



**Monthly Review N° 6/2008
June 2008**

EDITORIAL

**On the shared responsibility of receiving States and States of origin
in the setting of intercountry adoption costs** 

Although the issue of intercountry adoption costs remains a difficult topic to address, the sharing of responsibility between States of origin and receiving States remains inadequate in this field. However, better cooperation among States should lead to greater transparency.

There are numerous States of origin, which, for structural, economic or political reasons, are still unable to manage the monetary flows linked to intercountry adoption procedures. As it is often considered a fatality, this problem has been put aside for too long by receiving States, which believed it was not of their responsibility or merely to a limited extent. Of course, every State is sovereign and free to legislate and exercise an effective – or ineffective – control in any field of activity. Thus, it is worth noting with interest that some countries – such as Madagascar, for example – have taken encouraging measures in regulating the costs. However, the absence of rules and good practices may also escape the power of the competent authorities when the latter do not have the necessary resources to impose international standards. Nevertheless, one often notes that many countries of origin, which face poverty and its innumerable consequences, occupy leading places in the statistics of receiving countries. Thus, it is incumbent upon the latter to be all the more attentive and active in these contexts, in order to limit, as much as possible, the risks of making a business of adoption.

An initial framework

It is obviously not easy to put systems in place, which can guarantee maximum levels of transparency in the traffic of money in adoption procedures. In the 2005 document entitled *Report of the 2005 Special Commission to review to practical operation of the 1993 Hague Convention*¹, we note that the project of assessment of reasonable adoption costs was not successful – essentially, for practical reasons. The Special Commission therefore reaffirmed the 2000 Special Commission Recommendations N° 7 to 9 on the issue of costs: 'Prospective adopters should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the receiving State and the State of origin should cooperate in ensuring that this information is made available. Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.' On the basis of this theoretical framework, it then becomes a matter of reflecting on the means, which would enable make these concrete.

Greater transparency

Access to information remains a major obstacle to a project of analysis of costs, and the range of situations (signatory and non-signatory States signed; private adoption vs. accredited bodies) still complicates the task. In any case, the authorities possess sufficient knowledge and experience to be able to elaborate an initial list of basic costs, both in the country of origin and in the receiving country. A number of expenses should correspond to each stage of the procedure, whether fixed or estimated (translation costs, administrative fees in both countries, medical examination, *per diem*, if applicable, for the institution in charge of the care of children until their adoption). An exchange of views among countries of origin and receiving countries should allow for a better assessment of these costs, and a comparison among receiving countries would ensure their reliability. Accredited bodies, whose costs are carefully examined within the framework of their accreditation procedure, must also commit themselves to implement the necessary means for their respect, in particular by supervising their partners in the countries of origin.

Such steps, however, depend upon a genuine expression of willingness of the various actors involved, and we are bound to notice that the climate of competition, which currently prevails in intercountry adoption, may not be appropriate for this type of initiative.

Towards a transfer of responsibility?

In practice, one of the difficulties, which may be faced by prospective adoptive parents and accredited bodies, is that it is extremely difficult to oppose and decline a financial request, which, if not granted, may jeopardise the entire procedure. If one thinks of a system, in which the costs are set and known in advance – as

foreseen in the above-mentioned recommendations – and in which applicants and accredited bodies are expected to respect them, what would happen if, when faced with an undue request, the prospective parents and the intermediary refuse to comply, not only with the rules of the country of origin, but also with those of the receiving country? Of course, it is difficult to exclude all hidden types of payment, but it would be a matter of sending a strong signal by highlighting that the receiving countries also impose such rules. This would make it possible to avoid some of the pressure, which may be imposed on local authorities, while making the actors, which possess the ‘financial power’, more responsible.

An international project

By means of conclusion, it appears necessary for this issue to rapidly become the object of a study and discussion at the international level. In order to guarantee its feasibility, it is important for the project to benefit from a clear mandate arising from the competent authorities and institutions. Whether it is a matter for the Hague Conference, for a group of *ad hoc* experts, or for an independent body such as the ISS/IRC, the project should avail itself from the endorsement of the highest possible number of receiving States and States of origin, if it is expected to achieve conclusive results.

The ISS/IRC team
June 2008

¹ Report of the 2005 Special Commission to review to practical operation of the 1993 Hague Convention, p. 34; http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf.