILD ABDUCTION IN EMERGENCIES SITUATIONS

5.1 DOCUMENTED CASES

5.1.1 Child abduction after an armed conflict

GUATEMALA	1960- 1996	The Guatemalan army abducted at least 333 children, including babies, for adoption, during the country's 36-year civil war that ended in 1996 ¹³⁹ .
EL SALVADOR	1979- 1992	Some 75,000 people were killed in the war or disappeared and were presumed dead. Among those who disappeared were hundreds of children whose parents and human rights groups say were kidnapped by the Salvadoran military during attacks. Many of them were later adopted and grew up in the US and Europe ¹⁴⁰ .
CHAD	2007	Six charity workers of the French charity Zoe's Ark and its Children Rescue operation were accused of kidnapping, by trying to fly 103 children to France from the Chad-Darfur border to be adopted later on ¹⁴¹ .

Focus: Beyond the situation of abduction *stricto sensu*, it is important to recall the dramatic consequences of evacuating children during wartime: “Of the 2,500 children evacuated from **Vietnam** to the US and UK in the 1975 ‘Babylift’, fewer than ten were reunited with their families. About 20% of the 69,000 **Finnish** children who were evacuated to Sweden during the Second World War never returned home. An estimated 5,000 **Spanish** children who were evacuated to other countries during the Spanish Civil War never returned »¹⁴².

5.1.2 Child abduction after a natural disaster

HAITI 2010 A few days after the earthquake, UNICEF reported that children had gone missing from hospitals *“raising fears of trafficking for adoption abroad”*¹⁴³.

5.2 IDENTIFIED CAUSES

Today, there is broad consensus that, in the aftermath of a natural or manmade catastrophe, ICA is not an acceptable solution. At the very least there must be a waiting period until general conditions permit full family tracing efforts to be completed regarding the unaccompanied or separated children. This position is supported by several international instruments¹⁴⁴. Unfortunately, some ICAs still take place in emergency situations, but the number is often difficult to document¹⁴⁵. These reasons for this can be partially explained by the following:

- When the media take an interest in children in countries of origin, they often depict dramatic situations in an utterly biased manner. They show crowded and poverty-stricken institutions, without saying that the great majority of children placed in them are not orphans and are not adoptable. They portray countries ravaged by war, AIDS or a natural disaster, where children have lost their parents and are left to themselves, without mentioning the opportunities for family or traditional child care. After the 2004 tsunami in Asia, everyone remembers the pictures of children alone and destitute, and the rush to adoption fuelled by these pictures. The same thing happened after the 2010 earthquake in Haiti. In this case ICAs had to take place almost from one day to the other.

The international community was asked to “save” these children, without any consideration of their individual status, familial conditions, etc. It may be understandable that these very emotional images can cause a reflex of solidarity in the public, but studies carried out after these catastrophes provide clear evidence that the great majority of these children were not orphan and were then able to be reunited with members of their family. For instance, “after 12 years of civil war in **Sierra Leone**, UNICEF reported that 98% of children who remained separated from their families were reunited with their immediate or extended family. Over a six-year period, Save the Children and the International Committee of the Red Cross helped to reunite

“Recommendation concerning the application to refugee children and other internationally displaced children of the THC-93”:

“(…) The competent authorities of the State to which the child has been displaced shall take particular care to ensure that-

a) before any ICA procedure is initiated,
- all reasonable measures have been taken in order to trace and reunite the child with his or her parents or family members where the child is separated from them; and

- the repatriation of the child to his or her country, for purposes of such reunion, would not be feasible or desirable, because of the fact that the child cannot receive appropriate care, or benefit from satisfactory protection, in that country;

b) an ICA only takes place if

- the consents referred to in Article 4 c of the Convention have been obtained; and- the information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, the child's upbringing, his or her ethnic, religious and cultural origins, and any special needs of the child, has been collected in so far as is possible under the circumstances.”¹⁴⁶.

over 56,000 children with their families after the genocide in **Rwanda** in 1994¹⁴⁷”. After the **2004 tsunami in Asia** “2,853 children [found without family] were registered and 82% were placed in family care¹⁴⁸».

- The real issue lies with the fact that there is still a lack of common approach among States on how to deal with ICA in emergency situations. The earthquake in Haiti illustrates this question, where *“within five days of the earthquake, ten countries that had taken political stances to expedite transfer and/or adoption procedures made public announcements to that effect. These countries included Belgium, Canada, France, Germany, Luxembourg, the Netherlands, Switzerland and USA. In stark contrast to these ten countries, at least 30 countries from across the regions made explicit statements against ICAs from Haiti after the earthquake. These countries heavily relied upon the international standards demanding restraint and a certain time to elapse before such alternatives should be investigated. It is important to note that countries such as Austria, Australia, New Zealand, Sweden, United Kingdom, Denmark, Norway, Italy, Spain etc. had taken specific stances not to undertake adoptions in Haiti prior to the earthquake due to a lack of safeguards”*¹⁴⁹.

5.3 SOME AVENUES OF THOUGHTS

After the 2004 tsunami, many international organizations and NGOs thought alternative care in emergency situations needed seriously attention in order to enhance children’s rights. There are some good practices that have been put into place beyond just tracing and reunification measures.

- UNICEF Indonesia’s toolkit cited the three possible alternative care options: temporary foster care, temporary shelter homes and institutional care/orphanages. However, these solutions include both advantages and risks¹⁵⁰. It is important for children to be kept in the same locality as they live or were found, except when there are safeties or health concerns. Moreover, the UNICEF toolkit stressed that *“children with disabilities are normally at higher risk of separation during an emergency due to either their immobility, sight or communication impairment”*.

- Save the Children formulated some valuable recommendations, including:
 - Targeting support towards initiatives to trace families in emergencies;
 - Implementing measures to regulate ICA at the height of emergencies;
 - Supporting initiatives to build child protection services on a long-term basis. As an example, the Italian Central Adoption Authority donated large sums to several NGOs in order, *inter alia*, to facilitate the reunification of the children with their separated or injured relatives¹⁵¹;
 - Working in the long-term to build a child welfare system orientated around family preservation and family-based care rather than institutionalization¹⁵².

5.4 SOME GOOD PRACTICES TO STRESS

After the 2004 tsunami, Indonesian decision makers developed a number of policies to prevent further separation of children from their families, including a ban on adoption, travel restrictions and deployment of policemen at exit points such as airports and sea ports to prevent children being taken away.¹⁵³ As part of the emergency response, government and civil society staff were mobilized to carry out family tracing and reunification. Issuing quick and firm statement to ban adoptions in the aftermath of a natural disaster is a practice that should be encouraged.

As quoted in the Haiti report: *“From a receiving country point of view, Spain adopted, in 2007, a specific law that states that ICA cannot be undertaken in a country that has just suffered a catastrophe or is in the middle of a war (Art.4 of Law 54/2007)”*¹⁵⁴.

6. CHILD LAUNDERING

Steps in the adoption process	Child's birth	Child is separated from birth family	Declaration of child's adoptability	"Matching" with an adoptive family	Child leaves the country of origin
Grey zones	Child production and harvesting	-Forced relinquishment / abandonment -Child abduction	False orphan status, questionable judicial approvals	Unclear role of adoption agencies	Orphan visa

The situations described in the previous chapter shed light on the different ways that children are procured for ICA. However, once the child is identified and taken from his/her family, there is still a formal obstacle to be overcome. Indeed, no ICA can take place without a formal decision, whether it is an administrative or judicial decision, the person adopting has to have their adoption recognised in the receiving country. This chapter analyses the possibilities that “make a child adoptable,” regardless of the fact that he could have been abducted, sold, etc.

According to Nigel Cantwell: *“the ‘illegality’ of that decision could thus result from situations where, variously, the required procedures have not been followed, documents have been falsified, the child has been declared adoptable without due cause or as a result of manipulation, money has changed hands... but if it is truly an adoption, rather than some other form of transfer or removal, it will necessarily and by definition have been approved by a judge. It follows that all events and acts that would make it ‘illegal’ must therefore have taken place up to and including, but not after, the judgement”*¹⁵⁵. More precisely, *“child trafficking may also consist of misuse of the rules in order to render adoptable a child who does not necessarily require adoption”*¹⁵⁶.

The term *“child laundering”* implies, according to David M. Smolin, *“the claim that the current intercountry adoption system frequently takes children illegally from birth parents, and then uses the official processes of the adoption and legal systems to ‘launder’ them as ‘legally’ adopted children”*¹⁵⁷.

Child laundering requires two steps:

- 1° the child must have been illegally taken from his/her birth family;
- 2° the official adoption process has been followed.

The first step was presented in chapter 3. The second is examined through the false orphan status' issue (part 6.1), the unclear role of some adoption agencies (part 6.2) and the orphan visa as the final step of the child laundering process (6.3).

6.1 MAKING THE CHILD ADOPTABLE: THE FALSE ORPHAN STATUS

Making a child adoptable can be done either by obtaining a false birth certificate or any other necessary documents in the adoption process, especially through corrupted officials in charge of issuing documents, or by bribing a judge to "legitimize" the fraudulent adoption.

6.1.1 Documented cases

a) Falsification of birth certificates and surrender deeds

INDIA	1995 - 2001	From 1995 to 2001, several Andhra Pradesh's orphanages sent out "baby buyers" to purchase female infants from poor families. Then, birth certificates were falsified. Thus adoption agencies working with them, involuntarily participated in the laundering process ¹⁵⁸ .
CAMBODIA	1997 - 2001	The Galindo's case is interesting in this section since, according to US investigations, it has been proved Galindo was intentionally bribing Cambodian government officials ¹⁵⁹ .
CHINA	2005	Duan Yueneng and his family sold babies to orphanages which, according to his testimony, falsified foreign adoption papers ¹⁶⁰ .

NEPAL	2008	In the 2009 Hague Conference report about Nepal, it stated that “among the Permanent Bureau’s preoccupations, we’ll highlight there the falsification of documents and false statements in order to declare a child adoptable.” ¹⁶¹ In 2008, Terre des Hommes reported that according to reports received from child centre staff, among the 1,706 children residing in 3 child centres, only 15% were double orphans ¹⁶² .
	- 2009	
RUSSIA	2008	The National Police arrested six people involved in falsifying official documents needed for intercountry adoptions in Russia. The defendants were acting as intermediaries in the adoption process ¹⁶³ .
VIETNAM	2006	“Dr Evil”, the nickname given to a Vietnamese woman who arranged 150 adoptions of babies highlights how officials at the highest level were paid to procure paperwork or to turn a blind eye to whether the adoptions were legal or ethical ¹⁶⁴ .
	2008	Police of the northern city of Nam Dinh discovered networks making false birth records so children could be adopted by foreigners. Since 2006, 2 charity centres had supplied over 300 kids to foreigners as adopted children ¹⁶⁵ .
	2009	Sixteen former medical and orphanage officials were found guilty by Nam Dinh Province People’s Court on charges of forging documents and receiving bribes from foreigners to adopt 266 children ¹⁶⁶ .

HAITI	2009	The Immigration and Refugee Board of Canada (IRBC) led an investigation in Port-au-Prince in 2008 in order to find out how some people could change their civil status by requesting a “late birth registration” using another name, without either paying a fee or being subjected to any background check. Moreover, the IRBC asserted that officials took advantage of these loopholes to change registrations of births. The result is that, in rural areas of Haiti, thousands of children do not have any legal status since very few births in these areas are registered ¹⁶⁷ .
ETHIOPIA	2010	Several Australian families found that the paperwork for their adoptions was falsified “with their child’s age dramatically altered” ¹⁶⁸ .
HONDURAS	2010	According to the Guatemalan organization “Sobrevivientes,” a Honduran criminal network falsified identity documents of Honduran babies with the help of lawyers, doctors, and policemen, in order to send them to Guatemala where they can be sold, as Guatemalan citizens, for the purpose of adoption ¹⁶⁹ .

Focus:

- In regard to the Indian case, during his enquiry, the journalist Scott Carney has put forward the means used to falsify the child civil status: “the surrender deed (...) is a fraud (...) conspirators changed the child’s name (...) and concocted a false history, including a statement from a fictitious birth mother. But surrender deeds (...) bear the signatures of Malaysian Social Services officials alongside those of the suspected kidnappers.” Carney also insists on the fact

that authorities (the state department for instance) and adoption agencies do not call into question the legitimacy of the documents. An attorney from the State department in charge of adoptions said: *"All we have is the paperwork,"* illustrating the total absence of further investigation about the content of child dossiers.

- One of the unknown dramatic consequences of the laundering phenomenon is the deportation of a child from the receiving country. One example was brought to light by the newspaper *"Times Now"* in March 2010: an Indian girl was adopted by US citizens when she was 8. Many years later, as a married woman, with two children, she was deported from the US because the adoption agency, *"Americans for International Aid & Adoption,"* never bothered to get her paperwork right. In 2010, she was away from her family for over two years, unable to go back to the US¹⁷⁰.
- In the Cambodian case, Galindo's plea, it's noted that: *"Approximately, \$ 3500 of these funds¹⁷¹ were used, in part, to pay Cambodian ministry clerks, employees or officials in order to facilitate the adoption process in Cambodia"*¹⁷². The Galindo's defence on this point (p.16) said: *"On the other hand, Ms. Galindo necessarily had to deal with those in power in government to get her work done. The Cambodian ministry having jurisdiction over the orphanages, the Ministry of Social Action, Labor and Veterans Affairs, had as a common practice, a policy of refusing to move paperwork without the payment of money. As a consequence, Ms. Galindo and other facilitators, as part of their adoption processing fees, routinely requested money from the adoptive families that went directly to the ministries, though there were no formal government fees required by statute or regulation (...) In Ms. Galindo's case, she would give the money to Ms Pol who would in turn provide it to various officials in order to get the necessary paperwork."* However, Pol Solky, a Cambodian Government orphanage director, recounted a different version of the events; indeed, she confessed that *"Lauryn Galindo paid her an extra \$200*

*to sign fraudulent paperwork associated with adoptive parent (...)*¹⁷³. The Cambodian League for the promotion and defence of human rights' President stated in 2004 that *"there is every reason to believe that these payments were bribes, given the fact that the government has stated that it does not charge adoption fees"*; under Cambodian criminal law, the payment of bribes to civil servants is a crime, both for the payer and the receiver¹⁷⁴.

b) Questionable judicial approvals (corruption of an official body)

HONDURAS 1993 In Honduras, the deputy R. Godoy estimated that as many as 90 % of adoptions were illegal¹⁷⁵. Lawyers earned about \$ 12,000 in legal fees per child to obtain false birth certificates from corrupt civil servants in the National Registry offices.

PARAGUAY 1996 A 14 month old Paraguayan baby was stolen in order to be adopted by an American couple. According to the Paraguayan adoption process, in case of doubt about parentage, a DNA test can be undertaken by the US Embassy. However, on occasion lawyers claim that biological mothers cannot be found, in order to avoid DNA test and continue the adoption process. In this case the embassies may simply allow the adoption to go through and dismiss the request for a DNA test. Paraguay's new Supreme Court Chief removed the two judges who had approved many intercountry adoptions¹⁷⁶.

KENYA	2006	An UNICEF investigation revealed that Kenyan lawyers act as “middlemen” organizing ICAs from the first to the final step ¹⁷⁷ .
NEPAL	2007	Adoptions of Nepalese children by foreigners were stopped in May of 2007 following reports of middlemen charging prospective parents up to \$20,000. Terre des Hommes has documented 68 cases of children who have been adopted abroad even though they have parents who can look after them in Nepal ¹⁷⁸ . “Paperwork is created to declare the child an orphan whereas the child could be supported in the family,” J. Aguetant commented after the publication of The Hague report ¹⁷⁹ .
GUATEMALA	2010	Alma Valle, a lawyer involved in a network related to the illegal adoption of several minors through the Association Primavera was arrested in Houston, USA. On April 2010 she was released on bail after paying \$18,000 ¹⁸⁰ . The international commission against impunity in Guatemala investigated the Primavera case. This network integrates judges, doctors, nurses, lawyers, registry officers and adoption agencies. According to the investigations, Primavera first stole or bought infants in suburban areas. Then, it started the adoption process in complicity with the officers in the birth registry office who falsified birth certificates and changed both names of children and birth parents.

Focus: In 2008, Nepal published the “*Terms and Conditions and Process for Granting Approval for Adoption of Nepali Child by Alien*”¹⁸¹. Nepal again allowed foreign adoptions in January 2009 after this law entered into force, and the country signed the THC-93. The Hague Permanent Bureau’s determined that the terms and conditions of Nepal’s 2008 law was “*not adequate as a legal framework to conduct ICAs*”¹⁸². The Terre des Hommes report drove many receiving countries to suspend ICA from Nepal, including Germany¹⁸³ and provoked very strong reactions and criticisms¹⁸⁴.

6.1.2 Identified causes

Beside the general causes presented in chapter 2, it is difficult here to identify specific causes *per se*. The opportunity to make money is, of course, the primary motivation, which is linked with the general economic conditions of high poverty levels and low-wages paid to public servants that prevail in some sending countries. What is essential here is to understand that any official paper must not be seen as being legitimate. Rather, every document should be considered as potentially fraudulent (at least in countries of origin known for having difficulties with their ICA procedures). At the end of the day, it is perhaps most important to carefully analyse what is stated in the paperwork (where the child comes from, how the birthparents consent was given, etc.) in order to understand the circumstances under which the paper was issued. We cannot consider the final stamp as being the verification of factual, legal truth of the child’s history.

6.1.3 Some avenues of thoughts

The necessity to provide for a uniform definition of an orphan child has been reaffirmed by many experts for several years now. Indeed, according to the Committee on the Rights of the Child and UNICEF, the definition of orphan includes children who have lost **one** parent, while UNHCR’s definition is “*orphans are children both of whose parents are known to be dead*”¹⁸⁵. In addition, there are variations in the age up to which children

are considered orphans (14, 15, 18 or 21 years old) and the patterns of parental death required for orphan status to be attached to a child. In some cases both parents must be deceased, in others if only one parent dies or if only the mother dies the child is considered an orphan. These various definitions have also led to the distinction between a *half-orphan* (children having lost only one parent) and *double orphan* (children who have lost both parents).

The importance of this distinction is illustrated by the following statement of US Immigration and Citizenship Service: *“the Immigration and Nationality Act provides a definition of an orphan for the purposes of immigration to the United States. A child may be considered an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The child of an unwed mother or surviving parent may be considered an orphan if that parent is unable to care for the child properly and has, in writing, irrevocably released the child for emigration and adoption. The child of an unwed mother may be considered an orphan, as long as the mother does not marry (which would result in the child’s having a stepfather) and as long as the child’s biological father has not legitimated the child. If the father legitimates the child or the mother marries, the mother is no longer considered a sole parent. The child of a surviving parent may also be an orphan if the surviving parent has not married since the death of the other parent (which would result in the child’s having a stepfather or stepmother). PAPs should be sure that a child fits the definition of “orphan” before adopting a child from another country, because not all children adopted abroad meet the definition of “orphan,” and therefore may not be eligible to immigrate to the United States”*¹⁸⁶.

Thus, the absence of clear definition, or a too complicated definition, of an orphan can lead to bad practices as the cases of Nepal and Cambodia mentioned above. The fabrication of an orphan status has, indeed, become a way to avoid much of the legal adoption process, and is often the origin of the laundering process¹⁸⁷. The word “orphan” is often sufficient to “clean” the adoption, despite the fact that in many cases nobody knows

how that label has come to be decided upon. One can also note that the same problems applies to the term “orphanage”: it is not true that simply because a child home is called “orphanage” that every child staying in it has lost both parents, and is therefore adoptable.

Therefore, the most important question is what is the general understanding of the word orphan rather than what is its exact definition. One could go as far as saying that, because of the numerous definitions of the term, orphan does not mean anything, and professionals should not make any assumptions about the fact that the word appears in a child dossier. The important fact is where the child is legally adoptable, not whether the child is an orphan under any definition.

6.1.4 Some good practices to stress

Fighting corruption is a difficult task; of course, as it takes different forms and can affect any level of the administrative system of a country, whether it is a country of origin or receiving country. As illustrated above, actions have been taken in various countries to punish people found guilty of corruption in the field of ICA. This proves that progress can be achieved if the political will is there.

In the difficult context of Guatemala, in 2006, the Commission against Impunity in Guatemala (hereafter CICIG) was created by an Agreement signed by the U.N. and the Government of Guatemala. This independent body supports the Public Prosecutors Office, the National Civilian Police and other State institutions in their investigations, among which ICA is a major one. A report dealing with the actors involved in irregular adoptions in Guatemala describes and analyses how illegal adoptions have been practiced by a whole corrupt network for years¹⁸⁸. This work has proven to be beneficial since several high level persons involved in irregular adoptions in Guatemala were accused by name including judges and attorneys¹⁸⁹ and convictions have been achieved¹⁹⁰. Finally, the recent Guatemalan Penal Code’s revision added a new article 241*ter* entitled “irregular process of adoption”¹⁹¹.

6.2 THE UNCLEAR ROLE OF SOME ADOPTION AGENCIES

6.2.1 Documented cases

INDIA	2005	The adoption agency Peace Society was indicted on a charge of tampering relinquishment deeds, creating false siblings and giving incorrect information about children. However, its license was renewed in 2005 by CARA ¹⁹² .
ETHIOPIA	2008	Private adoption agencies operating in Ethiopia to “harvest” infants and toddlers in rural zones to meet the foreigner demand, like Christian World Adoption which was involved in child trade cases in 2008 but has denied involvement ¹⁹³ .
SAMOA	2007	The American adoption agency “ <i>Focus on Children</i> ” employees were indicted in 2007 for charges of conspiracy to commit alien smuggling, fraud and misuse of visas, and money laundering, <i>inter alia</i> ¹⁹⁴ . Samoan birth families were falsely told that by signing adoption papers, their children would benefit from American education and return home at the age 18. They were told they would receive regular news and photographs. The defendants were sentenced to five-year probation and were banned for life from any participation in the adoption business ¹⁹⁵ .
UNITED STATES	2009	Adoptions Associates Inc., an adoption agency, told PAP’s it had a \$500,000 budget shortfall and might close, suspend work on

		adoptions, and be unable to offer refunds if clients did not pay an additional amount ranging from \$1,250 and \$2,500 ¹⁹⁶ .
	2009	A former Californian businessman, who swindled \$800,000 from 59 hopeful parents through his adoption business, was arrested in 2009 after being a fugitive for months. He was sentenced to 3 years and 4 months in prison, and ordered to pay \$771,474 in restitution to the victims ¹⁹⁷ .
GERMANY	2003 - 2006	The International Child Care Organization (ICCO), a Hamburg based organization was accused of trafficking Russian children for the purpose of adoption by German families ¹⁹⁸ . Clients paid 10,000 to 20,000 € for services according to German prosecutors. In addition ICCO paid half of the sum to an intermediary, an American firm, which had authorization to provide adoption services in Russia, since the German organization did not ¹⁹⁹ .
IRELAND	2001	St Patrick's Guild adoption agency was involved in the illegal adoption of Tressa Reeves' son, falsely registered as the natural child of the adoptive parents ²⁰⁰ .

Focus: Samoa, which ratified the CRC in 1994, is not party to the THC-93²⁰¹. In 2005, Samoa passed an Overseas Adoption amendment to its adoption law in order to prevent ICA unless there *“are no other suitable arrangements available in Samoa for the care, support and welfare of the child”*²⁰². In the case mentioned above, Focus on Children exploited a Samoan tradition where *“adoption refers to a common, unofficial practice of allowing children to live with relatives in other parts of the country or even in nearby New-Zealand. This involves no legal proceedings and does not sever parental rights”*²⁰³.

6.2.2 Causes

The THC-93 and the related Guides to good practice provide for a complete range of legal requirements, standards and recommendations to be applied to AAB, their structures, responsibilities and activities. Prohibiting independent adoption is one thing, but *“agency involvement is not a guarantee in itself, and a “Good Practice Guide” [...] recognizes the need for stricter accreditation and authorization of agencies involved in ICA, with special attention to the professional quality and scope of the services they provide and to ensuring that their numbers are not greater than those needed”*²⁰⁴. The GGP2 states²⁰⁵ that: *“The process of accreditation of bodies is another of the Convention’s safeguards to protect children during the adoption process”* since AAB are *“expected to play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption”*.

However, accreditation remains a cornerstone of the policy that authorities of countries of origin have to set up to regulate adoption. The fact that the AABs are based in one country and work in another country does not make this process easier, especially for the authorities in the countries of origin. However, the latter have to be very clear, and very strict, about the way they want AABs to operate. Still today, many countries of origin have insufficient control mechanisms and too limited knowledge about what is going on in the field. A well organised adoption network (without being necessarily criminal) can easily take advantage of a weak system to keep a big share of the number of adoptable children.

On their side, receiving countries have to pay attention to worrying signs including the number of ICA per AAB, the geographical origin of the child, and the names of the parties involved (especially relinquishment witnesses, lawyers, public servant, etc.). A close monitoring of yearly activity reports provides relevant information. Obviously, the need for such services has to correspond to the foreseen number of adoptions, both domestic and intercountry. In this regard, in many countries, there are too

many AABs working. This creates a situation of competition among them, which, in turn, directly influences the occurrence of bad practices and abuses. This competition is not only quantitative, but also qualitative, as most of foreign prospective adopters would like to adopt healthy toddlers.

The following cases illustrate this phenomenon:

- In **Kenya**, before the Children’s Act, the Child Welfare Society of Kenya, the oldest adoption organization in the country, had been providing adoption services for 50 years, until 2001, when adoption services were liberalised. The executive director of CWSK notes with concern that before this law :“(...) CWSK was the *alone adoption society*. Now we have 3,000 others trying to get registered”²⁰⁶.

- In **Ethiopia**, at the beginning of 2010, there were more than 70 foreign agencies operating in the country. Among them, there were 22 US Agencies licensed to operate in Ethiopia by the Government, 15 of which were established since 2005. At that time, there was also information suggesting that there were an increasing number of unaccredited orphanages and transition homes, usually operated by international agencies from which children can be directly adopted.

- In **Viet Nam**, in mid-2008, a total of 68 agencies were authorised to work on ICA - Canada (3), France (9), Italy (8), Denmark (2), Ireland (1), Spain (4), Sweden (4), Switzerland (1) and USA (42) -. The 2009 ISS/IRC report on adoption in Vietnam quotes a foreign official interviewed who declared that “*Viet Nam has been a victim of the agencies*” (page 42). According to the authors: “*Concerning this worrying phenomenon, not only is it nearly impossible to monitor the activities of so many agencies (especially without the active assistance of the embassies concerned, but also it tends to create a climate of competitiveness among them that is anything but desirable for the ethical functioning of ICA. Certain agencies themselves agreed that there has been virtually no information exchange or coordination. This is true whether it is between agencies from the same country or between agencies working with the same “orphanage” or in the same Province*”²⁰⁷.

In some cases the clues are obvious. For instance, in India, the Tamil Nadu scandal in 2005 revealed how the procedures of licensing adoption agencies were flouted and officers “*pressured to issue licence*”. If the licenses of several agencies have been revoked, they were restored very quickly. In the case of the Peace Society, the agency’s ICA licence was renewed in April 2005 despite a very worrying inspection report about child trade²⁰⁸. The same happened for the Indian agency Preet Mandir, whose authorisation was suspended, and then renewed. There are many reports about this agency on the web, like Pound Pup Legacy²⁰⁹, which gives a list of foreign AABs cooperating in a way or another with Preet Mandir. It is not our intent to imply that any of these agencies are involved in wrongdoing. Rather, we want to illustrate the fact that being on this list should act as a signal both for the AABs themselves and their respective authorities.

Practices of North American AABs have been criticized as well suspicious for their questionable practices and involvement in the ICA process, particularly because of the amount of money charged for some of their services. As recalled by Smolin: “ (...) *the United States has failed to provide a mechanism or legal authority for limiting the amount of money United States adoption agencies provide or spend within sending nations, thereby permitting agencies to continue to incentivize corruption and child laundering*”²¹⁰.

6.2.3 Some avenues of thoughts

The cases mentioned above demonstrate how adoption bodies, such as adoption agencies, can play a prominent role in child trade and child laundering. Even if these entities meet all the requirements to be properly licensed, they also have to cope with the law of “*supply and demand*.” On the one hand, they have to meet the demands of their clients, the PAPs, on the other hand, they face the realities in the countries of origin in which they are operating.

Here again, money can play a pivotal role in facilitating the ICA process, and the limit of the AABs' responsibility is not always easy to discern. This is based, in part, on the fact that the way in which different AABs operate varies considerably from one to another, and from one country of origin to another. However, making it compulsory for prospective adopters to utilize an AAB of the receiving country rather than engaging in an independent adoption is now considered as an important guarantee for good practice in ICA²¹¹. Public authorities of the receiving countries and the countries of origin rarely have the material or human resources (trained and experienced interdisciplinary staff on site in sufficient number) to fully discharge the functions of preparing and supporting children, parents of origin and/or PAPs. In addition, the obligation for the PAP to use an AAB is part of the way in which abuses, trafficking and failures stemming from recourse to independent adoption can be combated. The CRC Committee, in its recommendations to France in May 2004, recalled the risks incurred by independent adoption, and encouraged recourse to an AAB²¹².

Experience shows that the involvement of AABs of the receiving States in the ICA process can make a positive contribution to the promotion of the rights of the child deprived of a family, to respecting the principle of subsidiarity, and to provide multidisciplinary support, at various stages, to the children, the parents of origin and the adopters. The AABs' mediation increases the chances of a successful adoption and serves as an ethical guarantee.

However, mediation of an AAB in a receiving State is only a safeguard if it follows certain guidelines. Preferably, an AAB should include medico-psychosocial and legal professional expertise and sufficient human and material resources to appropriately fulfill its responsibilities. The messages the AAB conveys, and its practice, should reflect its understanding of ethics in adoption matters. It should have a sound knowledge of the entire system of adoption, of the profile of the children in need of ICA, and of the family and child policy in the country of origin with which it is co-operating. It is essential that the AAB disclose its connections to other partners in the ICA system who may have the capacity to influence the AAB's activities.

Furthermore, the AAB must be wholly transparent about its financial operations. Adherence to these conditions requires regular supervision of the AAB, and a systematic review of the accreditations granted on the part of both the concerned receiving States and States of origin.

6.2.4 Some good practices to stress

As underlined by the GGP n°2, it is essential that receiving States limit the number of AABs in their territory and ensure that their number of PAPs and the number of AABs that *“are authorised to work with particular States of origin is reasonable and realistic in regard to the number of adoptions possible in the States of origin”*²¹³. As for States of origin, the number of AABs needed should be linked to the number and profile of children in need of a family through ICA. Denmark, for example, has developed a wide range of requirements before granting an AAB an authorisation to operate in any given country of origin²¹⁴.

When adoption agencies have clearly violated ICA rules, or, at the very least, when serious indicators of wrongdoing exist, both States of origin and receiving countries must prosecute them. Unfortunately, examples of prosecution are still rare. For instance, in the Indian State of Uttar Pradesh, 33 children have been adopted through the family court in Lucknow since 2003 under questionable circumstances. Chief Justice F.I. Rebello took note of a complaint made by the Saksham Foundation, and ordered an inquiry into alleged violations of children's rights²¹⁵.

6.3 THE FINAL STEP OF THE LAUNDERING PROCESS: THE VISA

6.3.1 Documented cases

UNITED STATES	1997-2001	When US citizens petition to receive an immediate relative visa for an orphan who comes from a non-contracting State, they have to sign at least three documents under penalty
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of perjury concerning material facts related to their child being an orphan²¹⁶. In the Galindo case, the three mentioned documents were not fully completed²¹⁷.

HAITI	2005	Terre des Hommes reported that various embassies didn't properly control paperwork because they lacked both the knowledge of the process and the means to enforce it. Moreover, in American adoptions, DNA tests are rarely used since most of these adoptions are intra-family ²¹⁸
IVORY COAST	2010	Embassies are powerless to call an adoption judgement into question as they have no authority over national judicial decisions ²¹⁹ as long as the latter adheres to the minimum requirements of the national law.

6.3.2 Causes

Historically, embassies were the only actors able to build bridges between countries of origin and receiving countries. One could even argue that embassies were the only actors able to have an “official view” on the adoption process taking place in the country in which they are located. The THC-93 changed this drastically by transferring responsibilities to the central authorities of both countries of origin and receiving countries. But of course, in countries of origin where the THC-93 is not implemented, embassies remain the main intermediary and should assume a wide range of responsibilities, even if it is not adequately equipped to do so.

Indeed, THC-93 does not deal with the role an embassy may play, and article 18 only states that *“the Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.”* The

following points illustrate the difficult role the diplomatic network has to play in ICA, and the potential abuses it may face.

a) Embassies of non THC-93 countries “stand alone to make the final checks”

As quoted in the report on adoption in Vietnam: *“if embassies do have the duty to check the child dossier, and to make sure that legal requirements have been respected, most of them do not have the capacities to enter into detailed investigations. It is very rare that Embassies have personal specifically in charge of ICA procedures, and when it is the case, it is mainly because of the high number of files to be dealt with yearly, which prevents in turn for an in depth analysis of each individual situation. When the country of origin is party to the THC-93, the role of diplomatic representations is not supposed to be so crucial, as the adoption procedure should have been closely monitored by the central authority of the receiving country. (...) Clearly, the Hague system is not putting the burden of control on diplomatic representations, but on central authorities. Of course, when the country of origin is not party to the THC-93, embassies are standing alone to make the final checks. The way this is done varies greatly from one country to another, depending on the resources available and the number of files. In some exceptional cases, an embassy may take the initiative to investigate adoption cases on the ground (like the US embassy in Vietnam in 2008²²⁰), or set up a system to cross-check the information presented in the child dossier (like the Swiss Embassy in Haiti), but this remains rare”²²¹.*

At the very least, embassies should maintain regular contacts with adoption agencies from their respective countries in order to combat the *laisser-faire* attitude that too often prevails.

b) An a posteriori inefficient control

In the case of the USA for example, the US Citizenship and immigration Services (USCIS) can only conduct *“a posteriori”* investigations overseas. This means that investigations into any allegations of wrongdoing in the

ICA process can only occur after the adoption has been finalized. This kind of investigation is very sensitive since, in the event that abuse or wrongdoing is proved, the resulting separation of the child and the adoptive family can be extremely traumatic. Moreover, the burden of proof in immigration cases rests with the petitioner, i.e the adoptive parent. In a situation where money has exchanged hands in order to finalize an ICA, the petitioner must be able to argue that the child was not bought and still retains the right to a visa.

c) The inadequate co-operation between central authorities and diplomatic representations of the receiving states

The problem of deficient communication between the central authorities and the embassies was pointed out by the Hague Permanent Bureau. This issue is *“highlighted in the case of adoptions which are finalised by their nationals in jurisdictions of non-Conventions countries. Consulates **should not** issue residency visas or temporary visas to children who do not have the requisite adoption documentation from their own countries. The very act of issuing of an entry / residence visa without proper documentation from the Central Authority of the nationality of the child is contrary to the stated object of the convention provided in article 1B: to establish a system of co-operation amongst Contacting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of or traffic in children”*²²².

In addition, field visits tend to demonstrate that central authorities of receiving countries do not always follow the recommendations and warnings of their embassies. Political considerations in the receiving countries often prevent the realities in the field from being heard, which causes unnecessary tensions and promotes bad practices. This is well illustrated by David Smolin speaking about Cambodia where *“the government continued to approve orphan visa applications from Cambodia at the very same time that it conducted a successful criminal prosecution for visa fraud [in Cambodia]”*²²³.

At the very least, embassies and consulates could be asked to be more active in sharing information and provide documentation about concerns regarding irregularities they face in the respective countries in which they are located. The practice of *laissez-faire* is not acceptable, especially when the existence of risks is well-known. For instance, in the Galindo case, Lauryn Galindo was suspected of having completed the adoption documents rather than the biological parents. According to Richard Cross, the investigator, the answers for several questions concerning biological parents were listed as “unknown”²²⁴. Thus, there should have been some clear indicators that something was wrong in some dossier and a non-go decision should have been enforced by the authorities in charge in the receiving country.

6.3.3 Some avenues of thought

The role of the diplomatic network varies considerably from one country of origin to another. This depends on a variety of factors including, the number of ICA to be processed, the available resources to carry out ICA, the relations between the receiving country and the country of origin, and the legal and ethical security conditions. Furthermore, on occasion, important differences can be noted between the views of the expatriate diplomatic personnel and the perception of their respective States.

The adoption professionals of receiving countries are very often faced with countless questions about the management of ICA procedures: what is the nature of such or such a document issued by the country of origin, is it possible to ascertain the child’s background, are the invoiced costs reasonable, what is the reputation of such or such local actor, etc. Often, the first reaction is to respond by saying ‘ask the embassy.’ Yet, in most cases, diplomatic personnel are simply not able to provide answers to these questions. Indeed, a diplomatic mission is not meant to question the politics, policies or practices of the country hosting it. On the contrary,

diplomatic staff must be sensitive to, and respectful of, that country's sovereignty. Staff may certainly search for information (laws, social and political context, etc.), but it cannot, in principle, send personnel to the field in order to undertake criminal investigations (fraud in documents, corruption) or social inquiries (biological parents' consent, background of the child, etc.). If these types of activities are undertaken in some countries of origin, it is either because the embassy has been granted permission by the national authorities to do so or by taking advantage of a certain level of *laissez-faire* by the latter. Whatever it may be, it is important to remember that the diplomatic network often has neither the right, nor the capacity, to respond to the request for investigations that it receives from the receiving country.

Within the framework of the adoption process itself, the embassy will check the content of the adopted child's file in order to issue his/her travel document. However, here too, the embassy's intervention has limits that go beyond obvious abuse cases. In cases where it is determined that there are insufficient safeguards to authorise adoptions, it is incumbent upon the receiving country to intervene, either by requesting additional information from the country of origin, or by limiting or prohibiting ICA with the above-mentioned country. The ISS/IRC's assessment missions have repeatedly shown that the reality of the ICA process experienced by diplomatic missions were sometimes very distant from the views of their respective countries. It is not unusual for the diplomatic corps, and its teams, to adopt a critical view of ICA in 'their' country, whereas the receiving country, which they represent, appears to be more inclined to turn a blind eye in order to maintain a certain number of adoptions per year. Differences in views also naturally exist amongst diplomatic missions. This is not without consequences for the country of origin, which may hear a number of different views by different stakeholders each of whom has a different set of needs and wants. This lack of coordination has contributed to keeping the *status quo*, and fostering situations in which safeguards remain insufficient, thereby allowing abuses and bad practices to continue.

ICA surely is not the diplomatic missions' first concern, despite the fact that embassies and consulates remain essential actors in the process. It is, therefore, important for their personnel to be better aware of, and better trained to, understand the complex and delicate issues linked to adoption. Knowledge of the field, information networks and diplomatic status remain very useful tools in the positive development of ICA and we must ensure that they are incorporated into the domestic adoption systems. This will allow for the development, of the best possible conditions and practices in ICA. Some receiving countries have already started to follow this course, by inviting, for example, representatives of the diplomatic corps to national meetings on adoption, or by involving the embassies into the various assessment processes. These important initiatives prove the need to strengthen these key relationships and to ensure the best possible coordination amongst intercountry adoption actors.

CONCLUSION

As mentioned at the beginning of this paper, our aim is not to paint too bleak a picture of ICA, but rather to draw the attention of professionals to the realities that affect the ICA process. The child dossier does not always reflect what really happened to the child, and a procedure conducted under the THC-93 is not a guarantee *per se*. We know that in order to ensure a legal, safe and appropriate adoption we must dig deeper into the child's background and not simply accept paperwork at face value. It is not acceptable to continue to disregard warning signs and ignore bad practices. ICA is a complicated matter without simple answers. By trying to shed light on the grey zones of ICA, this study demonstrates that any adoption procedure can be affected by illegal activities that are not easy to identify or combat. We realize that there is still a long way to go before receiving states and states of origin will be in a position to guarantee that every child is adopted in the right way and for the right reasons. We also acknowledge that much in this paper can give rise to a pessimistic view of ICA. However, we remind the reader that the fight for ethical, legal and safe ICA is still very new. This year THC-93 celebrates its 19th anniversary, coming close to its age of reason. Tremendous progress has been made during this period, in particular in the involvement and commitment of countries to improving the system. Good practices highlighted in this paper clearly show that solutions exist, when there is sufficient political will and resources are available.

The writing of this study has also challenged its authors to ponder the various consequences connected to the various sorts of abuses analysed. Firstly, the consequences of a legal nature, first of all, when, for example, the return of the child is ordered within his/her family of origin in the hypothesis where its wrongful removal has been demonstrated. This situation has just occurred in Guatemala and the international community wonders about the viability of such a decision of justice and its compatibility or not with the best interest of the child. Secondly, the consequences of a psychological nature then: how will the children

adopted in a fraudulent way be accompanied when they discover the truth? The adoptive parents, often ignorant of the fraudulent character of the adoption which they undertook in such or such country of origin, will also have to benefit from psychological support, via, for example, an international family mediator. Again, the families of origin do not have to be, for one more time, forgotten. Their voices must be heard and their pain relieved.

As a conclusion, the authors wish to address all these protagonists: the adopted and the adoptive families discovering the fraudulent reality of the adoption which binds them and the deceived biological families which fight to find their children or, at least, have the possibility of saying to them that they never wished to give them up. We are conscious of the steep character of this study, but it is necessary shed light on this subject, at the risk of awakening or confirming doubts for some adopted and/or their adoptive families. It is also the occasion reflect on the way support the adopted child, families of origin, adoptive families and professionals, should be made available when they face this type of questioning. The ISS/IRC commits itself to investigating this new theme, which risks well to occupy the ICA world over these coming years.



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FOOTNOTES

¹ Status on December 2011. To be noticed that the following additional States have signed but not ratified THC-93: Russian Federation and Nepal. For updated status and content, see:

http://www.hcch.net/index_en.php?act=conventions.status&cid=69

² These countries were in 2010: China, Ethiopia, Russia, Colombia, Haiti, Vietnam, Ukraine, South Korea, India and Kazakhstan (this latter replaces Guatemala that was one these ten first countries in 2009).

³ Light blue in the graph.

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¹⁶ Nigel Cantwell, “Intercountry adoption – Commentary on the number of adoptable children and the number of people seeking adoption internationally”, International child protection- The Judges’ Newsletter, vol.V., Spring 2003, pp.69-73, available at: http://www.iss-ssi.org/2009/assets/files/others/comment%20number%20adoptable%20children_eng.pdf

¹⁷ E.J. GRAFF, “The Lie we Love”, Foreign Policy Review, October of 2008, available at: http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love?page=0,0

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⁴⁹ See at :
<https://www.icbf.gov.co/icbf/directorio/portel/libreria/xls/COSTOSIAPASFEBRERO15DE2011.xls>

⁵⁰ Until the PAPS’ approval, all costs relating to compiling the files, as well as the expenses relating to the child, are borne by the institution or the foster family, which is caring for the child [art. 42 Decree]. However, from the time of approval, all fees, including those of the lawyers, are the responsibility of the applicants. After the approval – except in cases of relative adoption – in order to meet the child’s needs, the PAPS are required to submit a financial contribution to the Central Authority, which will transmit it to the institution or to the foster family, which has care for the child [arts. 43 and 44 Decree]. For full domestic adoptions, the financial contribution is set at 1,500,000 Ariary per child (approx. 570 Euros). For full intercountry adoptions, the said financial contribution amounts to 800 Euros per child [art. 44 Decree].

If during the procedure, the said financial contribution appears insufficient to meet the needs of the child, the adoptive parents are required to pay an additional amount – requested and duly justified by the institution or the foster family – to the Central Authority, which is responsible for ensuring that it reaches the mentioned institution or foster family [art. 45 Decree]. A 5% charge is also retained to cover the costs of services provided by the Central Authority [art. 46 Decree].

⁵¹ See at : <http://www.aai.gov.ie/index.php/intercountry-adoption/whats-new.html>

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⁵⁵ Ijeoma Ezekwere, "Nigerian police crack illicit baby trafficking ring", available at: <http://www.reuters.com/article/idUSL12808424>

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⁵⁸ See: <http://www.uoregon.edu/~adoption/topics/babyfarming.html>

⁵⁹ In February 1928, William and his wife Lila Young opened the "Ideal Maternity Home and Sanitarium" unofficially specialized in selling babies to adoptive parents. See: MEIER, P., Small commodities: how child traffickers exploit children and families in intercountry adoption and what the United States must do to stop them, Journal of Gender, Race and Justice, Sept.2008 <http://www.accessmylibrary.com/article-1G1-191777047/small-commodities-child-traffickers.html>

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⁶² "2 in Baby-Selling Case Were Long Under Scrutiny", The NY Times, 29/05/1999, available at:

http://www.nytimes.com/1999/05/29/nyregion/2-in-baby-selling-case-were-long-under-scrutiny.html?scp=105&sq=trafficking%20adoption%20children&st=cse&page_wanted=print. In USA, this phenomenon is not new. Indeed, in the first

middle of the XX^o century, child trade already created scandals. Among these scandals, is Georgia Tann who sold children to families anxious to adopt.

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⁶⁴ “Pakistani Gang Said to Kidnap Children to Be Sold Abroad”, The NY Times, 17/03/2002, available at:

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<http://marketplace.publicradio.org/display/web/2010/05/05/pm-dark-side-chinese-adoptions/>. Chen Zhijing worked in an orphanage in Hunan province in the late 90's; thus, when she found an abandoned baby in the street, she brought it to the orphanage. However, she testifies the orphanage wanted more babies and proposed to pay \$ 120 each. The “price” reached \$ 500 in 2005. Obviously, the orphanage had to face the higher demand since China's intercountry adoption was booming at that time. Duan Yueneng also sold babies to orphanages; he enlisted his wife and his sister to find more babies. They had a contact 600 miles away who collected unwanted babies in local hospitals. Duan's mother explains how they travelled with babies from Zhanjiang to Hunan: “We put six babies in three big powdered milk cardboard boxes. We put two babies in each box. My daughter went with me. We boarded the train at Zhanjiang station. In the middle of the trip, one box fell. Then, I started feeding them, one after another. Each of us was holding one baby and we had other four babies in two boxes. In 2005, Duan and his family were arrested and convicted on charges of trafficking 85 children. According to Brian Stuy, Research China's director, “baby selling is systemic in China” and according to him, “it's still happening today”.

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<http://www.lne.es/cultura/2011/03/25/vidas-robadas/1050579.html>

⁸⁸ The Assembly also recommends that the governments of member states which have not yet done so: 9.2. take all possible steps to make it compulsory and free of charge for births to be declared at the registry office or with another responsible authority, and to provide every child with a personal identity document;

Available at :

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/erec1828.htm>

⁸⁹ The Parliamentary Assembly states that: “the registration of all children at birth be an obligation totally free of charge for parents; provision could be made for incentive measures for such registration, for example by means of an allowance paid on the birth of the child.” (§12) Available at:

<http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1624.htm>

⁹⁰ “En México, el once por ciento de los niños menores de cinco años no están registrados, no existen y por ello no tienen acceso a servicios sociales como la educación y la salud que garantiza la Constitución”, Gabriela RAMIREZ, Adoptantis Newsletter, August 2010, available at:

<http://adoptantis.org>

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http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

⁹³ Available at: <http://www2.ohchr.org/english/law/crc.htm>

⁹⁴ Available at : <http://www2.ohchr.org/english/law/crc-sale.htm>

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⁹⁶ Article 175 of the Criminal Code: “(1) Whoever, in violation of the rules of international law, uses force or threatens to use force or by fraud, kidnapping, abuse of position or authority solicits purchases, sells, hands over, transports, transfers, encourages or mediates in the buying, selling or handing over of another person or who conceals or receives a person in order to establish slavery or a similar relationship, forced labor or servitude, sexual abuse or illegal transplantation of parts of a human body, or who keeps a person in slavery or in a similar relationship shall be punished by imprisonment for one to ten years”, Available at : http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Criminal-Code.pdf

⁹⁷ Article 373 of the Penal Code: “Whoever buys, hires or otherwise obtains possession of any 164[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, Available at:

<http://www.mppolice.gov.in/Static/IPC%20and%20CrPC/IPC/ipcmain.htm>

⁹⁸ 50 countries answered the questionnaire :

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¹⁰⁰ Available at : http://www.hcch.net/upload/wop/adop2010concl_e.pdf

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<http://www.cwa.org/ethiopia-statement.htm>, also see the CBS NEWS short video: <http://familypreservation.blogspot.com/2010/05/must-see-video-news-report-about-child.html>

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¹⁹⁸ Since the end of June 2006, International Child Care, is no longer allowed to handle adoption cases in respect of intercountry adoption

¹⁹⁹ “Germany probes illegal adoption ring”, RT, 19/05/2010, available at: http://rt.com/Top_News/2010-05-19/germany-probes-illegal-adoption.html

²⁰⁰ “In search of a long-lost boy”, Irish Examiner, 19/04/2010, available at: <http://www.irishexaminer.com/ireland/kfkfqlgbcwql/rss2/>

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²⁰² Available at:

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²⁰³ See:

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²⁰⁴ Issue paper “Adoption and children, a human right perspective”, Strasbourg, 28 April 2011

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²⁰⁷ The following considerations are excerpted from the ISS-IRC report “Adoption from Viet Nam. Findings and recommendations from an assessment”, November 2009, available at: http://www.iss-ssi.org/2009/assets/files/news/vietnam%20report_ENG.pdf

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²⁰⁹ <http://poundpulegacy.org/node/11071>

²¹⁰ “Abduction, Sale and Traffic in Children in the context of intercountry adoption” David M. SMOLIN, Information Document N°1 for the attention of the Special Commission of June 2010, available at: <http://www.hcch.net/upload/wop/adop2010id01e.pdf>

²¹¹ Some countries of origin (Bolivia, China, Ethiopia and India, for instance) and some receiving countries (Denmark, Finland, Norway, Sweden for instance) have made it compulsory to resort to an AAB.

²¹² CRC Committee, Concluding Observations: France (CRC/C/15/Add.240, 2004), para. 33.

²¹³ See at: http://www.hcch.net/upload/wop/adop2010_pd02e.pdf

²¹⁴ See at : http://www.hcch.net/upload/wop/adop2010pd03b_dk.doc

²¹⁵ See at : <http://www.sify.com/news/uttar-pradesh-child-adoptions-under-court-scanner-news-national-lbjxaebehfh.html>

²¹⁶ One of the questions asked in the first document is: “Has the remaining parent, in writing irrevocably released the orphan for emigration and adoption?”

²¹⁷ David M .SMOLIN, Child laundering : How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children, available at <http://law.bepress.com/cgi/viewcontent.cgi?article=3679&context=expresso>

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²¹⁸ « L’adoption internationale en Haïti, Evaluation rapide », TERRE DES HOMMES & UNICEF, July 2005, available at :

http://www.haiticulture.ch/pdf/haiti_adoption_internationale_rapport_2005.pdf

²¹⁹ Assessment of the Adoption system in Ivory Coast; ISS 2010; <http://www.iss-ssi.org/2009/index.php?id=49>

²²⁰ Summary of Irregularities in Adoptions in Vietnam (04/25/2008), available at:

http://vietnam.usembassy.gov/irreg_adoptions042508.html#top

²²¹ “Adoption from Viet Nam. Findings and recommendations of an assessment”, ISS report, November 2009, available at: http://www.iss-ssi.org/2009/assets/files/news/vietnam%20report_ENG.pdf

²²² Accreditation and adoption AAB: general principles and guide to good practice no 2 under the Hague convention of 29 may 1993 on protection of children and co-operation in respect of intercountry adoption drawn up by the permanent bureau, § 801, available at:

http://www.hcch.net/upload/wop/adop2010_pd02e.pdf

²²³ “ Child laundering: how the intercountry adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping and stealing children”, David SMOLIN, 2005, available at: <http://law.bepress.com/cgi/viewcontent.cgi?article=3679&context=expres>

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²²⁴ Affidavit of Richard Cross, §17.