

The Financial Aspects of Intercountry Adoption

(provisional edition pending completion of the French version)

Fact Sheet No 2 for the 2015 Special Commission meeting

For discussion on Thursday 11 June 2015

Background

The 1993 Hague Intercountry Adoption Convention (“1993 HC”) establishes standards and guarantees for the protection of children who are adopted across national borders. To reach these standards and fulfil these guarantees, a number of professionals, working in government and non-government offices, need to be involved in the intercountry adoption (“ICA”) process.

The 1993 HC therefore allows authorities, accredited bodies and approved (non-accredited) persons and bodies in receiving States and States of origin to charge reasonable and lawful fees for services provided. However, the 1993 HC also prohibits improper financial or other gain and recognises that the costs of ICA should be well regulated and limits should be established to ensure that they remain reasonable in relation to the services rendered.

What are the objectives?



Ensure that ICA takes place in the **best interests of children** and with respect for their rights



Promote **transparency, reasonability and accountability** in relation to the financial aspects of ICA



Prevent financial practices contrary to the objects of the 1993 HC, including improper financial or other gain



Address financial practices contrary to the objects of the 1993 HC



Protect ICA against **corruption and commercialisation**



Help States to effectively **legislate, control and monitor** the financial aspects of ICA in accordance with the 1993 HC

Some key rules and requirements in relation to the financial aspects of ICA set out in the 1993 HC include:

- ❖ Contracting States and Central Authorities have the obligation to take all appropriate measures to prevent improper financial or other gain in connection with an ICA and to deter all practices contrary to the objectives of the 1993 HC (Art. 8);
- ❖ Competent authorities of the State of origin have to ensure that the consent of the child and of the persons, institutions and authorities whose consent is necessary for adoption “have not been induced by payment or compensation of any kind” (Art. 4 c) (3) and (4); see also Art. 29);
- ❖ No one shall derive improper financial or other gain from an activity related to an ICA (Art. 32(1));
- ❖ Central Authorities are bound to co-operate to carry out their obligations, including those obligations relating to the financial aspects of ICA (Arts 7 and 9);
- ❖ Adoption Accredited Bodies (“AABs”) shall pursue only non-profit objectives; their financial situation has to be subject to supervision by the competent authorities of their State; and staff remuneration shall not be unreasonably high in relation to the services rendered (Arts 11 a) and c) and 32(3)).

! See also Art. 21 of the *UN Convention on the Rights of the Child* and Art. 3(1) a) of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*.

The challenge today

The problems surrounding the financial aspects of ICA, including those arising from contributions, co-operation projects and donations,¹ directly affect children, biological parents and prospective adoptive parents (“PAPs”), as well as the reputation and legitimacy of ICA as an option among the possibilities for alternative care.

Improper financial or other gain is often linked with, in particular, the procurement of children for adoption. In its worst form, this may involve the abduction, the sale of, or traffic in children for ICA, especially where the safeguards of the Convention are not in place.

Therefore, one of the most complex challenges in ICA today is to ensure that money is used to facilitate a professional ICA process, operating in the best interests of children, rather than being used to corrupt and commercialise ICA, and ultimately cause the development of an international “market” in children.

The main problems and ideas for the way forward

Extracts from the “Note on the Financial Aspects of ICA” (hereinafter, “the Note”) and the “Summary List of Good Practices on the Financial Aspects of ICA” (hereinafter, “the Summary List of Good Practices”), see p. 3.²

Clarity and consistency in the use of terminology

PROBLEMS:

- ❑ A number of key terms, either mentioned in the 1993 HC or deriving from practice, are undefined.
- ❑ The lack of definitions can cause ambiguity, confusion and inconsistent interpretations.

WAY FORWARD:

- ✓ Consistent use of the Harmonised Terminology.
- ➔ See further the **Harmonised Terminology on the Financial Aspects of ICA**.³

Transparency regarding costs

The recent responses of States to Questionnaire No 1, Prel. Doc. No 1 of July 2014 (“Q1”) and the 2014 Country Profiles (“CP”) show that while costs have become more transparent and more closely regulated and monitored in some States, there is still much work to be done.

PROBLEMS:

- ❑ Lack of transparency: often costs are not fully disclosed or, even if disclosed, are not easily accessible and up to date.
- ❑ The use of cash and the absence of receipts in some States makes it very difficult to know to whom the money is actually going and for what purpose. This can lead to corruption.

WAY FORWARD:

- ✓ Provide comprehensive, precise, accurate and up-to-date financial information.
- ✓ Ensure wide publicity of this information so that it is accessible by PAPs.⁴
- ✓ Notify PAPs in advance and create a timetable of payments for PAPs.
- ✓ Secure financial transactions, e.g., by using bank transfers and not cash.⁵
- ✓ Ensure transparency and accountability regarding the use of any money paid in relation to an ICA, e.g., by making payments through AABs.⁶
- ✓ Promote co-operation between States to ensure transparency in the end use of payments made.
- ✓ Limit costs and fees, and set standards for remuneration.

- ➔ See further the **Note at Chapter 5**.
- ➔ See further the **Summary List of Good Practices, Point 2**.

Reasonability (i.e., the level of costs)

Q1 and CP responses demonstrate that costs are better monitored in some States following implementation of the 1993 HC, but that such costs have become generally higher in recent years. States attribute increasing costs to a variety of factors, e.g., a more professional adoption process in order to better respond to the needs of adoptable children; more complex procedures; increasing controls and monitoring (e.g., of AABs); new licensing requirements; increased waiting times during various stages of the adoption procedure; a declining number of children being adopted; and increased post-adoption supervision of children.⁷ In some cases, increasing costs may also be attributable to illicit practices.

PROBLEMS:

- ❑ There are wide variations in the fees and costs charged between States of origin, between receiving States, in States themselves and between AABs, and sometimes an absence of limits on fees and costs.
- ❑ In these circumstances, the amounts charged may be unjustified.

WAY FORWARD:

- ✓ Limit costs and fees, and set standards for remuneration.
- ✓ Ensure better monitoring of costs and fees by government authorities.⁸

- ➔ See further the **Note at Chapter 5**.
- ➔ See further the **Summary List of Good Practices, Point 3**.

Contributions, co-operation projects and donations

Q1 and CP responses indicate that States continue to have differing views about contributions, co-operation projects and donations in the context of ICA.

PROBLEMS:

- ❑ Lack of transparency regarding contributions in relation to the amounts which must be paid and their purpose (i.e., end use).
- ❑ Donations involve substantial risks, in particular for PAPs who may inadvertently participate in the procurement of children or influence the consent of biological families. In addition, authorities are often unaware of donations and there is, by their very nature, a lack of traceability and accountability and a lack of monitoring, leaving considerable room for unethical practices and corruption.
- ❑ The link between contributions, co-operation projects and donations and the ICA process is problematic due to the impact these payments and projects may have on the process and the resulting potential for unethical practices. Such payments have the potential to influence the process, create dependency and expectations in the State of origin,

and encourage competition between PAPs, AABs, and receiving States.

WAY FORWARD:

- ✓ Ensure the separation of contributions, donations, and co-operation projects from the actual costs of the adoption process.⁹
- ✓ If contributions¹⁰ and donations¹¹ are permitted (or required) by a State, *see the recommended actions in the Summary List of Good Practices, Point 5.*

➡ See further the **Note at Chapter 6.**

Improper financial or other gain

Q1 and CP responses show that States take differing approaches in efforts to prevent and address improper financial or other gain.

PROBLEMS:

- ❑ Many States have a reactive approach to financial malpractice and abuse in ICA and tend to wait until problems are pervasive (often resulting in scandal at the global level, including in the media) before addressing them.
- ❑ In many States, the financial aspects of ICA are not dealt with by legislation and / or are poorly regulated.¹²
- ❑ In addition, where there is a legal framework, its implementation can be problematic often due to a lack of appropriate material and human resources, inadequate co-ordination between authorities, a lack of planning and a failure to train actors.
- ❑ As a result of deficient or inexistent regulations, as well as a lack of resources, political will, and control, a general deficiency in accountability regarding financial issues is also prevalent in many States. This means that some actors in the ICA process may not be held accountable for their actions and hence cannot be sanctioned, including for any financial malpractice.
- ❑ In many States, the enforcement of sanctions in relation to improper financial or other gain can be problematic. The level to which States have legislated in this regard varies significantly and, even where laws exist, their efficacy and implementation, including the enforcement of sanctions, may be deficient.
- ❑ The result of the situation described above can be that abuses continue and ultimately States of origin “close down” ICA or receiving States feel they can no longer co-operate with certain States of origin.

WAY FORWARD:

- ✓ Adopt a preventive approach to improper financial or other gain.¹³
- ✓ Establish and implement an adequate legal framework for financial issues.

- ✓ Ensure that the necessary funds and human resources are allocated for proper implementation of the legal framework.
- ✓ Ensure the accountability of all actors, including AABs.¹⁴
- ✓ Ensure effective and appropriate sanctions exist and are enforced.¹⁵

➡ See further the **Note at Chapter 7.**

➡ See further **Summary List of Good Practices, Points 6 and 7.**

What tools have been developed so far to help address these problems?

Experts' Group on the Financial Aspects of ICA

This Group is composed of experts from different States, international organisations, independent experts and the Permanent Bureau of the HCCH. Since 2012, the Group has been studying the problems in this field and has proposed some ways to address them. It has developed several tools described further below:

The Harmonised Terminology ...

- establishes common definitions and encourages consistency in usage and practice.

The Note on the Financial Aspects of ICA ...

- provides an overview of the already-established problems and good practices regarding the financial aspects of ICA summarised in this Fact Sheet.

The Summary List of Good Practices ...

- aims to provide an accessible and digestible list of recommended good practices.
- is a reference point for Contracting States seeking to improve their practices, as well as an important tool for those States considering joining the 1993 HC.

The Tables on Costs associated with ICA ...

- have been developed with a view to achieving maximum transparency.
- request information regarding the actual costs of an ICA in each State. The Tables do not aim to provide a definitive “total cost” for an ICA, but offer a reference point for PAPs and other actors so that they can identify if the costs they encounter are of a nature, and within the range, provided in the Tables.

Have these tools been finalised?

- Yes: following circulation to Contracting States to the 1993 HC and Members of the HCCH, the receipt of comments and further refinement, as well as final approval by the governing body of the HCCH, these

tools have been finalised and published on the HCCH website.

- The Experts' Group has recommended that they be promoted and used in future work on this topic (see below).

What will be discussed at the 2015 Special Commission meeting?

Discussions may focus on:

1. Challenges and good practices in relation to the financial aspects of ICA

Participants at the Special Commission meeting will be invited to discuss any new challenges, as well as good practices, in relation to the financial aspects of ICA, including those which they consider might inform the future work of the Experts' Group.

2. How best to promote use of the existing tools developed by the Experts' Group

Participants will need to discuss and identify the best methods of promoting within States the existing, already-developed tools (see previous section), to ensure the widest possible use of these tools. States which already use these tools will be invited to share their experiences.

3. The Tables on Costs: completion, publication and data analysis

The Experts' Group will suggest that:

- Central Authorities be in charge of collecting data and completing the Tables.
- The completed Tables be published on the websites of the respective Central Authorities, with links to the Central Authorities' websites provided on the HCCH website. In addition or alternatively, if a State so wishes, it may ask the Permanent Bureau to publish its Tables in full on the HCCH website.

4. The draft Survey for Adoptive Parents

The Experts' Group has developed a draft Survey with the principal aim of collecting information from adoptive parents on the payments made in the ICA process, with a view to promoting the transparency and reasonability of the costs of ICA. In addition, the information provided will assist national adoption authorities in addressing any problems identified in relation to the financial aspects of ICA in their country, *e.g.*, with regard to contributions, co-operation projects and donations; non-monetary gifts; unexpected increases in fees; and inappropriate payments or wrongdoing.

The Experts' Group is considering a number of issues relating to the proposed draft Survey, *e.g.*:

- The content and form of the Survey: a draft will be distributed prior to the Special Commission meeting.
- Confidentiality of the information provided: protecting the identity of the parents.
- Publication of the Survey: how the Survey will be made available to the parents.
- Use and analysis of the data: how information will be provided to the relevant national authorities and how the data will be analysed.

5. The future work of the Experts' Group

Draft Survey for Adoptive Parents

- Assisting the Permanent Bureau with the finalisation of the draft Survey in light of any comments received at the Special Commission meeting.
- Overseeing the Survey process.

Other areas of possible future work

The Experts' Group has also identified the following areas as those in which further work might be undertaken (see the Note at Chapter 8):

- Eliminating incentives for improper financial gain and profiteering.
- Avoiding the creation of dependency on income from ICA.
- Avoiding improper competition between receiving States or AABs.
- Establishing what should be considered as "reasonable" in terms of financial issues.
- Better regulation of AABs.

Questions for participants to consider in preparation for the Special Commission meeting

In light of the above, participants are kindly requested to consider the following questions for discussion during the Special Commission meeting:

Challenges & good practices

- What new challenges has your State experienced in recent years in relation to the financial aspects of ICA and what good practices have been developed (see also your State's Q1 and Country Profile response)?
- How might this inform the discussion concerning the “next steps” in this area?

Existing tools

- What methods for promoting the existing tools do you recommend?
- How can their use be encouraged in as many States as possible?

Tables on Costs

- What is your opinion on the proposal of the Experts' Group regarding the Tables on Costs (completion, publication and data analysis)?
- Do you have any additional suggestions?

Draft Survey for Adoptive Parents

- What is your opinion on the proposal of the Experts' Group regarding the Survey for Adoptive Parents (see draft to be distributed)?
- Do you have any additional suggestions?

Future work of the Experts' Group

- Do you agree with the future work proposed by the Experts' Group? Do you have any further / other suggestions? In particular:
 - Do you think this work is needed?
 - What priority should this work be given (in relation to other ICA projects)?

Further Reading

All documents mentioned below are available at < www.hcch.net > in the specialised “Intercountry Adoption Section”:

- The Note on the Financial Aspects of ICA, including the Harmonised Terminology
- The Summary List of Good Practices on the Financial Aspects of ICA
- The Tables on the Costs Associated with ICA
- Guides to Good Practice Nos 1 and 2 (Chapters 5 and 8, respectively)

- Responses of States to Q1: see questions 3, 4, 17 and 18
- Responses of States to the latest version of the Country Profile (2014) at Part X
- Previous Special Commission “Conclusions and Recommendations” from 2000 (Nos 6 to 10), 2005 (Nos 2 and 5) and 2010 (Nos 1, 4, 14, 36 and 37 e))

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- ¹ See further the Harmonised Terminology.
- ² Available on < www.hcch.net > in the specialised “Intercountry Adoption Section”.
- ³ *Ibid.*
- ⁴ In a number of States, this information is posted on websites by the government or AABs: *e.g.*, Australia, Belgium, Canada (certain provinces), China (Hong Kong SAR), Denmark, Finland, Germany, Ireland, New Zealand, Norway, Slovenia, Sweden, Switzerland, UK (Scotland) and United States of America (from the 2014 Country Profile for receiving States (“2014 CP RS”), Question 29 (f)); China (Hong Kong SAR), Colombia, Haiti, Lithuania, Philippines, United States of America and Vietnam (from the 2014 Country Profile for States of origin (“2014 CP SO”), Question 33 (f)).
- ⁵ In several States, payments are made exclusively by bank transfer: *e.g.*, Canada (certain provinces), Denmark, Finland, Germany, Luxembourg, Netherlands, Norway, Sweden and Switzerland (2014 CP RS, Question 29 (d)); Albania, Bulgaria, China, Madagascar and Vietnam (2014 CP SO, Question 33 (d)).
- ⁶ Some States require that payments be made only through AABs: *e.g.*, Canada (certain provinces), Denmark, Finland, Luxembourg, Norway and Panama (2014 CP RS, Question 29 (c)); Albania, Burkina Faso, China, Ecuador, Haiti and Philippines (2014 CP SO, Question 33 (c)).
- ⁷ See responses of Australia, Canada and Italy (EurAdopt) to Q1, Question 4 (a) and Italy (EurAdopt), Q1, Question 17 (b).
- ⁸ Many States monitor ICA costs (often through monitoring AABs): *e.g.*, Australia, Belgium, Canada (certain provinces), China (Hong Kong SAR), Denmark, Finland, Germany, Ireland, Luxembourg, Monaco, New Zealand, Norway, Sweden, Switzerland, UK (Scotland) and United States of America (2014 CP RS, Question 29 (b)); Albania, Bulgaria, Burkina Faso, Cape Verde, China, Ecuador, Guatemala, Haiti, Lithuania, Madagascar, Moldova, Philippines, Togo, United States of America and Vietnam (2014 CP SO, Question 33 (b)).
- ⁹ States that identify such separation as a good practice include France, Philippines and Romania. Q1, Question 4 (b).
- ¹⁰ Some receiving States permit contributions to be paid to a State of origin in order to engage in ICA with that State: *e.g.*, Belgium, Canada (certain provinces), Denmark, Germany, Ireland, Luxembourg, Netherlands, New Zealand, Norway, Sweden, Switzerland and United States of America. Others do not permit it: *e.g.*, Australia, Canada (certain provinces), China

(Hong Kong SAR), China (Macao SAR), Czech Republic, Finland, Monaco, Panama and UK (Scotland) (2014 CP RS, Question 30 (a)). Many States of origin do not require that receiving States pay contributions: *e.g.*, Albania, Bulgaria, Burkina Faso, Cape Verde, Chile, China, China (Hong Kong SAR), China (Macao SAR), Colombia, Czech Republic, Dominican Republic, Ecuador, Guatemala, Haiti, Hungary, Latvia, Lithuania, Madagascar, Mexico, Moldova, Panama, Philippines, Romania, Slovakia, Togo, United States of America and Vietnam (2014 CP SO, Question 34 (a)).

- ¹¹ If permitted in the State of origin, some receiving States permit PAPs or accredited bodies to make donations to orphanages, institutions or birth families in the State of origin: *e.g.*, Australia, Belgium, Canada (certain provinces), Czech Republic, Denmark, Luxembourg, Monaco, New Zealand, Switzerland and United States of America. Others do not allow it: *e.g.*, Canada (certain provinces), China (Hong Kong SAR), China (Macao SAR), Dominican Republic, Finland, Germany, Ireland, Netherlands, Norway, Panama, Sweden and UK (Scotland) (2014 CP RS, Question 30 (c)). For States of origin, some permit donations: *e.g.*, Albania, China, Czech Republic, Dominican Republic, Ecuador, Guatemala, Haiti, Lesotho, Madagascar, Moldova, Philippines, United States of America and Vietnam. Others do not: *e.g.*, Bulgaria, Burkina Faso, Chile, China (Hong Kong SAR), China (Macao SAR), Colombia, Hungary, Latvia, Lithuania, Mexico, Panama, Romania and Slovakia (2014 CP SO, Question 34 (c)).
- ¹² Among the 52 States that have completed the 2014 CP, 20 States (plus Canada for certain provinces) reported that they do not have regulations regarding the costs of ICA.
- ¹³ See, *e.g.*, the information that is provided to PAPs by the Australian government (2014 CP RS, Question 31 (b)).
- ¹⁴ For example, in some States, AABs must submit financial reports on an annual basis: *e.g.*, Canada (certain provinces), Belgium, China (Hong Kong SAR), Denmark, Norway, Sweden and United States of America (2014 CP RS, Question 31 (b)).
- ¹⁵ For example, some States list suspension or withdrawal of the accreditation of AABs as a potential sanction: *e.g.*, Belgium, Canada (certain provinces), Denmark, Germany, Ireland, Netherlands, Norway, Sweden and United States of America (2014 CP RS, Question 31 (c)); Bulgaria, Colombia, Ecuador, Lithuania, Moldova, Philippines, Romania and United States of America (2014 CP SO, Question 35 (c)).