

# Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption



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## Foreword

The protection of children has always been one of the pillars of the work of the HCCH and the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Adoption Convention) is one of the core instruments adopted under the auspices of the HCCH in this regard. One of the key purposes that led to the negotiation and adoption of this Convention was the prevention of illicit practices in the intercountry adoption process.

The 1993 Adoption Convention has established safeguards and procedures to ensure that if intercountry adoption takes place, it is in the best interests of the child. However, for this fundamental aim to be achieved, all Contracting Parties need to implement and operate the Convention properly. Otherwise, illicit practices may still occur. The continuing and effective protection of children thus is a collective responsibility. It is hoped that this Toolkit will assist Contracting Parties, as well as all actors and persons involved in adoption, to properly implement and operate the Convention, by providing practical guidelines on what needs to be done to identify illicit practices and enabling factors, to prevent them, and to address them if they do regrettably occur.

Preventing and addressing illicit practices is of the utmost importance for all actors, but in particular for all persons with a lived experience related to adoption. Adoption has a lifetime impact on adoptees. Adopted children become adults and want to have answers about their origins, especially if they discover that their adoption was vitiated by illicit practices.

This publication is the fruit of many years of work, dating back to 2012 when the work on the financial aspects of intercountry adoption started, and which was broadened in 2016 to include all illicit practices in intercountry adoption. The draft Toolkit was discussed and approved in 2022 at the Fifth Meeting of the Special Commission on the practical operation of the 1993 Adoption Convention, and its publication endorsed by the Council on General Affairs and Policy of the HCCH at its March 2023 meeting.

I wish to take this opportunity to thank all the members of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption for their invaluable expertise and work over the past few years. I also thank all the delegates of Members and Contracting Parties who participated in the 2022 meeting of the Special Commission for their important input. I am particularly grateful to Ms Carine Rosalia, Attorney Advisor at the Department of State of the United States of America, who ably chaired the Working Group since 2016 and co-chaired the 2022 meeting of the Special Commission. Finally, I would also like to acknowledge the colleagues at the Permanent Bureau: Secretary Laura Martínez-Mora for her leadership, Legal Officer Capucine Page, Mr Keith Loken (seconded from the Department of State of the United States of America) and Publications Officer Lydie De Loof, among many others who have contributed to make this Toolkit possible.

I truly hope that this Toolkit will be a valuable resource for authorities and bodies involved in intercountry adoption, for other professionals working in adoption, as well as for any person impacted or connected with adoption. I also hope that this Toolkit will serve as a new piece in the puzzle towards furthering the protection of children.

Christophe Bernasconi | [Secretary General](#)



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# Abbreviations







1993 Adoption Convention / Convention / HC	<u><i>Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption</i></u> done at The Hague
2017 UN Rapporteur Report	UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, <u>Thematic Report on Illegal Adoptions</u>
2020 UN Rapporteur Report	UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, <u>Final Report</u>
AAB	Adoption accredited body <sup>1</sup>
Checklist	HCCH Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Part II, Checklist to Assist Decision-Making by Central Authorities
CRC	<u><i>United Nations Convention on the Rights of the Child of 1989</i></u>
C&R	Conclusion and Recommendation
Explanatory Report	G. Parra-Aranguren, <u>Explanatory Report</u> of the 1993 Adoption Convention
Fact Sheets / FS	HCCH Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Part I, Fact Sheets on Illicit Practices
GGP No 1	HCCH <u>Guide to Good Practice No 1</u> "The implementation and Operation of the 1993 Hague Intercountry Adoption Convention"
GGP No 2	HCCH <u>Guide to Good Practice No 2</u> "Accreditation and Adoption Accredited Bodies"
Guidelines	HCCH Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Part IV, Guidelines on Enhancing Cooperation and Coordination to Prevent and Address Illicit Practices, including Patterns
HCCH	Hague Conference on Private International Law
ISS	International Social Service
List	HCCH <u>Summary list of good practices on the financial aspects of intercountry adoption</u>

All HCCH documents on adoption mentioned in this Toolkit are available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Adoption Section".

<sup>1</sup> In this Toolkit, all the content regarding AABs applies to approved (non-accredited) persons (HC, Art. 22(2)), unless otherwise indicated.

Model Procedure	<a href="#">HCCH Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption, Part III, Model Procedure to Respond to Suspected and Actual Cases of Illicit Practices</a>
Note on Financial Aspects	<a href="#">HCCH <u>Note on the Financial Aspects of Intercountry Adoption</u></a>
Note on Habitual Residence	<a href="#">HCCH <u>Note on Habitual Residence and the Scope of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption</u></a>
OPIC	<a href="#">Optional Protocol to the CRC on a Communications Procedure</a>
OPSC	<a href="#">Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography</a>
PAPs	Prospective adoptive parents
RS	Receiving State
SC	Special Commission on the practical operation of the 1993 Adoption Convention
SO	State of origin
UN Guidelines	<a href="#">United Nations Guidelines for the Alternative Care of Children of 2009</a>
UNICEF	United Nations Children's Fund

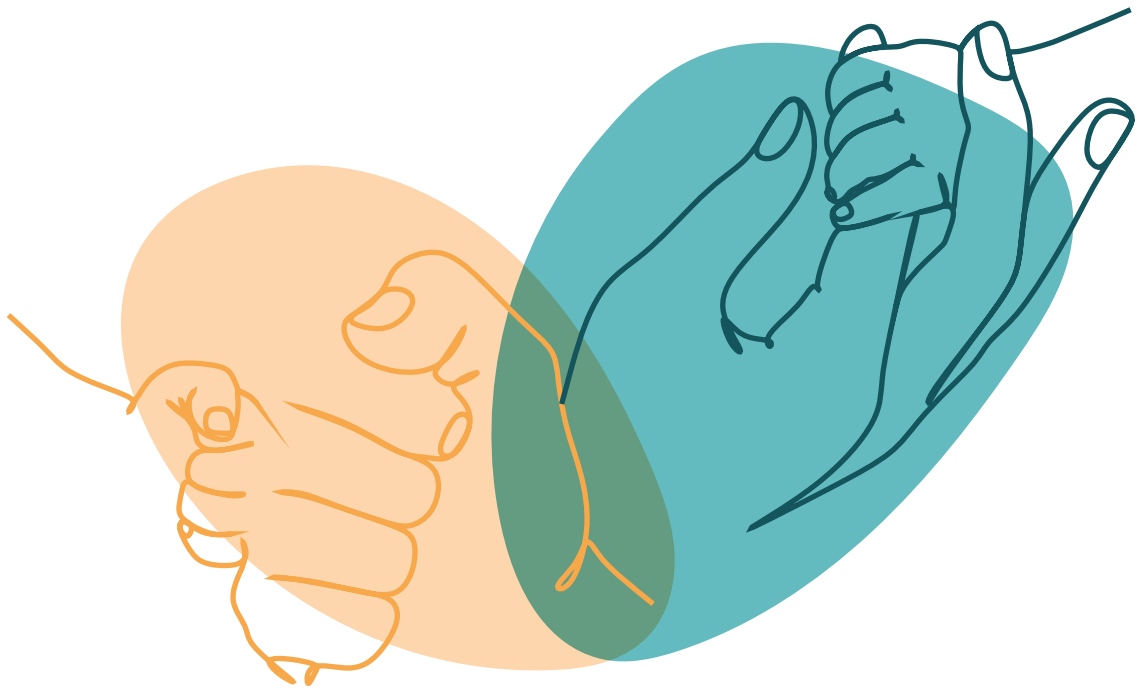
## Fact sheets on Illicit Practices

FS 1 "Abduction"	Fact Sheet 1: Abduction, Sale of, and Traffic in Children
FS 2 "Circumventing the Convention"	Fact Sheet 2: Circumventing the Application of the Convention
FS 3 "Financial Gain"	Fact Sheet 3: Improper Financial and other Gain
FS 4 "Identity"	Fact Sheet 4: Misrepresentation of Identity
FS 5 "Documents"	Fact Sheet 5: Forgery and Falsification of Documents
FS 6 "Subsidiarity"	Fact Sheet 6: Failure to give due Consideration to Subsidiarity
FS 7 "Consent"	Fact Sheet 7: Adoptability: Lack of, or Deficient, Consent

FS 8 "Unknown Parents"	Fact Sheet 8: Misrepresentation of Adoptability of Children of Unknown Parents
FS 9 "PAPs"	Fact Sheet 9: Circumventing the Procedure to Apply for Adoption, the Preparation and Assessment of PAPs, as well as the Socialisation Period
FS 10 "Matching"	Fact Sheet 10: Circumventing Matching
FS 11 "Origins"	Fact Sheet 11: No Preservation of, or Unlawful Denial of Access to, Information regarding Origins



# Introduction



## Introduction

<b>1</b>	<b>Why this Toolkit?.....</b>	<b>15</b>
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## 1. Why this Toolkit?

- 1 The 1993 Adoption Convention was developed to respond to the serious and complex human and legal problems in intercountry adoption and the absence of an international legal instrument that could respond to the situation. Thus, two of the objectives of the Convention are to “establish safeguards to ensure that intercountry adoptions take place in the **best interests of the child** and with respect for his or her **fundamental rights** as recognised by international law” and to “establish a system of cooperation amongst Contracting State to ensure that those safeguards are respected and thereby **prevent the abduction, the sale of, or traffic in children**” (HC, Art. 1(a) and (b), emphasis added).
- 2 The Convention has promoted the adoption of laws and regulations, more rigorous procedures, stricter controls and the processing of intercountry adoptions through competent authorities. All of which have contributed to mobilising political will to increase efforts to prevent and address illicit practices in intercountry adoption. However, being a Party to the Convention has little effect if Contracting States do not implement it correctly, and illicit practices may thus still occur.<sup>1</sup> In addition, while the Convention provides safeguards that significantly reduce the risks of illicit practices, where it is properly applied, it does not address all the enabling factors that may facilitate or contribute to the occurrence of illicit practices. It is therefore crucial that States identify and recognise the problems, tackle the enabling factors that create an environment conducive to illicit practices, establish prevention mechanisms, ensure adequate control of their authorities and bodies (in particular AABs), monitor the adoption procedures, and cooperate to respond effectively whenever illicit practices may have occurred.
- 3 Against this background, it was decided to convene a Working Group<sup>2</sup> responsible for developing tools to assist in preventing and addressing illicit practices, which are now included in this Toolkit.<sup>3</sup>

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<sup>1</sup> See “20 years of the 1993 Hague Convention: Assessing the impact of the Convention on laws and practices relating to intercountry adoption and the protection of children”, Prel. Doc. No 3 of May 2015 for the attention of the SC of June 2015 on the practical operation of the 1993 Adoption Convention.

<sup>2</sup> Further information on the work of the Working Group is available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Adoption Section” and then “Preventing and Addressing Illicit Practices”.

<sup>3</sup> Many experts have participated in the work of the Working Group since its inception. The following experts participated in at least two meetings of the Working Group and / or had an active role in the discussions and drafting of the Toolkit:

HCCH Members Contracting Parties: Australia (Ms Rosie Elliot, Ms Sarah Healy, Mr Samuel Mackay, Ms Elisabeth Wale); Belgium (Ms Ariane Van Den Berghe, Mr Koen Rummens); Brazil (Ms Natalia Camba Martins); Canada (Ms Louise Gagnon, Ms Josée-Anne Goupil, Ms Erin O'donoughue Given, Ms Geneviève Poirier, Ms Marie Riendeau, Ms Michèle Salmon); Chile (Ms Marisol Fernández, Ms Orietta Orellana, Ms Martina Strobel, Ms Maria Isabel Torres); China (Ms Juan Li, Ms Yanbo Ma, Mr Dongliang Wang, Ms Yunmei (May) Wang, Mr Liu Jun Zhang); Croatia (Ms Irena Majstorovic, Ms Jasna Palić Babić, Ms Martina Tutić); Denmark (Ms Karina Haahr-Pedersen, Ms Karin Rønnow-Søndergaard); France (Ms Nathalie Brat, Ms Cécile Brunet-Ludet, Ms Marie-Laure Gounin, Mr Etienne Rolland-Piegue); Ireland (Ms Patricia Carey, Mr Kiernan Gildea, Ms Tara Downes); India (Mr Sanjay Barshilia, Mr Manoj Kumar Singh); Italy (Ms Alessandra Barberi, Ms Grazia Cesaro, Ms Anna Guerrieri, Mr Joseph Moyersoan); Malta (Ms Denise Frendo, Ms Edwina Gouder); Mexico (Ms Dulce María Mejía Cortés, Mr Miguel Angel Reyes Moncayo); Norway (Ms Benthe Hoseth); Netherlands (Mr Arjan Van Leur); Peru (Ms Soledad Cisneros Campoverde, Ms Kerin Ludeña Torres, Ms Mayda Ramos Ballón); Philippines (Ms Bernadette Abejo); Portugal (Ms Eliana Costa Mendes Dos Santos,

### Damaging effects of illicit practices and potential consequences if nothing is done to prevent and address illicit practices

Illicit practices have extremely damaging results:

- they can result in **children being unnecessarily taken away** from their birth families and / or being unnecessarily drawn into childcare institutions;
- they often inflict **lasting and profound trauma and harm** (e.g., distress, mental health concerns, life-altering situations, vulnerability, uncertainty) on the persons involved, especially on adoptees and families;
- when there are no consequences, **deterrence is weakened**, and **rules** may become **ineffective**; in addition, impunity can lead to **further violations**;
- it is **difficult** to **improve** existing preventive measures **without information** from thorough investigations of illicit practices;
- they have a **cost for society** (e.g., people impacted may need professional assistance or may be excluded from their community);
- they may **limit** the **potential benefits** of intercountry adoption as a child protection measure (e.g., they undermine the necessary trust between States and the public trust within a State, trust which the 1993 Adoption Convention seeks to establish through a system of cooperation and safeguards; States may prohibit or severely limit intercountry adoption by moratoria and shutdowns).

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Ms Bárbara Sacur); Sri Lanka (Ms Nirmalee Perera); Switzerland (Ms Joëlle Schickel-Küng); United States of America (Ambassador Susan Jacobs, Ms Marisa Light, Ms Trish Maskew, Ms Kjersti Olson, Ms Carine Rosalia); Venezuela (Judge Rosa Isabel Reyes Rebolledo); Vietnam (Mr Anh Tuan Dang Tran, Ms Thi Hao Nguyen, Ms Minh Phuong Nguyen, Ms Thi Kim Anh Pham); Zambia (Ms Nomsisi Wonani).

HCCH Members non-Contracting Parties: Republic of Korea (Ms Hyunhee Han, Ms Hwayon Lee).

Observers Non-Members Contracting Parties: Cabo Verde (Ms Catia Cardoso, Mr Jose Carlos Correia, Ms Margarida Lopes Borges Andrade); Haiti (Mr Andolphe Elie Ducarmel Guillaume); Togo (Ms Djanguenane Epse Penn Y. Falaman, Mr Abd-Nafiou Mamanh, Mr Pascal Tchilteme Toatre).

Observers International organisations: UNICEF (Mr Nigel Cantwell); Intercountry Adoptee Voices (ICAV) Ms Lynelle Long); International Social Service (Ms Mia Dambach, Mr David Smolin, Ms Jeannette Wöllenstein-Tripathi); Nordic Adoption Council (NAC) (Mr Øystein Gudim, Mr Kristinn Ingvarsson).



## 2. What can you find in this Toolkit?

4 This Toolkit is composed of the tools listed below that can be read independently or together. Where relevant, cross-references between the tools are made to allow for a holistic view of the approach to be taken to facilitate the identification and prevention of, and the response to, illicit practices.

5 The tools are deliberately drafted in general terms in order to encourage States to adapt them to their specific realities by establishing their own procedures, measures and safeguards, and to widely disseminate them. This Toolkit does not replace the need for States to have their own measures, policies, guarantees and procedures to safeguard against, and address, illicit practices in intercountry adoption.

### Introduction

6 The introduction explains the reasons for drafting the Toolkit, its content, to whom it is addressed, its scope of application and recalls the importance of the best interests of the child and respect for their fundamental rights in all adoption matters.

### Part I – Fact Sheets on Illicit Practices

7 Fact Sheets aim at assisting in better **identifying** and **recognising**:

- illicit practices in intercountry adoption;
- factors that may contribute to and / or facilitate the development of illicit practices (“enabling factors”); and
- measures and safeguards that may assist in **preventing** illicit practices.

### Part II – Checklist to Assist Decision-Making by Central Authorities

8 The Checklist aims to provide Central Authorities and / or AABs with a **list of issues they should watch out for** and what **actions they may take at each step** in an intercountry adoption procedure to help prevent or reduce, to the extent possible, the risk of illicit activity from permeating or influencing the intercountry adoption process, in light of the respective responsibilities and co-responsibilities of States of origin and receiving States.

### Part III – Model Procedure to Respond to Suspected and Actual Cases of Illicit Practices

9 The Model Procedure aims at providing guidance on **how to respond** to specific cases or suspected cases of illicit practices, including when these cases part of a pattern of illicit practices.

### Part IV – Guidelines on Enhancing Cooperation and Coordination to Prevent and Address Illicit Practices, including Patterns

10 The Guidelines aim at providing **guidance on how States can cooperate and coordinate** their efforts in order to prevent and respond to illicit practices, including patterns of illicit practices.

### 3. To whom is this Toolkit addressed?

- 11 This Toolkit is primarily addressed to authorities and bodies directly or indirectly involved in the intercountry adoption process and each tool is more specifically addressed to different actors:
- The Fact Sheets are primarily directed at Central Authorities, other competent authorities (*e.g.*, judges, administrative authorities) and bodies (*e.g.*, AABs). They may also be useful when providing technical assistance for new Contracting States to the Convention or Contracting States wishing to improve their adoption system.
  - The Checklist is directed at Central Authorities and, when applicable, AABs.
  - The Model Procedure and the Guidelines are primarily directed at all State actors, with respect to their respective roles and responsibilities.
- 12 In addition, the Toolkit may be of relevance to other professionals working in adoption (*e.g.*, lawyers, social workers, psychologists) and personnel working in childcare institutions. It may also be of interest to adoptees,<sup>4</sup> birth families and prospective / adoptive parents and families.

### 4. What is the scope of application of this Toolkit?

- 13 This Toolkit is aimed at preventing and addressing illicit practices in intercountry adoptions made under the 1993 Adoption Convention.
- 14 However, Contracting States are also encouraged to apply this Toolkit, as far as possible, to intercountry adoptions made between a Contracting State and a non-Contracting State: experience shows that intercountry adoptions made outside the scope of the 1993 Adoption Convention are linked to a higher risk of illicit practices. Consequently, past Special Commission meetings have recommended that Contracting States to the 1993 Adoption Convention should, "as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoptions which they make in respect of non-Contracting States".<sup>5</sup>
- 15 In addition, Contracting States might consider referring to the Toolkit in dealing with suspected illicit practices arising from adoptions that occurred prior to the coming into force of the Convention in their State.<sup>6</sup>
- 16 Nothing in this Toolkit may be construed as binding on particular States or Central Authorities or as modifying the provisions of the Convention; however, all States are encouraged to consider reviewing their own practices, and where appropriate and feasible, to modify them in line with the Toolkit. For both established and developing Central

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<sup>4</sup> Where the term "adoptee" is used in this Toolkit, it usually refers to an "intercountry adoptee".

<sup>5</sup> 2000 SC, C&R No 11; 2005 SC, C&R No 19; 2010 SC, C&R No 36.

<sup>6</sup> 2022 SC, C&R No 5.

Authorities, the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement.

### **Ensuring the best interests of the child and child-friendly measures in preventing and addressing illicit practices in intercountry adoption**

The best interests of the child shall be the paramount consideration in adoption (CRC, Art. 21). Explicit guidance on how to determine in adoption what is in the best interests of a child can act as a safeguard against illicit practices. This guidance should reflect the principles and safeguards enshrined in the CRC and the 1993 Adoption Convention. This includes that a best interests' assessment should always be carried out in an adoption procedure, should be individualised and conducted on a case-by-case basis, and should be informed by the child's views, in accordance with their age and maturity (*i.e.*, the child should have an active role in decisions made about them) as well as by the life-long effects of an adoption. In addition, as for any decision that impacts a child, their fundamental rights should be respected.

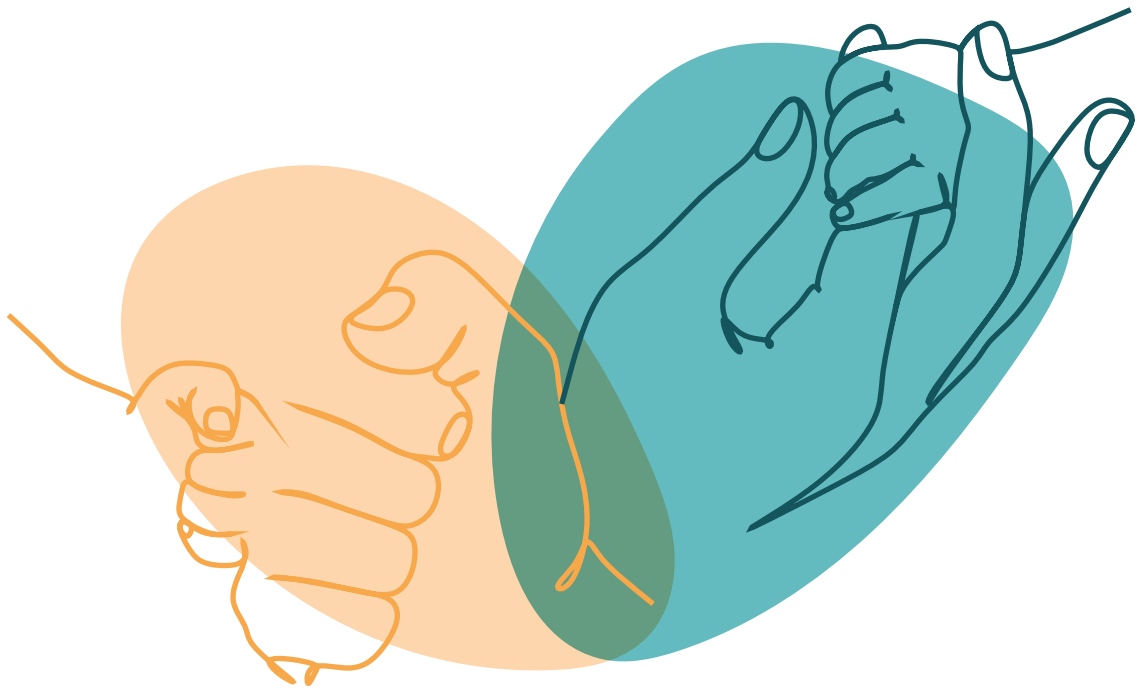
All actors should always take into consideration the importance of the best interests of the child in addressing suspected and actual cases of illicit practices and need to be sensitive to concerns of adoptees, as well as birth and adoptive families. It is also of the utmost importance to consider not only the short, but also the long-term effects on the adoptee of any action taken to address an illicit practice.

In the context of adoption, authorities and bodies should have a child-friendly approach. Therefore, approaches, processes and systems designed for and by adults may need to be altered to reflect the capacities, needs and rights of children and to ensure that they have adequate support and are properly involved. Child-friendly approaches in adoption may include:

- devoting time and attention to ensure that the child is properly informed, prepared and given the opportunity to contribute their views at all stages of the adoption process;
- altering language and communication styles to reflect the capacities of the child;
- establishing complaints mechanisms that are adapted to the child and assisting them in accessing such mechanisms.



# Glossary





The terms below have been defined for the purposes of this Toolkit only. Where the definitions are drawn from other sources, such sources are noted in parentheses.

## 1. Definitions

**Abandonment:** an act which may include

- permanently leaving a child anonymously in a place where they may, or may not, be found and looked after; or
- entrusting a child to another person, without coming back to collect the child after a given period of time, and where it is impossible to contact or find the person(s) who entrusted the child.

**Abduction of children:** "the act of taking a child away illegally, especially using force" (Oxford Dictionary), including through coercion or threats, for the purpose of intercountry adoption. This can be done by, for example, kidnapping a child or falsely informing parents that their baby was stillborn or died shortly after birth (see 2017 UN Rapporteur Report, para. 28).

**Best interests of the child:** "the term is not defined in the Convention because the requirements necessary to meet the best interests of the child may vary in each individual case, and the factors to be considered should not, in principle, be limited. However, a number of essential factors are referred to in the Convention and must be included in any consideration of what is in the best interests of a child who is the subject of an intercountry adoption. [...]" (GGP No 1, Glossary).

**Enabling factors:** social, economic and other factors and weaknesses related to the legal frameworks, institutions, resources and / or procedures within a State that may facilitate or contribute to the occurrence of illicit practices.

**Family:** where reference is made to family or birth family instead of parents or birth parents, it is meant to include not only the birth parents but also the close relatives (e.g., siblings, grand-parents) living in the same household. When reference is made to adoptive family instead of adoptive parents, it is meant to refer to the family unit composed of the adoptee,<sup>1</sup> their adoptive parent(s) and possible siblings.

**Falsification:** the act of changing a document such that it contains false information. Falsification is a form of fraud.

**Forgery:** the creation of a false document. Forgery is a form of fraud.

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<sup>1</sup> Other terms used by some States are "adopted person / person who was adopted".

**Illegal adoption:**<sup>2</sup> “an adoption resulting from ‘abuses, such as abduction, the sale of, traffic in, and other illegal or illicit activities against children’. [...]” (GGP No 1, Glossary) and usually prohibited by law.

**Illicit practices in intercountry adoption:**<sup>3</sup> practices leading to “situations where a child has been [or is to be] adopted without respect for the rights of the child or for the safeguards of the [1993 Adoption] Convention” (2012 Australia / HCCH Discussion Paper).<sup>4</sup>

**Independent adoptions:** “cases where the [PAPs] are approved as eligible and suited to adopt by their Central Authority or [AAB]. They then travel independently to a [State] of origin to find a child to adopt, without the assistance of a Central Authority or [AAB] in the State of origin. [...] They do not satisfy the Convention’s requirements and should not be certified under Article 23 as a Convention adoption. [...]” (GGP No 1, Glossary).

**Inducement:** an improper or illicit means of obtaining consent for adoption. “[I]nducement may be present if any form of compensation or payment is used to influence or bring about the decision to relinquish a child for adoption” (GGP No 1, para. 83).

**Orphan:** a child under 18 years of age who has lost all their legal parents to any cause of death.

**Parent:** parent(s) of the child at birth. In this Toolkit, they are also referred to as “birth parent(s)”. In addition, depending on the issue discussed, the reference to “parent(s)” or “birth parent(s)” may be to the legal parent(s), or the biological parent(s) whose legal parentage is not established or both. For the sake of clarity, the term “parent” does not refer to adoptive parent(s), rather they are referred to as “adoptive parent(s)”.

**Pattern of illicit practices:** illicit practices should be understood as constituting a pattern where there have been repeated abuses of a similar type over a given period of time, usually involving the same actors.<sup>5</sup>

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<sup>2</sup> Broadly, the term ‘illegal’ refers to actions that would be forbidden by law while ‘illicit’ could be either forbidden by law or unethical or immoral. Neither term refers solely to actions which are contrary to best practice.

<sup>3</sup> *Ibid.*

<sup>4</sup> See *Discussion Paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases*, 2012.

<sup>5</sup> Possible examples of patterns include: children who are routinely admitted to childcare institutions and declared to be “orphans” in need of adoption without sufficient investigation of their background, including reasonable efforts being made to locate the child’s birth family; the “consent” of the parents is routinely obtained by representatives of childcare institutions which make misleading or false promises to the often uneducated or illiterate parents. The latter may believe that the child is going to a boarding school in the receiving State and will return to the family after a period of time, when in fact the intent is to declare the child adoptable; children are routinely directed to intercountry adoption without assistance first being offered to the family and / or consideration given to suitable permanent domestic alternative care solutions; PAPs are routinely permitted to visit childcare institutions and identify children they wish to adopt. The “matching” of these children is subsequently carried out by officials in such institutions in accordance with the preferences stated by the PAPs; AABs that often charge fees for work not carried out.



**Private adoptions:** "where arrangements for adoption have been made directly between a [birth] parent in one Contracting State and [PAPs] in another Contracting State. Private adoptions arranged directly between birth parents and adoptive parents come within the scope of the Convention if the conditions set out in Article 2 are present (*inter alia*, the child has been, is or will be moved from the State of origin to the receiving State), but such adoptions are not compatible with the Convention. [...]" (GGP No 1, Glossary).

**Prospective adoptive parent(s) (PAPs):** person or persons wishing to adopt, regardless of whether they have been determined to be eligible and suitable for adoption.

**Relinquishment:** "a [legal] parent's decision to forego or surrender [parental] rights and responsibilities in respect of a child, or to [give] consent to the adoption of a child", before an authority (GGP No 1, para. 267).

**Sale of children:** "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration" (OPSC, Art. 2(a)). This includes, among other things, "[i]llegally inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" (OPSC, Art. 3(1)(a)(ii)).

**Subsidiarity principle:** "a child should be raised by [their] birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the [State] of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests" (GGP No 1, para. 47).

**Traffic in children:** "the payment of money or other compensation to facilitate the illegal movement of children for the purposes of illegal adoption or other forms of exploitation" (GGP No 1, para. 74).<sup>6</sup>

## 2. Definitions linked to financial issues<sup>7</sup>

The terms below reproduce some of the definitions included in the Note on Financial Aspects:

**Cooperation projects:** programmes or projects with the aim of strengthening the child protection system in a State of origin. These are mostly focused on capacity building and

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<sup>6</sup> This Toolkit uses the term "traffic in children" as it is the term used in the Convention; it can be used interchangeably with "trafficking in children". It has to be noted that most of the forms of exploitation mentioned in the definition of trafficking in the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Palermo Protocol), e.g., sexual exploitation, forced labour, slavery, servitude, removal of organs, would not be common in traffic of children for the purpose of intercountry adoption (see further, D. Smolin, *Intercountry Adoption as Child Trafficking*, 39 Val. U. L. Rev. 281 (2004), p. 296).

<sup>7</sup> See, in particular, Part I "Fact Sheets", FS 3 "Financial Gain".

training of stakeholders and should ideally be self-sustainable in the future. Without compromising other forms of cooperation projects, the cooperation projects [...] are considered as a category of development aid.

**Contribution:** [there exist two forms of contributions]

- Contributions demanded by the **State of origin**, which are mandatory and meant to improve either the adoption system or the child protection system. The amount is set by the State of origin. These contributions are managed by the authorities or others appropriately authorised in the State of origin which decide how the funds will be used.
- Contributions demanded by the **[AAB]** from [PAPs]. These contributions may be for particular [childcare] institutions<sup>8</sup> (e.g., for maintenance costs for the child) or for the cooperation projects of the accredited body in the State of origin. The cooperation projects may be a condition of the authorisation of that body to work in the State of origin. The amount is set by the accredited body or its partners. The payment may not be a statutory obligation and accredited bodies may present the demand in terms of 'highly recommended contribution', but in practice it is 'mandatory' for the [PAPs] in the sense that their application will not proceed if the payment is not made.

**Costs** (HC, Art. 32(2)): a collective term to refer to the amount requested to obtain a specific service or group of services (e.g., translation costs, administrative costs) to complete the adoption. [T]he term 'costs' may be used in conjunction or interchangeably with the term 'expenses'. Costs include fees and other amounts for specific services and for obtaining specific documents.

**Donations:** voluntary *ad hoc* payments or gifts of material goods from [PAPs] or [AABs] for the well-being of children in institutions. Donations are usually given to the orphanage or institution connected to the [...] adopted child. The donation might also be given by an accredited body to a specific fund in the State of origin.

**Expenses** (HC, Art. 32(2)): an amount of money spent on a particular service to complete the adoption. Costs are charged and expenses are paid. A cost converts into an expense as soon as it is paid.

**Fees** (HC, Art. 32(2)): an amount that a person or entity charges for a particular service (e.g., court filing fee). It generally takes the form of a lump-sum paid in one instalment for one particular service or group of services, but it might also be fixed on an hourly rate (e.g., lawyers' fees). It may be classified as a subcategory of the costs of the adoption. 'Professional fees' referred to in Article 32(2) refer to the amount requested by professionals, such as lawyers, psychologists and doctors, for their work on a particular case.

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<sup>8</sup> In this Toolkit, childcare institution should be understood as one of the possible forms of residential care facilities (see UN Guidelines, Section 29(c)(iv)).

# Part I



## Fact Sheets on Illicit Practices

## Fact sheets on illicit practices

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- 1 The Fact Sheets are designed to assist in the identification of illicit practices and provide a comprehensive presentation of measures that various actors may take to help prevent them. Fact Sheets 1 to 5 present overarching issues. The remaining Fact Sheets (Nos 6-11) address specific aspects and have been organised and, where possible, presented following the order of steps included within a "typical" intercountry adoption procedure.
- 2 Each Fact Sheet has been designed as a stand-alone document. Therefore, there is some repetition of content among the different Fact Sheets.
- 3 The Fact Sheets describe **illicit practices related to a specific issue** that may occur in relation to an adoption. The Fact Sheets are divided into two sections:
  - The first section on **illicit practices**: this section presents the different forms that the illicit practices can take.
  - The second section on **enabling factors**: this section describes the factors that may contribute to and / or facilitate the development of illicit practices. Enabling factors include systemic weaknesses and professional practices that are inconsistent with established good practices.
- 4 The sections are divided into **levels** (N.B. not all levels will be relevant for every Fact Sheet):
  - **Adoption** level: measures and practices that relate to the adoption specifically.
  - **Child protection** level: measures and practices connected with a child protection matter.
  - **General** level: general measures and practices that extend beyond child protection (e.g., documents that are not particular to child protection only).
  - **Sanction** level: elements related to possible criminal investigations, including accountability, prosecution and sanctions.
- 5 Each section is divided as follows:
  - The red or orange boxes describe the **illicit practices** or **enabling factors**.
  - The green boxes describe **possible actions to help in preventing** the illicit practice and / or addressing the enabling factor. Please note that while each illicit practice or enabling factor has its "own" corresponding preventive action, in many cases, in order to help in preventing the illicit practice and / or the enabling factor, other actions presented in the Fact Sheet may also need to be implemented.
  - For each possible preventive actions, the State in which the practice or factor may occur, and which may be primarily responsible for the preventive action, is specified: it can be either the receiving State (**RS**) or the State of origin (**SO**), or both.
- 6 The different measures and practices suggested in the green boxes may provide guidance on how to prevent the occurrence of related illicit practices or address the enabling factors. However, merely following the guidance presented in the Fact Sheets might not be sufficient to prevent illicit practices, and additional or different measures may be needed. Therefore, to prevent illicit practices to the extent possible, all actors should actively apply the measures and practices contained in the Fact Sheets, and indeed in all the tools of the Toolkit, and remain vigilant to any potential concern at every step of the process.

- 7 For some of the information provided in the Fact Sheets, additional explanations are available in the notes at the end of the Fact Sheet (endnotes), which provide more in-depth guidance to identify, understand and / or prevent a specific illicit practice or address an enabling factor. The numbers of the endnotes are colour coded depending on whether they refer to an illicit practice (1), an enabling factor (1), or a possible preventive action (1).

## FACT SHEET 1

### Abduction, Sale of, and Traffic in Children

This FS is to be read together with all FS, in particular FS 3 "Financial Gain"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Abduction of children for the purpose of intercountry adoption.
2. Sale of children for the purpose of intercountry adoption.<sup>1</sup>
3. Traffic in children for the purpose of intercountry adoption.

Establish and properly implement a comprehensive **legal framework** that prohibits, prevents, addresses and prosecutes the abduction, sale of, and traffic in children for the purpose of intercountry adoption and illegal adoptions.



RS  
SO

Carefully regulate the **financial aspects** of intercountry adoption to prevent the abduction, sale of, and traffic in children and illegal adoptions which are, in many cases, driven by financial benefits.<sup>2</sup>

Close or suspend **intercountry adoption programmes** where suspected cases of abduction, sale of, and / or traffic in children have been disclosed, at least until sufficient safeguards have been put in place to address such risk.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

4. Lack of or inadequate comprehensive legal framework and procedures on:
- adoption, including all guarantees (e.g., consent, adoptability, matching, adoption decision); and
  - preventing and addressing abduction, sale of, and traffic in children in intercountry adoption.

5. Lack of, or weak implementation of, the legal framework.



RS  
SO

Establish and properly implement a comprehensive **legal framework**, including the 1993 Adoption Convention, the OPSC and relevant domestic legislation, and procedures.

See also green box corresponding to red boxes 1 to 3 of this FS, as well as section "At the sanction level" below.

6. Inadequate training and / or lack of resources of actors involved in alternative care and adoption.



RS  
SO

Ensure adequate **resources and training** on how to identify, prevent and address illicit practices for actors involved in alternative care and adoption.<sup>3</sup>

7. Lack of or inadequate supervision, monitoring and accountability of authorities and bodies involved in adoption.



RS  
SO

Ensure the **supervision, monitoring and accountability** of authorities and bodies involved in adoption.<sup>4</sup>

8. Lack of or inadequate government processes and / or political will to identify, prevent and respond to illicit practices.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to illicit practices.



9. Lack of or limited general public awareness about illicit practices in adoption.



RS  
SO

**Increase awareness-raising**, including campaigns, media and pamphlets, about how to identify, prevent and respond to illegal adoption, including among communities and children in vulnerable situations, caregivers, government officials, AABs, other relevant authorities and bodies, prospective adoptive parents and the general public.

10. Lack of or inadequate policies or procedures to ensure free and informed consent to adoption, including counselling.



SO

Ensure that the **consents to adoption** have been obtained in accordance with the Convention, including after proper counselling and without inducement or solicitation.<sup>5</sup>

## II. At the **CHILD PROTECTION** level

11. Lack of an effective and adequate child protection system.



SO

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support and family reintegration, and includes social protection policies and family strengthening programmes.<sup>6</sup>

12. Alternative care systems relying on privately run childcare institutions.



SO

Ensure that the child protection system has adequate **public funding** and that any tasks delegated to the **private sector** are authorised and monitored.

13. Lack of a central database or registry for missing children.



SO

Establish, and properly implement and maintain a centralised and up-to-date **database** or registry for missing children.

14. Lack of or inadequate system for the return of lost, missing or displaced children.



RS  
SO

Establish and properly implement a **mechanism for the return** and / or reconnection of **lost, missing or displaced children**, in accordance with their best interests, to and / or with their families once they are found.<sup>7</sup>

### III. At the **GENERAL** level

15. Lack of or inadequate system of, or barriers to, birth registration (*e.g.*, fees, distance, discrimination<sup>8</sup>).



SO

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system**.<sup>9</sup>

16. Poverty.<sup>10</sup>

17. Forms of discrimination that render parents vulnerable and without protection, which may make them more vulnerable to exploitation, or to abandoning or relinquishing their child.<sup>11</sup>

18. Conflicts, and political and humanitarian crises.



SO

Address, through a plan and adequate allocation of resources, the root causes of **poverty, discrimination, conflicts and crises**.

19. Poorly paid civil servants and under resourced civil service.

20. Culture of corruption within a State.



RS  
SO

Ensure that **civil servants** dealing with adoption matters are sufficiently paid, adequately trained and are not over-worked.

Take action to prevent, expose and address **corrupt activity**.

21. Lack of or inadequate controls to prevent children from traveling internationally without free and informed consent of the parent(s) or the person(s) legally responsible for them.



SO

Establish and properly implement mechanisms to verify the existence of free and informed consent(s) of parent(s) or any other persons legally responsible for the child(ren) before allowing **children to travel internationally**.<sup>12</sup>

22. Lack of or inadequate reporting mechanisms which may lead to underreporting of abuses.



RS

SO

Develop **accessible and effective justice** systems to enable adoptees to report abuses, seek justice and reparation.

**Coordinate** with, and support the efforts of, authorities and bodies that work to detect, receive and refer cases of illegal adoptions.

23. Lack of or inadequate assistance to adoptees, birth parents and adoptive parents affected by illicit practices in intercountry adoption.



RS

SO

**Assist adoptees, birth parents and adoptive parents** affected by illicit practices in intercountry adoption.

This may include providing information on the file, directing adoptees, birth parents and adoptive parents to available services and supports, and undertaking research on situations of illicit practices.<sup>13</sup>

24. Lack of research, statistics and understanding of the reasons for illicit practices in adoption.



SO

Conduct research and collect statistics to consider **root causes** and underlying factors of illicit practices in adoption, including the demand for children.

IV. At the **SANCTION** level

25. Failure to treat abduction, sale of, and traffic in children for the purpose of adoption, and illegal adoptions, as separate criminal offences.



RS  
SO

Ensure that the abduction, sale of, and traffic in children and illegal adoptions are treated as separate **criminal offences** and are criminally prosecuted.

26. Lack of or inadequate accountability of all actors.

27. Lack of or inadequate investigation, prosecution and sanctions deterring illicit practices.



RS  
SO

Establish and properly implement a comprehensive legal framework, including police **investigation, prosecution, and strong sanctions** for abduction, sale of, and traffic in children and illegal adoption.<sup>14</sup>

Improve the technical capacity of **law enforcement authorities**, child protection professionals and the justice system to effectively detect, investigate, prosecute and sanction illegal adoptions.

## FS 1 “Abduction” – additional information (endnotes)

- 1 Sale of children**

The overlap between the sale of children and certain other illicit practices is discussed in the [2017 UN Rapporteur Report](#) (paras 24, 25 & 28). Art. 3(1)(a)(ii) of the OPSC “can be taken also to mean deliberately avoiding or preventing necessary consents being given. But the ramifications of the concept clearly go far beyond issues of consent: they concern all subsequent phases of a normal adoption procedure where the child in question is unduly inducted into and “transferred” through the system with the aim of securing a legalised adoption despite the illicit practices involved” (N. Cantwell, *The Sale of Children and Illegal Adoption* (2017)).

This FS follows the recommendations given by the UN Special Rapporteur on the Sale of Children in her [2020 Final Report](#).
- 2 Financial aspects**

See FS 3 “Financial Gain”; GGP No 1, Chapter 5; Note on Financial Aspects, in particular para. 19; 2010 SC, C&R No 1.
- 3 Training of relevant actors**

With regard to AABs, see GGP No 2, Section 6.5.3.
- 4 Supervision, monitoring and accountability of authorities**

With regard to AABs, see GGP No 2, Section 2.3.5.
- 5 Consents to adoption**

See OPSC, Art. 3(1)(a)(ii). See FS 7 “Consent” and GGP No 1, Section 2.2.3.
- 6 Establishment of a national child protection system**

See FS 6 “Subsidiarity”, endnote 6. See also UN Guidelines, Chapter IV; GGP No 1, Chapter 6.
- 7 Return or reconnection of lost, missing or displaced children**

The use of the word “return” in this FS is limited to the adoption context and not intended to extend to migration matters. See the use of this term in Art. 21(1)(c) of the HC.
- 8 Discrimination in birth registration**

For example, in some cases, women or some parents are not allowed to register the birth of their child: see UNHCR and UNICEF, [Background Note on Sex Discrimination in Birth Registration](#) (2021), pp. 8-10. There are other reasons for parents not being able to register the birth of their child, for example, because of their belonging to certain ethnic groups: see UNICEF, [Every child’s birth right, Inequities and trends in birth registration](#) (2013), p. 22.
- 9 Establishment of a birth registration system**

The child shall be registered immediately after birth (CRC, Art. 7). See FS 4 “Identity”, endnote 15.
- 10 Poverty**

Poverty, usually combined with other factors (e.g., lack of or inadequate family support or alternatives to abandonment and relinquishment) can lead to abuses. See GGP No 1, Section 6.2.3.
- 11 Discrimination**

In some States, parents, and most often single mothers, may face discrimination, whether by society at large or by their community or family, and this may lead them to abandon or relinquish their children for adoption.
- 12 Children travelling internationally**

If authorities have doubts about the free and informed consent and / or the reasons for the travel, they should not allow the child to travel internationally.

**13 Assistance to adoptees, birth parents and adoptive parents affected by illicit practices**

See Part III "Model Procedure".

**14 Sanctions**

See GGP No 1, Section 2.2.2. States should ensure that their laws impose sufficiently severe penalties for these offences to provide a strong deterrent.

## FACT SHEET 2

### Circumventing the Application of the Convention

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On this topic, see also:  
FS 6 "Subsidiarity" and FS 10 "Matching"

#### Illicit practices and possible preventive actions ✔

##### I. At the **ADOPTION** level

1. Authorising or tolerating direct contact by PAPs with State of origin authorities and / or bodies without the PAPs having first applied for an intercountry adoption to the Central Authority in the State of their habitual residence (HC, Art. 14).<sup>1</sup>



RS

Establish and properly implement clear mechanisms for persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, to apply to the Central Authority in the State of their **habitual residence** (HC, Art. 14) before having any contact with the State of origin's authorities and bodies.



SO

Ensure that where persons habitually resident in a Contracting State have made direct contact with the Central Authority in the State of the child's habitual residence, this Central Authority does not engage in the request and instead, directs these persons to the **Central Authority in the State of their habitual residence**.

2. Allowing a domestic adoption by nationals of the State of origin who are identified as habitually residing in another Contracting State (HC, Art. 2).



RS

SO

Ensure that the habitual residence of the PAPs and the **scope of application of the Convention** to each case is clearly established.



SO

Ensure proper **internal coordination** among a State's Central Authority and competent authorities responsible for domestic adoptions to ensure that intercountry adoptions are identified as such and handled under the Convention.

3. Private and independent adoptions.<sup>2</sup>RS  
SO**Prohibit private and independent adoptions.**<sup>3</sup>4. AABs operating without having been accredited and / or authorised to operate (HC, Arts 10-12).<sup>4</sup>RS  
SOEnsure that **AABs** are:

- **accredited** in the State where they were constituted; and
- **authorised to operate** in the State of origin by both the receiving State and the State of origin.


## 5. Private arrangements regarding adoptions between AABs, childcare institutions, and / or persons without the involvement of the Central Authority.

## 6. Placement of an adopted child by adoptive parents with other parents for the purposes of circumventing the Convention (re-homing), with or without the assistance of AABs.


RS  
SO**Prohibit private arrangements** regarding adoptions between AABs, childcare institutions and / or persons.**Inform** AABs, childcare institutions and persons that a privately arranged adoption application will be refused by the State of origin and the receiving State.Provide appropriate **support and counselling** to adoptees, (prospective) adoptive parents and families, including after adoption.7. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>5</sup>RS  
SOEstablish and properly implement clear policies and procedures for **emergency situations**.<sup>6</sup>

- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;





- 
RS  
SO
 publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.

8. Removing a child from the State of origin through misuse of domestic adoption, guardianship arrangements, custody orders, or other judicial or administrative processing to circumvent the application of the Convention.<sup>7</sup>


- 
RS  
SO
 Ensure **coordination** among Central Authorities and the establishment of a mechanism to:
  - prevent intercountry adoptions outside of the Convention framework;<sup>8</sup> and
  - identify and respond to practices that bypass the intercountry adoption process.

Work closely with the **Consulate or Embassy** of the receiving State in the State of origin, in particular for visa requests, in order to identify attempts to circumvent the Convention (see also green box 11 of this FS).

- 
SO
 Ensure that all competent authorities (including child or family courts) and other actors involved in the child protection system in the State of origin are **aware of the Convention** and understand its scope of application.<sup>9</sup>

- 
RS
 Ensure that all actors (child or family courts in particular) in the receiving State are **aware of the Convention** and understand its scope of application, particularly as to children whose adoptions are finalised in that State.

9. Not proceeding to verification that the adoption procedure and safeguards were properly followed and respected before giving the agreement that the adoption may proceed (HC, Art. 17 (c)).

- 
RS  
SO
 Verifying that all the stages of the **adoption procedure** and that the safeguards provided for under the Convention and domestic law on adoption were properly followed and respected before giving the agreement that the adoption may proceed under Art. 17(c) of the Convention.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

10. Intercountry adoption legislation and procedures are not included within the national child protection system.



SO

Ensure that any legislation, regulations and procedures on intercountry adoption are included within the legislation and procedures on the **national child protection system**.

11. Failure to properly determine the habitual residence of the child and / or the PAPs.



RS

SO

Establish and properly implement a mechanism for the determination of the **habitual residence** of the child and the PAPs, including for intra-family adoptions.<sup>10</sup>

12. Failure to scrutinise applications for a domestic adoption (including for intrafamily adoptions), guardianship and custody orders by:
- PAPs who are nationals of the State of origin and / or relatives of the child but who habitually reside outside the State of origin;
  - PAPs temporarily living in the State of origin whose habitual residence is unclear.<sup>11</sup>



RS

SO

Establish and properly implement procedural and practical resources to promote sufficient **scrutiny of applications** for domestic adoption, guardianship, or custody orders by:

- PAPs who are nationals of the State of origin and / or relatives of the child but who habitually reside outside the State of origin; and
- PAPs temporarily residing in the State of origin (including expats and / or diplomats), to determine whether:
  - o the adoption is actually an intercountry adoption;
  - o the PAPs moved to the State of origin for the purpose of circumventing the safeguards of the Convention or with an immediate plan to return to their usual State of habitual residence.<sup>12</sup>

13. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>13</sup>



RS  
SO

Prevent practices leading to **pre-identification of children** for adoption by PAPs:

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).
- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>14</sup>
- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

See also green box 19 of this FS.

14. Lack of or limited public awareness about the Convention.



RS  
SO

Ensure **public awareness** of the principles, safeguards and procedures of the Convention.<sup>15</sup>

15. Lack of or inadequate supervision, monitoring and accountability of AABs.



RS  
SO

Ensure that **AABs** are properly supervised and monitored by the Central Authorities of both the receiving State and the State of origin.<sup>16</sup>

Ensure that AABs are held accountable by the Central Authority of the State which accredited them.

16. Lack of or inadequate limitation of the number of AABs authorised to work in one State.



RS  
SO

Ensure that the **number of AABs** is proportionate to the number of children in need of intercountry adoption in the State of origin where the AAB is authorised to operate.<sup>17</sup>

17. Lack of or inadequate regulation, supervision and monitoring of childcare institutions.<sup>18</sup>



SO

Enact and properly implement legislation and / or regulations on the functioning of **childcare institutions** and their monitoring.  
Ensure childcare institutions are run predominantly by locals.

18. Lack of or inadequate government processes and / or political will to identify, prevent and respond to circumvention of the application of the Convention.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to circumvention of the application of the Convention.

## II. At the **CHILD PROTECTION** level

19. Voluntourism (see orange box 13 of this FS).



RS

SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>19</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.

## FS 2 “Circumventing the Convention” – additional information (endnotes)

### 1 **Direct contact of the PAPs with the State of origin**

A few Contracting States are of the view that, in some instances, the Central Authority should be able to determine when limited contact between PAPs and a Central Authority is permissible, such as for habitual residence determinations and general adoption inquiries (2022 SC, C&R No 16).

### 2 **Private and independent adoptions**

See Glossary of this Toolkit; GGP No 1, Sections 8.6.6 and 10.1.1.6. In such adoptions, many principles of the Convention may not be respected (*e.g.*, assessment of the eligibility and suitability of the PAPs, matching procedure, birth parents' consent, subsidiarity principle, application to adopt to the Central Authority in the State of habitual residence of the PAPs).

### 3 **Private and independent adoptions**

States should prohibit private and independent adoptions in their legislation. Some receiving States do this through migration and visa eligibility requirements which prohibit the entry of a child adopted under a private or independent arrangement.

### 4 **AABs not accredited and / or authorised**

For ease of reference, the term “AAB” has been used. However, it should be noted that if an adoption body has not been accredited, it should not qualify as an “AAB”.

Please note that in the case of approved (non-accredited) persons or bodies (HC, Art. 22(2)), they do not need to be accredited, but they would need to be approved. Thus, if a person or body under Art. 22(2) of the Convention operates without having been approved to operate, this would also constitute an illicit practice.

### 5 **Emergency situations**

If an adoption takes place in an emergency situation, it can be very difficult or impossible to ensure that the guarantees and procedures of the Convention are respected.

In this Toolkit, “unregulated” adoptions refer to adoptions done without respecting the Convention; and “premature” adoptions refer to adoptions done prior to the authorities taking reasonable and sufficient efforts to trace the family of the child for family reunification.

In emergency situations (whether natural (*e.g.*, the 2010 earthquake in Haiti, the 2004 Tsunami in Sri Lanka, a pandemic, climate change) or manmade (*e.g.*, (armed) conflict, war, disturbances), more children are abandoned, lost or become orphans due to these emergency situations; there are fewer resources to locate the family of separated children and to properly implement the principle of subsidiarity; and, if an adoption takes place, it can be very difficult or impossible to ensure that all steps and guarantees are respected. Therefore, there is a greater risk of abduction, sale of, or traffic in children, or illegal adoptions.

### 6 **Emergency situations**

See GGP No 1, para. 502 and Annex 9, as well as the UN Guidelines, Chapter IX. In emergency situations, the safety of children should be the first priority. As authorities are likely to be overwhelmed with emergency priorities, it will be very difficult to ensure all guarantees and procedures of the Convention are respected. Therefore, adoptions should be halted in emergency situations. However, a distinction should then be made between:

- children who have been separated from their family as a result of the emergency situation: “efforts to reunify a displaced child with [their] parents or family members must take priority and [...] **premature and unregulated attempts** to organise the adoption of such a child abroad should be **avoided and resisted**” (see GGP No 1, p. 112); and
- children who have been declared adoptable before the emergency: the continuation of the adoption process should be discouraged as the children may have experienced a new trauma

and going through an adoption process shortly after could aggravate that trauma. The State of origin may, however, assess if it has the capacity to handle these adoptions. If it does, such adoptions should only be considered if they are in the best interests of the child and if the adoption can be carried out in accordance with the procedures and safeguards of the Convention. The receiving States should also pay particular attention to respecting the Convention. If adoptions cannot be carried out properly, they should be halted.

Within the broader framework of child protection, and in order to prevent more children being abandoned as a result of the deteriorating living conditions due to the emergency situation, States should ensure that families receive adequate support.

In some cases, the HCCH 1996 Child Protection Convention may prove to be helpful, for example to protect and assist displaced children.

#### **7 Misuse of domestic adoption, guardianship, kafala, custody orders, or other judicial or administrative processes**

For example, a guardianship order is made in the State of origin with the purpose of seeking an adoption once the child is in the receiving State. Other examples include: adoptions arranged under customary or religious practice; adoptions by diplomats where their habitual residence is not clearly determined; PAPs claiming to be residents in the State of origin by, for example, using a secondary residence in the State of origin when habitual residence is in the receiving State; or birth mothers who move from the State of habitual residence to another State for the purpose of giving birth in that other State and relinquishing the child to be adopted domestically in the State of birth of the child.

For cases where a competent authority in the State of habitual residence of a child intends to place that child under *kafala* with persons who habitually reside in another State, please refer to the HCCH 1996 Child Protection Convention (assuming that Convention is in force in both States), including Art. 33 of that Convention.

#### **8 Cooperation and effective control mechanisms**

See GGP No 1, Section 2.3.3. Authorities should seek to prevent any attempts to circumvent the Convention's requirements. Art. 8 of the Convention provides that "Central Authorities shall take, directly or through public authorities, all appropriate measures [...] to deter all practices contrary to the objects of the Convention."

#### **9 Actors in the State of origin**

If adoption is part of a comprehensive child protection system, competent authorities will be better informed and trained about all possible measures of care and will thus be able to distinguish between domestic and intercountry adoptions. See also HCCH Note on Habitual Residence.

#### **10 Determination of the habitual residence**

See HCCH Note on Habitual Residence.

#### **11 Failure to scrutinise applications for domestic adoptions**

This is especially the case when competent authorities are not duly informed and trained about the Convention.

For example, expatriate PAPs may take advantage of a "potentially unclear" habitual residence to complete a domestic adoption instead of an intercountry adoption, avoiding respecting the principles of the Convention.

#### **12 Scrutiny of applications for domestic adoptions**

PAPs temporarily residing in the State of origin should be appropriately assessed and scrutinised by the State of origin. Consideration should be given by the State of origin as to whether there is an intent to move the child out of the State of origin after the completion of the adoption, including to the PAPs' usual State of habitual residence (or, for example, if one of the spouses moved to the State of origin for the purpose of circumventing the safeguards of the Convention or with an immediate plan to return to the usual State of habitual residence with the adoptee and later on, the other spouse completes a

domestic step-child adoption). If their intention is indeed to move the child out of the State of origin after the completion of the adoption, consideration should be given by the State of origin to whether it is appropriate to enable the domestic adoption to proceed.

**13 Summer camps, hosting programmes and voluntourism**

See FS 10 “Matching”, endnote 12.

**14 Summer camps and hosting programmes**

Most States do not organise summer camps or hosting programmes where PAPs can identify a child as this can lead to circumventing the Convention and to illicit practices. However, those States which do organise them report that such programmes, when carried out with sufficient safeguards, have proven helpful for the adoption of older children and / or children with special needs for whom no family (domestically or intercountry) could be found. See further FS 10 “Matching”, endnote 13.

**15 Public awareness of the Convention's principles and safeguards**

Raising public awareness on the Convention, and the importance of its principles and safeguards, can assist in preventing circumvention of its application. For example, some PAPs may believe that they are doing the right thing for the child while they are actually causing the child more harm. To help prevent this, it is important that the Central Authority's website provides thorough, up-to-date information, including contact information. If a Central Authority receives requests from PAPs, it should provide clear information in response.

**16 Supervision of AABs by Central Authorities**

See GGP No 2, Section 2.3.

**17 Proportion of the number of AABs**

For examples of good practices, see GGP No 2, footnote 105, as well as Sections 2.3.4.2 and 4.4.

**18 Childcare institutions**

Foreigners involved in the work, management and / or finances of childcare institutions may have the potential of additional risks of circumventing the Convention's safeguards, including regarding financial aspects, as they may have easier access to funds (e.g., it may be easier to find funds in a receiving State where the foreigner comes from, and thus they may be more easily established and functioning), and contacts with persons in a receiving State that work on intercountry adoptions.

In addition, it is important to recall that “[t]here is wide recognition of the adverse impacts of institutionalization on developmental outcomes and children's well-being”. The focus should be on “reducing the numbers of children living in institutional care and, whenever possible, to prevent institutionalization in the first place, or to reunite children with their families in line with their obligations under the [CRC] and the UN Guidelines [...]” (see UNICEF, *Children in alternative care*, 2020). See also FS 6 “Subsidiarity”, endnote 21.

**19 Voluntourism**

See FS 10 “Matching”, endnote 24.





## FACT SHEET 3

### Improper Financial and other Gain<sup>1</sup>

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On this topic, see also:  
FS 1 "Abduction", FS 2 "Circumventing the Convention", FS 8 "Unknown Parents", FS 9 "PAPs" and FS 10 "Matching"

#### Illicit practices and possible preventive actions ✔

##### I. At the **ADOPTION** level

#### All financial aspects

1. Deriving improper financial or other gain from an activity related to intercountry adoption (HC, Art. 32(1)).



RS  
SO

Take all appropriate **measures** to prevent, address and ensure that no one derives improper financial or other gain in connection with an intercountry adoption.<sup>2</sup>

2. Charging, suggesting, proposing, requesting, paying and / or receiving costs, fees, contributions, donations and / or doing cooperation projects which are prohibited by law or not permitted by either the State of origin or the receiving State.<sup>3</sup>



RS  
SO

Establish and implement an adequate **legal framework** and clear guidance for the financial aspects of adoption<sup>4</sup> (see also green box 14 of this FS).

Authorities and bodies should only charge, suggest, propose, request and / or receive costs, fees, contributions, donations and / or doing cooperation projects which are **permitted by law** in both the State of origin and the receiving State.

### 3. Circumventing financial controls.



RS  
SO

Develop and ensure **strict control mechanisms**, including through monitoring and supervising the activities of different actors (see further below section "Accountability and control mechanisms").<sup>5</sup>

## Costs and fees

### 4. Charging costs and fees:

- that are unreasonably high (HC, Art. 32(2) & (3)),<sup>6</sup>
- that exceed actual costs incurred,<sup>7</sup>
- for services where it is inappropriate to do so and / or that were not provided (delivered).<sup>8</sup>



RS  
SO

Ensure that **costs and fees** for adoption services, including the staff remuneration of AABs, are reasonable (HC, Art. 32(2) and (3)) taking into consideration the standard of living of the relevant States and other child welfare services<sup>9</sup> (see further below section "Reasonability").

Ensure that the amount charged does not exceed the required amount by the relevant authority or body (see further below section "Transparency").<sup>10</sup>

Limit payments to costs and fees that have been disclosed by each State in the [HCCH Table on Costs associated with Intercountry Adoptions](#).

Prohibit actors from charging for services where it is inappropriate to do so, or which are / were not provided (delivered).<sup>11</sup>

Specify the final use of the costs and fees (the money should be used to pay for a particular adoption service) (see further below section "Transparency").<sup>12</sup>

### 5. Suggesting, proposing, requesting or making the payment of an additional sum to expedite the adoption process before the adoption decision is made.<sup>13</sup>



RS  
SO

Prohibit suggesting, proposing, requesting, making or receiving payment of **additional fees** to expedite the adoption process (*i.e.*, "expediting fees").<sup>14</sup>

## Contributions, donations & cooperation projects<sup>15</sup>

### DIFFERENT VIEWS

#### VIEW No 1:<sup>16</sup> SEPARATION OF ACTIVITIES

There should be **NO contributions, donations and / or cooperation projects** in the context of adoption.

6. Charging or paying sums in relation to the adoption that are neither costs or expenses, including reasonable professional fees (HC, Art. 32).<sup>17</sup>



RS

SO

“Only costs and expenses [...] may be charged or paid” (HC, Art. 32(2)).

**Prohibit** contributions, donations and / or cooperation projects in the context of intercountry adoption.<sup>18</sup>

#### IEWS Nos 2<sup>19</sup> and 3<sup>20,21</sup> MEETING THE NEEDS OF STATES OF ORIGIN / ACKNOWLEDGEMENT AND SUPPORT OF SUCCESSFUL PROJECTS

**Contributions, donations and / or cooperation projects may be permitted** by a State, if **certain safeguards** are respected.<sup>22</sup>

This section of the FS presents some possible illicit practices in this area, when safeguards are not respected.

7. Lack of separation of contributions, donations or cooperation projects from the actual costs and fees of an adoption, as well as from the intercountry adoption process as a whole.



RS

SO

Establish, in all cases, a **clear separation** of intercountry adoption (the actual costs of an adoption) from contributions, donations and development aid (cooperation projects).<sup>23</sup>

Among others, the actual costs of an adoption (costs and fees) should be clearly specified and detailed in advance to PAPs, and distinguished from any possible contribution, donation or cooperation project.

Establish clear consequences if the separation is not maintained.

8. Contributions, donations or cooperation projects aimed at funding or directly influencing intercountry adoption either generally or for a specific adoption, including:<sup>24</sup>



RS  
SO

See green box 7 of this FS.

Establish appropriate controls to ensure **undue influence** cannot occur.

9. - cooperation with specific States (e.g., matching of children with PAPs of those States) influenced by levels of contributions, donations and support for cooperation projects;



RS  
SO

Establish measures to avoid giving priority to **cooperation** or basing decisions regarding the placement of children (matching) on the level of contributions, donations or support for cooperation projects provided by AABs or PAPs, or their respective governments.<sup>25</sup>

10. - contributions, donations or cooperation projects aimed at supporting childcare institutions taking care of adoptable children who may be adopted intercountry.<sup>26</sup>



RS  
SO

Ensure that contributions, donations or cooperation projects are only used to improve the **national child protection system**, in particular to strengthen programmes on family preservation and reunification, and prevention of abandonment.

They should not be used for the intercountry adoption system, or for childcare institutions involved with intercountry adoption<sup>27</sup> (see further below green boxes 18 and 19 of this FS, and section "Transparency").

11. Unreasonably high amount of contributions or donations in relation to the cost of living in that State.<sup>28</sup>



RS  
SO

Ensure the **amount of the contributions**:

- is established by the State of origin (and not by the childcare institution (often a partner of the AAB) or the AAB itself) and
- is reasonable, fixed, publicly known and identical for all receiving States<sup>29</sup> (see further below section "Transparency").

Set reasonable limits on the number and the amount of possible donations.<sup>30</sup>

12. Seeking, offering, making, accepting, or receiving donations before the adoption procedure is completed / finalised<sup>31</sup> to State authorities (e.g., government officials, Central Authorities) or bodies concerned with the adoption process.



RS  
SO

Prohibit **donations to authorities** (e.g., government officials, Central Authorities) and other bodies concerned with the adoption process before the adoption procedure is finalised.<sup>32</sup>

**Donations by PAPs to adoption bodies** concerned in the adoption process must not be sought, offered or made.<sup>33</sup>

13. Seeking, offering, making, accepting, or receiving donations (before or after the adoption has been finalised) to birth families.<sup>34</sup>



RS  
SO

Prohibit **donations to birth families** of (possible) adoptable children.<sup>35</sup>

## Enabling factors and possible preventive actions

- I. At the **ADOPTION** level

### All financial aspects

14. Lack of or inadequate legislation, regulations and / or guidelines on financial aspects, and resources for implementing them.<sup>36</sup>



RS  
SO

Establish an adequate **legal framework** for the financial aspects of adoption and ensure that necessary funds, and human and material resources are allocated for a proper implementation.<sup>37</sup>

15. Failure of authorities and AABs to train their staff and / or representatives about financial aspects.<sup>38</sup>



RS  
SO

Properly **inform and train** the different actors involved in the adoption procedure.<sup>39</sup>

16. Staff and other persons working for competent authorities and bodies do not have adequate qualification, experience, resources and / or remuneration.



RS  
SO

Ensure that **competent authorities and bodies working on adoption** are appropriately qualified, experienced, and trained; have adequate powers and resources (including adequate remuneration for the services rendered).

17. Lack of proper rules on conflict of interest and resources to properly implement them.<sup>40</sup>



RS  
SO

Ensure that **competent authorities and bodies working on adoption** have high ethical standards and no conflict of interest.

18. Assessments (medical or other) to determine the child's needs paid by the PAPs.<sup>41</sup>

19. Sums to provide for the child ("maintenance") from the time of acceptance of the matching decision until the child leaves the institution covered by PAPs.<sup>42</sup>



RS  
SO

Ensure that the relevant authorities in the State of origin are responsible and pay for all the assessments to determine the **child's needs** before matching is done, as well as responsible for care until the child is entrusted to the PAPs.

States of origin that need to transition to this practice must ensure that **maintenance cost** for the child are determined in advance and include such fixed cost in the adoption's fees. No other payments should be requested or given.

## Transparency

20. Lack of or limited transparency. For example:



RS  
SO

Ensure **transparency** of all financial aspects.<sup>43</sup>

Ensure that Central Authorities, in cooperation with relevant competent authorities and bodies, complete and update regularly the **HCCH Tables of Costs** associated with intercountry adoptions.

21. - information regarding the financial aspects is not fully disclosed, or, even if disclosed, is not easy to access and / or up to date;<sup>44</sup>



RS

Ensure that all **information on financial aspects** is comprehensive, precise, accurate and up to date.<sup>45</sup>

SO

Ensure that the amounts for costs, fees and contributions are **publicly known and widely publicised**.<sup>46</sup>

22. - PAPs are not informed in advance of the costs and fees to be paid or made for the different steps of intercountry adoption, and of any (requested) contributions;  
- (Prospective) adoptive parents are exposed to pressure to make payments that were not initially planned.<sup>47</sup>



RS

Notify PAPs in advance (before the start of the adoption process) with an **itemised list of all costs, fees and contributions**, including information on whether any payments can be waived, reduced or refunded.<sup>48</sup>

SO

For each adoption, propose a **written timetable for the payment** of costs, fees and contributions for PAPs (e.g., in the contract signed with the AAB).<sup>49</sup>

Encourage PAPs to request **additional information or clarification** throughout the adoption process.

### Reasonability (see also orange and green boxes 4 and 5 of this FS)

23. Wide variations in the costs and fees charged:
- in States themselves;
  - by AABs;<sup>50</sup>
  - between States of origin;
  - between receiving States.<sup>51</sup>



RS

Determine an **acceptable range of permissible costs and fees**,<sup>52</sup> at least within a same State and its AABs if applicable, which should be reasonable in relation to the standard of living of the relevant State and other child protection services.

SO

Reconsider the extent of cooperation (and, if needed, cease cooperation) with a State (RS or SO) where there is no clear and reasonable explanation for a wide variation in the costs and fees charged in comparison to other States in its region.

24. Lack of or inadequate limits on costs, fees and contributions that can be charged or paid, and on donations that can be made.<sup>53</sup>



RS  
SO

**Limit the amounts** of costs and fees, contributions and donations.<sup>54</sup>

25. Remuneration of professionals is dependent on the number of adoptions finalised.



RS  
SO

Ensure that the **remuneration of professionals** is not dependent on the number of adoptions, or the characteristics of the child placed for adoption and, if possible and where the number of adoption cases allows for this, is made on a monthly basis.<sup>55</sup>

### Securing the transaction

26. Costs and fees, contributions and donations made in cash and / or not recorded (and / or not tracked).<sup>56</sup>



RS  
SO

Prohibit payments made in **cash**.<sup>57</sup>

Ensure that all payments are recorded and made by **bank transfer** to a specified formal Central Authority or AAB bank account.<sup>58</sup>

27. Costs and fees, contributions and donations made without invoices (excluding for donations) or receipts.<sup>59</sup>



RS  
SO

Issue or request **detailed invoices** (excluding for donations) and **official receipts** for payments of costs and fees, contributions and donations.<sup>60</sup>

28. PAPs make payments directly to persons, bodies or institutions in the State of origin.<sup>61</sup>



RS  
SO

Ensure that PAPs make all payments in the State of origin **through the AAB** that they are using, or if possible, **through the Central Authority**.<sup>62</sup>



## Accountability and control mechanisms

29. Lack of, limited or inadequate accountability and / or control mechanisms regarding financial aspects.<sup>63</sup>

✓ RS  
SO

Ensure **accountability and strict control mechanisms** by the supervising authority:<sup>64</sup>

- seek full accountability by verifying the information provided by the recipient (e.g., AAB, institutions) of payments and, where necessary, request an explanation for any costs, fees, contributions or donations;<sup>65</sup>
- ensure that regular external audits are carried out;<sup>66</sup>
- provide easily accessible means of reporting any improper payment or abuses.<sup>67</sup>

Before giving the agreement that the adoption may proceed (HC, Art. 17(c)), **verify all costs and fees** charged, paid or made up to that moment.<sup>68</sup>

30. Lack of or limited or inadequate financial recording and reporting by the authorities and bodies receiving payments for costs, fees, contributions or donations to the Central Authority or competent authority, including how the money was used.

✓ RS  
SO

Ensure that **recipients of payments**:

- record all financial transactions and produce a detailed financial report;<sup>69</sup>
- maintain detailed accounts of the costs, fees, contributions and donations; how they have been spent; and ensure that they are used for the purpose for which they were requested, sought or accepted.<sup>70</sup>

Central Authorities should be **notified of any donations** made by AABs or PAPs and / or cooperation projects of AABs.<sup>71</sup>

31. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving improper financial or other gain.

✓ RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving improper financial or other gain (Part III “Model Procedure”).

## Cooperation

32. Lack of or inadequate cooperation between States.<sup>72</sup>



RS  
SO

Promote **cooperation** between States by:

- gathering, exchanging and comparing information (e.g., using the [HCCH Tables on Costs](#) for reference) between States on financial aspects, and experiences and tools to achieve transparency and reasonability;<sup>73</sup>
- considering the extent of the cooperation (and if necessary, cease cooperation) with a State when the practices regarding the financial aspects in that State are inadequate and are not addressed in a satisfactory manner;<sup>74</sup>
- considering cooperation and providing support through official channels such as bodies, agencies and organisations that specialise in development aid.<sup>75</sup>

## Contributions, donations & cooperation projects

33. Reliance and dependency on intercountry adoption for (additional) sources of funding through donations, contributions or cooperation projects.<sup>76</sup>



RS  
SO

Ensure that States strive to eliminate their **reliance on intercountry adoption** for additional sources of funding through donations, contributions or cooperation projects.

Ensure that States try to find **other means of support** through official developmental aid, not linked to adoption.

34. The purpose of the contribution, donation or cooperation project is unclear.<sup>77</sup>



SO

Ensure that the competent authorities and bodies explain clearly and in advance the purpose and final **use or destination of the contribution, donation or cooperation project**.<sup>78</sup>

35. Contributions,<sup>79</sup> donations and cooperation projects for childcare institutions.



SO

Through States' authorities, actively consider prohibiting contributions, donations and cooperation projects to support **childcare institutions**.<sup>80</sup>

Ensure that contributions, donations and cooperation projects are instead intended to **strengthen programmes** on family preservation, prevention of abandonment, or similar child protection projects.<sup>81</sup>

If, nevertheless, a donation to a childcare institution is done, it should preferably be to a childcare institution not caring for adoptable children.

**Contributions** (see also orange and green boxes 14 to 35 of this FS)

36. The amount for contributions demanded by a State of origin is not fixed, and / or varies among receiving States working in that State of origin.<sup>82</sup>



RS

SO

Ensure that the amount for contributions required is a **fixed amount and is identical** for all receiving States working in that particular State of origin.<sup>83</sup>

Establish a **specific fund** to which all contributions will be paid, with all necessary safeguards.<sup>84</sup>

37. The amount for contributions demanded by an AAB is not fixed and clear.<sup>85</sup>



RS

SO

Ensure that the amount for contributions is **fixed by the State of origin** and not by the childcare institution (often a partner of the AAB) or the AAB itself.<sup>86</sup>

**Donations** (see also orange and green boxes 14 to 35 above of this FS)

38. Monetary donations.



RS

SO

**Donations in kind** should be preferred.<sup>87</sup>

39. Expectation that donations should be made or received after an adoption is finalised.<sup>88</sup>
40. Pressure on PAPs to provide gifts and / or donations for childcare institutions or its staff.

Ensure that authorities, bodies, persons, **do not ask** PAPs to make donations.



RS  
SO

**Inform PAPs** about the problems and dangers regarding donations (e.g., influencing the process, creating dependency and expectations, encouraging competition between AABs and PAPs).<sup>89</sup>

Ensure that **donations are always voluntary**: inform PAPs that they are not obliged to make donations, and if they receive pressures to do so, they should inform the Central Authorities of the receiving State and the State of origin.<sup>90</sup>

### Cooperation projects (see also orange and green boxes 14 to 35 of this FS)

41. Cooperation projects, without appropriate safeguards.



RS  
SO

Set out **strict conditions and limited purposes** under which cooperation projects may be permitted.<sup>91</sup>

Cooperation projects should match the **real needs** of the State of origin.<sup>92</sup>

Require by law the **separation** of intercountry adoption from cooperation projects and other forms of aid.<sup>93</sup>

42. Lack of a written cooperation agreement between the bodies and / or authorities involved in the receiving State and the State of origin.



RS  
SO

Ensure that a **written cooperation agreement** (including terms setting out how the cooperation will be put into practice) is signed between the bodies and / or authorities involved in both States.<sup>94</sup>

43. Cooperation projects of AABs, without appropriate reporting, nor supervision and monitoring by the competent authority.




RS  
SO

Ensure that AABs **report** to the relevant competent authority in both the State of origin and the receiving State on the cooperation projects in which they are involved.


- 
RS  
SO
Ensure **supervision and monitoring** of the projects of AABs by the competent authority of the receiving State in close cooperation with the competent authority of the State of origin.<sup>95</sup>

44. Lack of separation between the staff and finances of the authorities or AABs dealing with intercountry adoption and the staff and finances dealing with cooperation projects.

- 
RS  
SO
Ensure that the AABs have a **separate department** for cooperation projects: *i.e.*, in their structure, with separate accounts and separate personnel to manage them and which are distinct and fully independent from the department handling the adoption operations.<sup>96</sup>

Contributions and donations for cooperation projects of AABs should be made to a **specific department** devoted to cooperation.

45. Expectation or obligation for, or pressure on, AABs and / or receiving States, to undertake cooperation projects in States of origin.


- 
RS  
SO
**Inform AABs** about financial aspects in adoption.  
States of origin should not require AABs and / or receiving States to undertake or contribute to cooperation projects in their State.

46. Obligation to contribute to the AABs' cooperation projects.

- 
RS  
SO
**Prohibit obliging PAPs to contribute** to the AABs' cooperation projects.

## II. At the **SANCTION** level

47. Lack of or inadequate criminal law provisions targeting activities related to improper financial or other gain, and/or resources to effectively enforce them.<sup>97</sup>

- 
RS  
SO
Enact **strong laws** targeting all violations related to improper financial or other gain, including meaningful sanctions such as deterrence, and effectively enforce such laws.<sup>98</sup>

48. Culture of corruption which enables a system of uncontrolled profiteering.



RS  
SO

Take action to prevent, expose and address **corrupt activity**.<sup>99</sup>

## FS 3 “Financial Gain” - additional information (endnotes)

<sup>1</sup> N.B.:

“Due to the importance of preventing illicit practices related to the financial aspects of intercountry adoption, the SC recommended that CGAP establish a new Experts' Group to take stock of current practices, identify possible coordinated, targeted approaches, and to prioritise them with the understanding that the objective would be to raise standards using the HCCH Guides to Good Practice and the Note on the Financial Aspects of Intercountry Adoption as the starting point” (2022 SC, C&R No 11).

This FS is based on current thinking and practices. It follows the HCCH [GGP No 1](#) and [No 2](#), the [Note on Financial Aspects](#) and the [Summary list of good practices on the financial aspects of intercountry adoption](#) (List). These documents took a pragmatic approach and described the risks associated with contributions, donations and cooperation projects and the different views on whether they should be permitted by States in the context of intercountry adoption. They also set out the recommendations which should, as a minimum, be implemented if they are to be permitted by a State.

However, the Working Group on Preventing and Addressing Illicit Practices “acknowledged that problems [...] still continue and, therefore, recommended that further discussion is needed, in particular, to properly implement the Convention which establishes that “[o]nly costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid” (Art. 32(2)), as well as “to raise standards in relation to improper financial and other gains”” (see 2019 WG Report, para. 9).

### **2 Prevent improper financial gain**

See List, Section 6.

### **3 Charging costs when prohibited or not permitted**

See Note on Financial Aspects, para. 154: “In many cases, the law could regulate the more general and important prohibitions, while regulations may establish more detailed issues and offer tables with maximum costs (which may be updated regularly)”.

### **4 Adequate legal framework**

See List, Section 6(a).

### **5 Develop strict control mechanisms**

See Note on Financial Aspects, para. 161 which includes some examples on how to do this: “enact and enforce regulations concerning control or supervision that are precise and transparent, including, among others, the need for regular reporting; clearly state the authorities which are in charge of the control and supervision; effectively communicate those regulations to the adoption community, to other States and to the public at large to encourage transparency and accountability; retain State control of supervision functions; provide adequate and appropriate resources to perform these functions; retain control or supervision of the parts of the adoption process that are most prone to abuse or exploitation; and control authorities responsible for the adoption process (*i.e.*, through a system of inspection and by subjecting decisions to a process of review or appeal).” See also List, Section 6(b).

### **6 Unreasonably high costs and fees**

See Note on Financial Aspects, definitions of “improper financial or other gain” and “reasonable” and Section 5.3. For example, administrative, legal, or translation costs which are particularly expensive in comparison with the relevant State’s cost of living on the assumption that PAPs have the means to pay higher costs. Nevertheless, it is also important to ensure availability of persons who can do the work and quality work.

- 7** **Costs and fees that exceed actual costs**  
See Note on Financial Aspects, para. 99.
- 8** **Costs and fees charged for services where it is inappropriate to do so, or for services not provided (delivered)**  
Inappropriate: *e.g.*, charging for services which a State ordinarily provides free of charge; a body charging higher fees to PAPs for an official government service other than the one established by that authority.  
  
Services not provided (delivered): *e.g.*, costs and fees have been charged by an AAB which then ceases to operate but neither the service is rendered nor the costs and / or fees refunded (GGP No 2, para. 344); when an adoption procedure is stopped but amounts paid in advance for services which were not rendered are not refunded.
- 9** **Only reasonable costs and fees**  
See Note on Financial Aspects, Section 5.3., para. 108. Costs and fees are generally reasonable when they are: permitted (allowed) under the law of the State(s) in which the service is provided and the payment is made; commensurate with the necessary qualifications and experience of the actor, as well as with the number of hours that the actor has worked; and when they are similar to the costs and fees charged by comparable bodies or professionals within the State for similar services. The relevant authority or body should also specify if the relevant costs are fixed or variable.
- 10** **Charging costs and fees that do not exceed actual costs**  
See Note on Financial Aspects, para. 85.
- 11** **Prohibit charging for services where it is inappropriate to do so, or for services not provided (delivered)**  
See Note on Financial Aspects, para. 104 and List, Section 3(a).
- 12** **Final use of costs and fees**  
See Note on Financial Aspects, para. 90; List, Section 2(e).
- 13** **"Expediting" fees**  
See GGP No 1, paras 236-237 and Annex 3.2: "In some States "unofficial" adoption fees are charged – those that are demanded to move the required paperwork through the adoption process. For example, significant unexplained paperwork delays may occur without the payment of "expediting" fees. Some accredited bodies or approved (non-accredited) persons may find that their clients do not receive child assignments without paying incentives to officials or orphanage directors who make placement decisions" (GGP No 1, para 236). "Such practices undermine attempts to protect the interests of children to be adopted. Once a system of using such "expediting" fees develops, it is difficult to stop the abuses" (GGP No 1, para 237). The use of expediting fees "in relation to adoption can result in the failure of the State to meet its Convention obligations regarding subsidiarity and the best interests of the child" (GGP No 1, Annex 3.2.3.2). See also Note on Financial Aspects, para. 102.  
  
It has to be noted that the payment of expediting fees once the adoption decision has been finalised (for example for expediting the issuance of the child's passport or exit visa) when permitted by the legislation of a State, when transparent and when paid to the office itself and not to persons, does not constitute an illicit practice.
- 14** **Prohibit "expediting" fees**  
See Note on Financial Aspects, para. 104. However, this does not include the expediting fees for issuance of the child's passport or exit visa which are permitted by the legislation and are transparent (see further *supra* endnote 13).
- 15** **Contributions, donations and cooperation projects**  
The Note on Financial Aspects (Section 6) describes the risks associated with contributions, donations and cooperation projects, and the different views regarding the legitimacy of contributions and



cooperation projects to support child protection systems in States of origin. This FS presents the different views presented in GGP No 2 (Section 9.7) and in the Note on Financial Aspects.

**16 Contributions, donations and cooperation projects – View No 1**

2022 SC, C&R No 9 : “Most delegations expressed strong support for ensuring that only costs and expenses are charged or paid in line with Article 32(2) of the Convention (view 1). In their view, contributions, donations and cooperation projects should not take place in the context of intercountry adoption in order to ensure a full separation from costs and fees. They emphasised that States should make efforts to build a pathway towards this view to avoid the inherent risks of undue influence related to contributions, donations and cooperation projects, but recognised this may take some time to be achieved”.

See also GGP No 2, Section 9.7.1; Note on Financial Aspects, paras 128-129.

**17 Problems of contributions, donations and cooperation projects.**

See GGP No 2, Section 9.7.1; Note on Financial Aspects, paras 117-123: Contributions, donations and cooperation projects are not required by the Convention as they influence the process, create dependency and expectations, encourage competition; and are not a legitimate way to support child protection systems in States of origin. For example, contributions to AABs may lead to an open competition between foreign AABs, where bodies supporting larger projects may be favoured in the allocation of children.

See also GGP No 2, paras 429 and 444: “[t]he view that donations will not influence outcomes if paid after the adoption cannot be justified in the majority of cases” and “[i]t is difficult to imagine that a donation will not influence the process when an adoption is undertaken on the understanding that a donation will be forthcoming” (View No 1).

**18 No contributions, donations and cooperation projects from actors involved in intercountry adoption**

See GGP No 2, para. 443; Note on Financial Aspects, para. 129: It should also be kept in mind that the role of adoption authorities and bodies is to facilitate intercountry adoptions when they are in the best interests of the child, and “therefore, they may not have the capacity, experience and professionals needed to properly implement the cooperation projects”.

See also 2019 WG Report, para. 9: “Some questioned on what children’s rights basis the child protection system, including the adoption system, in a [State] should be partially funded by [PAPs] or [AABs] through contributions, donations and / or cooperation projects”.

**19 Contributions, donations and cooperation projects – View No 2**

Some are of the view that “some projects may meet the needs of States of origin and may be legitimate if they are properly monitored”, Note on Financial Aspects, para. 137. See also GGP No 2, Section 9.7.2.

**20 Contributions, donations and cooperation projects – View No 3**

Some are of the view that “successful projects of AABs must be acknowledged and supported, and therefore they may be legitimate” Note on Financial Aspects, paras 138-139. See also GGP No 2, Section 9.7.3.

**21 Contributions, donations and cooperation projects – Views No 2 and No 3**

2022 SC, C&R No 10: “Some delegations expressed the view that setting and respecting strong safeguards regarding contributions, donations and cooperation projects is another way to ensure that there is no undue influence in the adoption process (views 2 and 3). Nevertheless, the SC noted that even under this view, 1) lack of separation of contributions, donations or cooperation projects from the actual costs of an adoption, as well as from the intercountry process as a whole, and 2) cooperation with specific States influenced by levels of contributions, donations and support for contribution projects, still constitute illicit practices.”

- 22 Contributions, donations and development aid may be permitted if safeguards are respected**  
See GGP No 2, Section 9.7 and Note on Financial Aspects, paras 137-139 and paras 142 and 145 for recommendations regarding contributions and donations, if allowed.
- For the safeguards to prevent illicit practices from occurring see, for example, green boxes 1 to 3, and 7 to 13 of this FS.
- For the safeguards to prevent enabling factor from occurring see, for example, green boxes 14 to 48 of this FS.
- 23 Clear separation**  
2022 SC, C&R No 8: "Recalling that contributions, donations and cooperation projects present a high risk of influencing the adoption process by creating dependency and encouraging competition amongst States, organisations and prospective adoptive parents (PAPs), the SC reiterated that there should be a clear separation of possible costs and fees of the adoption process, from contributions, donations and cooperation projects." See also 2010 SC, C&R Nos 1(h) and 14; Note on Financial Aspects, paras 21, 124-126; List, Section 5(a); GGP No 2, Section 9.7.1.
- 24 Influencing intercountry adoption**  
In the context of views 2 and 3, some States have expressed concerns about how the issues are presented and treated in red boxes 8 to 10 of this FS.
- See Note on Financial Aspects, paras 118-121.
- Contributions, donations and cooperation projects affect the fairness of the cooperation between States. In such cases, the illicit practice would be the contribution, donation or cooperation project itself, but it does not mean that the adoption itself would become illicit.
- 25 Avoiding influencing intercountry adoption**  
For example, a State may want to establish strict rules to ensure that the persons or committee making decisions regarding the placement of children are not given access to any information regarding the levels of contributions, donations and support for cooperation projects from various PAPs, AABs and/or RS.
- 26 Contributions, donations or cooperation projects aimed at supporting childcare institutions taking care of adoptable children who may be adopted intercountry**  
Some States are of the opinion that, under views 2 and 3, the content of red box 10 would be considered more appropriately as an enabling factor.
- 27 Improve the child protection system**  
See Note on Financial Aspects, paras 91-92 and List, Section 5(b).
- 28 Unreasonably high contributions or donations**  
See Note on Financial Aspects for the definitions of "improper financial or other gain" and "reasonable" for costs and fees, which may also be applicable to contributions and donations.
- 29 Fixed and reasonable amounts of possible contributions**  
See Note on Financial Aspects, para. 142. Also, GGP No 2, para. 426.
- 30 Limit the amounts of possible donations**  
See Note on Financial Aspects, para. 145-146.
- 31 Donations made before the finalisation of the adoption**  
See GGP No 1, para. 244: "Concerns were raised in the 2000 Special Commission about the practice of making donations to adoption bodies or institutions, in particular before the adoption process is completed. Specific concerns were the lack of knowledge about, and the lack of monitoring or reporting systems for, the use of donations, and the varying amounts sought or given" (see also

2000 SC, C&R No 9, and 2005 SC, C&R No 5; Note on Financial Aspects, para. 145; List, Section 5(c). See also GGP No 2, para. 429.

It has to be noted that “before the finalisation of the adoption” also during the adoption process.

**32 Prohibition of donations before the finalisation of the adoption**

See 2000 SC, C&R No 9; 2005 SC, C&R No 5; GGP No 1, para. 244; Note on Financial Aspects, paras 145 and 146; List, section 5(c).

PAPs are or should be made aware of all financial aspects (including donations) as part of the information provided to them at the beginning of their project. In addition, during the adoption process, neither the AAB nor the PAPs should be solicited for donations in order to avoid the possibility that the donations will have an influence on the allocation of children. However, even if the PAPs and AABs are not solicited during the adoption process, they know they may be after the process. Thus, the efficacy of not soliciting them during the process may be quite limited, especially since PAPs very often feel obligated to donate or insecure about potentially losing their child if they do not donate.

**33 Prohibition of donations before the finalisation of the adoption**

See 2000 SC, C&R No 9; 2005 SC, C&R No 5; GGP No 1, para. 244; Note on Financial Aspects, paras 145 and 146; List, Section 5(c).

**34 Donations to birth families**

See Note on Financial Aspects, para. 144.

**35 Prohibition of donations to birth families**

See Note on Financial Aspects, para. 145: “donations should never be given to [birth] families of adoptable children”.

**36 Lack of or inadequate regulation and implementation**

See Note on Financial Aspects, Sections 7.2 and 7.3.

**37 Adequate legal framework and its implementation**

See Note on Financial Aspects, paras 157-158; see also Sections 7.1, 7.2 and 7.3, and List, Section 6(a). The “Convention only set[s] minimum standards with regard to financial issues” (Note, para. 152). Domestic legislation should build on and raise those standards (see Note, paras 153-154). Implementation may be carried out through laws at the more general level addressing the important prohibitions and regulations dealing with more detailed matters (see Note, para. 154).

**38 Failure to train staff and representatives**

See Note on Financial Aspects, paras 43 and 156. Such lack of training or monitoring could result in the personnel not being aware of the risks of financial aspects and could result in unreasonably high amounts being charged and / or improper payments being requested.

**39 Proper information and training**

See Note on Financial Aspects, paras 57, 150-151 and 159. For example, the State of origin should have meetings with the representatives of the AABs in order to explain the adoption procedure to them.

**40 Conflict of interest**

See Note on Financial Aspects, para. 103: “It is legitimate to expect that quality services will be remunerated accordingly. Failing to do so may also lead professionals to resort to illicit means to supplement their income (e.g., accepting a bribe), or to take on too many jobs which could divert them from their initial mission and create potential conflicts of interest”. See also GGP No 1, Annex 3.1.3.2 and GGP No 2, para. 228.

**41 Assessment of the child paid by PAPs**

For example, in some cases PAPs are asked to fund further assessments (medical or other) to determine the child’s needs after the matching is done, while these assessments should have been

done before the matching in order to ensure that authorities are able to make an appropriate / informed match and PAPs make a fully informed decision.

**42 Maintenance of a child before entrustment being paid by PAPs**

In some instances, PAPs are asked to pay for the maintenance of a child. Some childcare institutions see these sums as a steady additional income and may therefore expedite the matching process to identify PAPs prematurely and / or delay the entrustment of the child to the PAPs.

**43 Transparency**

See Note on Financial Aspects, Section 5.2; List, Section 2.

**44 Information not fully disclosed**

See Note on Financial Aspects, para. 68.

**45 Comprehensive, precise, accurate and up-to-date information**

See Note on Financial Aspects, paras 75-78; List, Sections 2(a), 5(b). The information should be updated at least once a year.

**46 Wide publicity**

See Note on Financial Aspects, paras 79-80; GGP No 2, paras 353 and 355. *E.g.*, through brochures, websites, and, where appropriate, in multiple languages.

**47 Payments not initially planned**

See Note on Financial Aspects, para. 37: "for example under the cover of donating to a childcare institution. Sometimes they are coerced in the final stages to pay more money or risk having the adoption blocked or stopped".

**48 Notify PAPs in advance**

See 2000 SC, C&R No 9, and 2005 SC, C&R No 5; Note on Financial Aspects, paras 17 and 82; List, Section 2(c).

**49 Timetable of payments**

See Note on Financial Aspects, paras 83-84; List, Section 2(c); ISS, *Intercountry Adoption and Its Risks: A Guide for Prospective Adopters*, 2015.

**50 Wide variation of costs and fees between AABs**

It has to be noted that in the case of AABs from different States, part of this variation may be due to how AABs are funded, especially where they are publicly funded. In such case, the variation would not be an enabling factor.

**51 Wide variation of costs and fees**

See Note on Financial Aspects, para. 99.

**52 Determine a range of costs and fees**

See Note on Financial Aspects, para. 106.

**53 No limits**

See Note on Financial Aspects, paras 100-102. *E.g.*, "different actors may benefit from the absence of laws and regulations limiting costs and may increase the amounts that they charge".

**54 Limit amounts**

See Note on Financial Aspects, paras 105-106; List, Section 3(a).

**55 Remuneration not dependent on number of cases**

See Note on Financial Aspects, para. 111; List, Section 3(a).

**56 Payments in cash and / or not recorded**

See Note on Financial Aspects, para. 71.

- 57 Prohibition of payments in cash**  
See GGP No 1, para. 246; Note on Financial Aspects, para. 85; List, Section 2(d).
- 58 Payments by bank transfer**  
See GGP No 1, para. 246; Note on Financial Aspects, para. 85; List, Section 2(d).
- 59 Payments without invoices / receipts**  
See Note on Financial Aspects, para. 71.
- 60 Official receipts and invoices**  
See GGP No 1, para. 238; GGP No 2, para. 393; Note on Financial Aspects, paras 88-89; List, Section 2(d).
- 61 Payments directly by PAPs**  
See Note on Financial Aspects, para. 86; List, Section 2(d).
- 62 Payments through AABs**  
See Note on Financial Aspects, para. 86; List, Section 2(d).
- 63 Lack of accountability and / or control**  
See Note on Financial Aspects, paras 144 (donations) and 160.
- 64 Ensure accountability and / or control**  
See Note on Financial Aspects, para. 161; List, Section 6(b).
- 65 Accountability**  
See Note on Financial Aspects, paras 93 and 161; List, Section 2(e).
- 66 Audits**  
See Note on Financial Aspects, paras 17, 93 and 161.
- 67 Reporting improper payments and abuses**  
See Note on Financial Aspects, para. 115. *E.g.*, complaints line, phone (*e.g.*, hotline), specific email-address.
- 68 Verification of costs and fees**  
Please note, that it is not possible to verify donations and contributions at this stage, as donations and contributions should not be paid or made before the adoption is finalised.
- 69 Financial reports**  
See Note on Financial Aspects, paras 76, 90-95; List, Section 2(e).
- 70 Proper use of payments**  
See Note on Financial Aspects, para. 90; List, Section 2(e). Competent authorities should supervise and monitor how funds are used, so as to identify any illicit practice that could occur.
- 71 Notifying donations and cooperation projects**  
See Note on Financial Aspects, para. 145; List, Section 5(c).
- 72 Lack of cooperation**  
See Note on Financial Aspects, para. 73.
- 73 Gathering of information by Central Authorities and / or AABs**  
See Note on Financial Aspects, para. 74; List, Sections 2(a) and 2(f). When collecting information, it should include an estimation of the State's cost of living to compare it with the costs and fees charged for adoption in the different States.
- 74 Consider extent of cooperation**  
See List, Section 2(f).

- 75 Cooperation through specialised bodies, agencies and organisations**  
See Note on Financial Aspects, para. 135; List, Section 5(a).
- 76 Creating dependency and expectations on contributions, donations or cooperation projects**  
See Note on Financial Aspects, paras 58-59 and 120: “[S]ome States of origin finance (part of) their adoption system through the costs and fees paid, and parts of their child protection system through contributions and donations”. “States wanting to ensure a steady flow of external funds [for this purpose] may feel obliged to ensure that children are “supplied” for intercountry adoption” “regardless of the real need of children”.
- 77 Unclear or questionable purpose**  
See Note on Financial Aspects, para. 72.
- 78 Clear purpose and final destination of contributions, donations, and cooperation projects**  
See Note on Financial Aspects, paras 91-92 and List, Section 2(e), 5(b) and 5(c). *E.g.*, which aspects of the child protection system the contribution, donation or cooperation project will be used for.
- 79 Contributions, donations and cooperation projects for childcare institutions**  
Contributions, donations and cooperation projects for individual childcare institutions (including through AABs) create dependency as they connect the operation of childcare institutions with intercountry adoption. This practice may also encourage direct contact between the PAPs and the childcare institutions. See GGP No 1, para. 243.
- 80 Prohibit contributions, donations and cooperation projects to childcare institutions**  
See, UN Committee on the Rights of the Child, *2021 Day of General Discussion Children’s Rights and Alternative Care - Outcome Report*, Recommendations, Section E: “Transform the alternative care system towards family-based and community-based care”: “[States] should emphasize redirecting resources from institutional care towards family-based and community-based care [...]”; “States should ensure that national and international funding mechanisms, cooperation assistance and private funding are not used to support the institutionalization [...] of children [...]”.
- Some receiving States may not be able to prohibit donations to childcare institutions in the State of origin by their citizens (PAPs of the receiving State). In such cases, the receiving States should strongly and actively discourage donations to childcare institutions in States of origin.
- 81 Contributions, donations and cooperation projects for family preservation and preventing abandonment should be preferred**  
See *supra* endnote 27. See the recommendations made for donations: Note on Financial Aspects, para. 145; List, Section 5(c).
- 82 Amount for contributions demanded by a State of origin is not fixed**  
Contributions with amounts left to the discretion of the PAPs may encourage PAPs to pay more in order to influence an adoption.
- 83 Fixed amounts for contributions demanded by a State of origin**  
See Note on Financial Aspects, para. 142; List, Section 5(b).
- 84 Contribution to a fund**  
See Note on Financial Aspects, paras 130-131 (see paras 132-134 for the risks involved in this).
- 85 Amount for contributions demanded by an AAB is not fixed**  
See Note on Financial Aspects, para. 141.
- 86 Fixed amounts for contributions demanded by an AAB**  
See Note on Financial Aspects, para. 142; List, Section 5(b).

**87 Donations in kind should be preferred**

See Note on Financial Aspects, para. 145; List, Section 5(c). *E.g.*, material support such as food or educational supplies. One advantage of donations in kind is that the end use of the donation is generally transparent, unlike with cash. However, the value of a donation in kind can also be extremely important. Childcare institutions should report on the estimated value of donations in kind that they receive.

**88 Expectation of donations**

See GGP No 2, paras 429 and 444; Note on Financial Aspects, para. 51.

**89 Informing PAPs about risks of donations**

See Note on Financial Aspects, Sections 6.1 and 6.4.

**90 Informing PAPs about risks of donations**

See Note on Financial Aspects, Sections 6.1 and 6.4; as well as *supra* endnote 32 of this FS.

**91 Purposes of cooperation projects**

Cooperation projects should aim primarily at reinforcing the child protection system overall by providing support to birth families, preventing abandonment, gatekeeping and institutionalisation.

**92 Cooperation projects matching the needs of the State of origin**

See Note on Financial Aspects, para. 139. The cooperation project to be undertaken should be discussed and decided on after discussions between the AAB and the State of origin based on the latter's needs.

**93 Separation required by law**

See GGP No 2, para. 455.

**94 Written agreement**

See Note on Financial Aspects, para. 126: “[This] is another method to emphasise the requirement that any project must be kept separate from intercountry adoption”.

**95 Supervision of projects**

See Note on Financial Aspects, para. 137.

In some States, the competent authorities will be the Central Authority. However, some States are of the view that if the Central Authority is responsible for monitoring and supervising the cooperation projects of AABs, then, there is a link between the cooperation project and intercountry adoption. As explained under green boxes 6 and 7 of this FS, there should be a clear separation of cooperation projects from intercountry adoptions.

**96 Separation of departments**

See GGP No 2, para. 455: “the [AAB] must have a separate unit for cooperation projects in its structure”. See Note on Financial Aspects, para. 125; GGP No 2, Section 9.6.1, para. 442. *E.g.*, AABs may undertake cooperation projects in the regions of a State where they do not adopt children. The personnel and finances for intercountry adoption should be distinct from those for cooperation projects. Cooperation partners in States of origin must have a corresponding separation if they operate in both areas. Even if funds are raised by AABs, the cooperation projects should be developed by another expert body in that area.

However, some States question the feasibility and efficacy of this suggested preventive action due to the following:

- 1) It appears to depend on a scenario where an AAB receives funds from the receiving State's development aid program to then use for a cooperation project in the State of origin. However, in many States AABs are very small and are not publicly funded.
- 2) In any event, the authorities in the State of origin (including the authorities responsible for adoption) will / may be aware that development aid is provided by a particular receiving State.

For example, there are situations where an AAB may have set up a distinct entity (e.g., a foundation) for the purposes of receiving contributions and using them for cooperation projects in the State of origin. While legally distinct, the State of origin (and adoption authorities) will also inevitably make the connection between the AAB and the foundation (and therefore the connection with the cooperation project).

97

**Criminal law**

See Note on Financial Aspects, paras 53 and 162. There are failures in law enforcement due to, among other factors, a lack of resources being allocated to this task.

98

**Strong sanctions as deterrence**

See Note on Financial Aspects, para. 167: Sanctions should "target all violations related to improper financial or other gain [...], [apply to] all persons, authorities and bodies participating in the violation [...], and [be] commensurate with the violation yet sufficiently strict to [serve as a deterrent]".

99

**Prevent, expose and address corruption**

See Note on Financial Aspects, paras 57 and 169, which provides a list of examples of potential actions States can take to address corruption and specifies possible sanctions. See also GGP No 1, paras 247-248.



## FACT SHEET 4

### Misrepresentation of Identity

On this topic, see also:  
FS 5 "Documents", FS 7 "Consent" and FS 11 "Origins"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Misrepresenting the identity of (1) the child, (2) the parent(s), or (3) any other person who has the legal responsibility of the child, to make the child available for adoption, *such as*:<sup>1</sup>



RS  
SO

Enact and properly implement **legislation, regulations and procedures** to identify, prevent and address the misrepresentation of the child or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

2. - falsely claiming that the child is an orphan or has unknown parents, and is in need of adoption;
3. - falsely claiming to be the parent of a child and giving consent to the adoption of that child;
4. - falsely claiming that a child has only one parent, to circumvent the requirement that both parents need to consent;
5. - swapping the identities of children;
6. - creating a new identity for a child;
7. - simulating births through tampering with civil registry records.<sup>2</sup>



SO

Ensure that only **competent authorities** register the identity of children. Always **verify the identity** of the child and those registering the child's birth, relinquishing or consenting to the adoption of the child.



SO

Where possible, provide **DNA tests** for the child and the birth parents.<sup>3</sup>

Provide details in the **report on the child** of the steps that were taken to verify the identity of the child and the documentation of these steps.

8. Declaring a child adoptable when there is insufficient information and documentation regarding the child's identity, or, if the parents are unknown, no thorough investigation has been done, and the child's identity has not been (re-)established.



SO

Ensure that competent authorities that may **declare a child adoptable** must only do so based on reliable documents relating to the child's identity or, if the parents are unknown, after a thorough investigation (*e.g.*, having exhausted all available information and options – see further green box 15 of this FS) has been done, and after the child's identity has been accurately (re-)established.<sup>4</sup>

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

9. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards.

10. Lack of or inadequate verification of the identity of the child, the birth parents, the PAPs and any other relevant persons at different stages of the adoption procedure.<sup>5</sup>



SO

**Train actors** to undertake the search of identity of the child and provide resources for the police or social workers to undertake the search for the family of origin if needed.



RS


SO

Always **verify the identity** of the child, the parents, the PAPs (HC, Arts 15 & 16) and any other relevant persons at different stages of the adoption procedure.<sup>6</sup>




SO


Prepare a **report** including comprehensive information about the identity of the **child**, including among others information about the birth parent/s (where known) (HC, Art. 16(1)(a)).

-  RS Prepare a **report** including comprehensive information about the identity of the **PAPs** (HC, Art. 15).

11. Lack of or inadequate record and / or preservation of information about the child's identity.


-  RS  
SO Ensure that **preservation of information** held by competent authorities and bodies concerning the child's identity, including information about the identity of the parents for a sufficient period of time, and ideally in perpetuity.

12. AABs having direct contact with the birth family (*e.g.*, in birth clinics, in childcare institutions) and lack of or inadequate application of measures to prevent such contact.<sup>7</sup>

-  RS  
SO **Prohibit AABs from having direct contact with the birth family.**  
Prohibit the adoption through an AAB that has had direct contact with the birth family.

## II. At the **CHILD PROTECTION** level

13. Measures which allow for the anonymous abandonment of children (*e.g.*, baby boxes, anonymous or secret births).<sup>8</sup>

-  SO
  - Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>9</sup>
  - Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).
  - Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>10</sup>
  - Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected and preserved.<sup>11</sup>

14. Allowing birth clinics to operate childcare institutions.<sup>12</sup>

-  SO **Prohibit birth clinics from operating childcare institutions.**

15. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child to verify the identity of the child, while ensuring the safety of the birth parents, as well as mechanisms to preserve the evidence obtained during investigations.<sup>13</sup>

16. Lack or limited capacity of the competent authorities and bodies to establish, verify and preserve the child's identity due to lack of resources and / or inadequate training.



SO

Ensure adequate **resources and training** for the competent authorities and bodies on how to establish, verify and preserve the child's identity.

17. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving misrepresentation of identity.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving misrepresentation of identity.

### III. At the **GENERAL** level

18. Lack of or inadequate system of, or barriers to, birth registration (*e.g.*, fees, distance, discrimination<sup>14</sup>).



SO

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system** managed by a competent authority that registers all births in the State, including recording the identity of the parents.<sup>15</sup>

19. Parents have no identity documents.



SO

Ensure that all persons have an **identity document** and can obtain a replacement when necessary (*e.g.*, if lost or stolen) or can be supported to establish identity if needed.

20. Possibility of changing birth records without reason and without proof of the original registration of the child.



so

Enact legislation or regulations that limit the permitted legal bases for **changes to birth registration** and that require that such changes are done through proper legal procedures. Ensure that the original information is preserved.

Verify that any changes to birth registration have a legal basis and are done in the best interests of the child.

21. Lack of or inadequate regulation and monitoring of birth clinics and midwives to ensure that they register or encourage parents to register the child expeditiously.



so

Regulate, train and monitor **midwives and personnel of birth clinics** to ensure that they register the child, or that they report their attendance at a birth and support / encourage parents to register the child expeditiously.

22. Cultural and familial norms and expectations that result in mothers feeling they need to hide their pregnancy and / or the birth of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>16</sup>



so

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

23. Illiteracy and poor education.<sup>17</sup>



so

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>18</sup>

## FS 4 “Identity” – additional information (endnotes)

Identity includes name, nationality and family relations (see CRC, Art. 8(1)). Legal identity is defined by the United Nations as “the basic characteristics of an individual’s identity, for example, name, sex, and place and date of birth, conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth” (see UN Economic and Social Council, *Introduction of the United Nations Legal Identity Agenda: a holistic approach to civil registration, vital statistics and identity management*, 2019).

### 1 **Misrepresentation of identity**

Misrepresentation of identity includes “false representation”.

Misrepresentation of identity is an illicit practice in itself but may also be the consequence of forging or falsifying a document. The identity of children in need of adoption can be misrepresented through the use of authentic documents that contain false information (*i.e.*, child “laundering”) (see FS 5 “Documents”). For example, a document may indicate that a child has been abandoned or orphaned when, in reality, the child’s parents exist and have no intention of abandoning or relinquishing their child. Identity is also misrepresented where children are falsely presented as siblings or twins.

### 2 **Simulation of births**

The identity of children can be misrepresented by the creation of new birth records to reflect a false birth or to reflect the birth of a child who has already been registered (see FS 5 “Documents”).

### 3 **DNA test**

DNA tests may be useful to ensure that persons claiming to be the parents of a child are indeed the parents, to assist with an investigation to find the child’s family, and to verify the identity of persons consenting to the adoption. DNA testing may also be useful to ensure that the child who entered the child protection system is the same child who is declared adoptable or with whom PAPs have been matched.

States have different views as to whether DNA testing should be used in the context of adoption as it may interfere with privacy rights and raise issues about data protection. If DNA tests are permitted, careful attention should be given as to how this information will be preserved. States should ensure that DNA samples are used only for the purposes for which they were gathered (see HC, Art. 31), and States should find alternatives to birth parents (or those claiming to be) having to pay for such tests, with the understanding that costs for such testing should never be borne by PAPs or AABs.

### 4 **Re-establishment of identity**

The source of information in the identity document may refer to the place, authority, body or person from which the authority obtained the information used to prepare the document.

It is the responsibility of the State to re-establish identity, under Article 8(2) CRC, in order to rectify elements that may be missing (*e.g.*, giving the child a name if it does not have one, to ensure that the child has a legal identity) and / or falsified (*e.g.*, establishing what the real origins of the child are if the birth certificate has been falsified).

### 5 **Lack of verification of identity**

Lack of, or inadequate, verification of the child’s identity at different stages (*e.g.*, when the child enters the child protection system, when a decision is made on the child’s adoptability, when PAPs have been matched with the child, when the adoption decision is to be issued) may allow misrepresentation of the child’s identity. The same applies to the lack of, or inadequate, verification of the parents’ identity at different stages (*e.g.*, when the child enters the child protection system, when the birth parents give their consent to their child’s adoption).

### 6 **Verification of the child’s identity**

Important stages for verifying a child’s identity include when the child enters the child protection system, when persons whose consent is required give their consent, when the child’s adoptability is

determined, when the receiving State receives the report on the child (HC, Art. 16(1)(a)), when the child is matched with PAPs, before agreements under Art. 17(c) of the Convention are given, and before the final adoption order is made.

#### 7 **AABs in direct contact with birth family**

AABs may put pressure on the birth parents themselves and / or on the birth parents' family to influence the birth parents' decision.

#### 8 **Anonymous abandonment of children**

The anonymous abandonment of children may make it impossible to correctly identify the child.

For example, in “accouchement sous X” (anonymous birth), the details of the mother remain unknown and cannot be divulged unless she gives her consent. See UN Committee on the Rights of the Child [Concluding Observations](#) “[t]he Committee also recommends that the State party consider removing the requirement of the biological mother’s consent to reveal her identity and to increase its efforts to address the root causes that lead parents to choose to use confidential [anonymous] birth” (2016 CRC/C/FRA/CO/5, para. 33).

#### 9 **Policies on abandonment of children**

With regard to baby boxes, the Committee on the Rights of the Child has recommended that States review their policies on baby boxes with a view to prohibit them.

See the Committee on the Rights of the Child [Concluding Observations](#) “the Committee urges the State party to completely abolish the practice of anonymous abandonment of infants” (2020 CRC/C/AUT/CO/5-6, para. 20).

See the Committee on the Rights of the Child [List of Issues](#) “specify measures taken (...) to end the “baby box” programme, address its causes and promote alternatives” (2021 CRC/C/CZE/Q/5-6, para. 5(d)).

#### 10 **Confidential hospital births**

Confidential hospital births occur where the (medical or other) details of the mother are kept and can be revealed to the child later on. See the Committee on the Rights of the Child [Concluding Observations](#) “prohibit the “baby box” initiative (...)” and “(...) consider introducing, as a last resort, the possibility of confidential hospital births” (2019 CRC/C/KOR/CO/5-6, para. 23).

#### 11 **Information regarding cases of anonymous birth**

See the Committee on the Rights of the Child [Concluding Observations](#) “ensure that the draft legislation provide for children to have access to information regarding their identity if they were adopted or were born via anonymous birth” (2021 CRC/C/LUX/CO/5-6, para. 16).

#### 12 **Birth clinics operating childcare institutions**

Birth clinics operating childcare institutions may have a potential conflict of interest as they may have financial or other incentives to separate children from their birth parent(s) and steer the child to the institution where they could be adopted. In order to do so, clinics may misrepresent identities in the birth notification that they issue for the birth registry.

#### 13 **Mechanism facilitating searches for the child's family**

In cases where a child is presented as having unknown parents, it is essential that the competent authorities conduct a thorough investigation over a reasonable period of time to identify family members and verify the child's identity. Good practices may include the use of television, radio, the press, and Internet in searching for family members of that child (in consultation with the child, especially if the child is older). Some authorities also rely on word of mouth and oral interactions to find the child's family within the community or city; others bring the child to the place where they believe the child comes from to see whether the child can be recognised. If doubt exists about a child's identity, DNA testing may also be an option. Consideration should be given to ensuring the safety of the parents if they were to be found. The procedure should not be stopped before significant efforts over a reasonable period of time have been undertaken and all efforts should be documented. In any

case, authorities must double check the veracity of the information received in response to public campaigns. All relevant information that is collected should be preserved. See also FS 8 "Unknown Parents", endnote 11.

**14 Discrimination in birth registration**

See FS 1 "Abduction", endnote 8.

**15 Establishment of a birth registration system**

The child shall be registered immediately after birth (CRC, Art. 7). Birth registration should be mandatory, free and should result in the issuance of a public document recording the identity of the child and any other relevant information. This document (usually a birth certificate or a birth extract) is key to ensuring that the adoption procedure is legal. States should ensure that everyone has access to the birth registration system, especially in remote areas (e.g., by mobile registration units, online registration systems, integration of birth registration in other services such as health and education). Birth registration records should be carefully controlled, and revisions should be permitted only through proper legal procedures. When immediate registration of the child at birth has not occurred, States should still permit free registration at a later stage. See UNICEF Article, [What is birth registration and why does it matter?](#); and UNCHR Good Practices Paper (Action7), [Ensuring birth registration for the prevention of statelessness](#).

**16 Discrimination**

Discrimination may result from giving birth out of wedlock or due to race, sex, disability, caste, social class, etc.

**17 Illiteracy and poor education**

Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter or translation or poor education. In such cases, they would be reliant on the information provided to them by the person asking them to sign the documents, which could result in misrepresentation of identity, content or purpose of the documents (e.g., the documents could state names and identities different from those of the birth parents and / or the child).

**18 Free education to all**

For example, see Art. 13 (2) (a) of the International Covenant on Economic, Social and Cultural Rights provides that "Primary education shall be compulsory and available free to all".



## FACT SHEET 5

### Forgery and Falsification of Documents

On this topic, see also:  
FS 4 "Identity", FS 7 "Consent" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Use of false documents in the adoption procedure including:
2. - as a means to establish false identities for children and parent(s);
3. - to cover up the fact that children were obtained through illicit or illegal means (e.g., fraud, abduction).



RS  
SO

Authorities issuing documents should verify and confirm the **source of the information** in the documents.<sup>1</sup>

See also green boxes 6 to 9 of this FS.

4. Declaring a child adoptable when there is insufficient information and documentation, in particular regarding the child's identity and / or about the efforts made to find the family.



SO

Only **declare a child adoptable** if that child is in need of adoption and all necessary documentation<sup>2</sup> is available, including:

- proper birth certification of the child and the birth parents if known; or
- in case of unknown or uncertain origins or identity of the child, documentation recording all efforts made, the investigation carried out to find the family, and the documents re-establishing<sup>3</sup> the identity of the child.

## II. At the **GENERAL** level

### 5. Forgery and falsification of documents.<sup>4</sup>



RS  
SO

Enact and properly implement **legislation, regulation, policies and procedures** against forgery and falsification of documents, including meaningful sanctions as a deterrence.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

#### 6. Lack of or inadequate standardised documentation for adoption.<sup>5</sup>



RS  
SO

Establish and properly implement **standardised documentation** for the adoption procedure.<sup>6</sup> Provide a sample package of required documents (indicating who must sign and what stamps and seals must be affixed) to the partner State.<sup>7</sup>

#### 7. Lack of or inadequate mechanisms, tools, and procedures allowing authorities to quickly and effectively review and verify the validity, accuracy and completeness of documents.



RS  
SO

Create, and properly implement, **mechanisms, tools, and procedures** allowing authorities to quickly and effectively review and verify the validity, accuracy and completeness of documents presented during the adoption process.<sup>8</sup>

#### 8. Failure to review and scrutinise all documentation regarding the identity and adoptability of the child, the identity of the parents and the identity and profile of the PAPs to determine if they are / appear questionable, inconsistent, or incomplete.

Reliance on documents that have not been reviewed or scrutinised, or that are / appear questionable, inconsistent, or incomplete.



RS  
SO

Ensure that **certified copies** of the child's birth certificate, the consent(s) to adoption or any decision on the adoptability of the child are sent to the receiving State at the time of the provision of the report on the child.



RS

SO

**Review and scrutinise all documentation**, about the child, the parents and the PAPs, including verifying the origin of the documents, the information provided therein and that there are no inconsistencies.

Ensure that for any document transmitted to another relevant authority or person, the **original document or a certified copy** is sent, in particular if there are specific concerns.

Verify all documents before agreeing that the adoption may proceed (HC, **Art. 17(c)**).

9. Use of documents, either in electronic or paper form, without the required signatures, stamps, legalisation, Apostille, or other information about the relevant competent authority.



RS

SO

Ensure that **(electronic and paper) documents** are:

- issued by a competent authority;
- duly signed and include, if required, official stamps;
- authenticated through an Apostille or other means.<sup>9</sup>

## II. At the **GENERAL** level

10. Lack of or inadequate standardised birth registration documentation.



SO

Create **standardised birth registration documents** (e.g., birth certificates).<sup>10</sup>

11. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving forged or falsified documents.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving forged or falsified documents.

12. Illiteracy and poor education.<sup>11</sup>



SO

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>12</sup>

## FS 5 “Documents” – additional information (endnotes)

### 1 **Verifying the source of information in the document**

The source of information in the document may refer to the place, authority, body or person from which the authority obtained the information used to prepare the document.

### 2 **Verification of necessary documents prior to the declaration of adoptability**

Necessary documents may include, among others, a birth certificate, police reports, comprehensive reports on the child prepared by an authority or body, and a consent form from the legal parents.

### 3 **Re-establishment of identity**

See FS 4 “Identity”, endnote 4.

### 4 **Forgery and falsification of documents**

Examples of forgery or the falsification of documents are issuing invalid documents, recording false or inaccurate information, deleting or changing information on documents related to the child, birth family and / or PAPs, or simulating the signature of another person's name (see also FS 4 “Identity”).

Documents that may be falsified for an adoption include:

- the child's birth certificate (*e.g.*, the names of the child's parents are erased from the certificate in order that the child can be considered parentless, which may simplify the procedure to declare the child adoptable);
- the birth parents' birth certificate (*e.g.*, a person modifies the birth parents' certificate to misrepresent they are the child's birth parent);
- the PAPs' birth certificate (*e.g.*, the PAPs' birth certificate is modified to misrepresent they are relatives of the child, and thus that it is an intrafamilial adoption);
- the form recording the consent of the parent(s) or other person(s) or authorities whose consent is necessary for adoption (*e.g.*, the form is signed by different persons);
- the child's file and the PAP's file (*e.g.*, the file falsely states that the socialisation period lasted the required length of time so that the adoption order may be issued and the PAPs may return to the receiving State with the child);
- the certification of the PAP's eligibility and suitability to adopt;
- the adoption order; and
- the results of DNA tests.

### 5 **Lack of or inadequate standardised documentation**

Using a number of different forms of documentation makes it harder to detect fraud.

### 6 **Standardised documentation for the adoption procedure**

Such documentation may include, for example, standardised police reports, reports on the child, forms regarding the decision on the child's adoptability and forms on consent.

States are encouraged to develop and use standardised forms (see HCCH Model Forms at [www.hcch.net](http://www.hcch.net) under “Adoption”). The benefit of standardised forms is that they present all the relevant information in a comprehensive, systematic and understandable way (provided that they are filled out completely and properly). This helps authorities and other bodies to more easily identify documents, and check that all information is included, while also improving accuracy and saving time. They also help to prevent fraud, as authorities and bodies will be able to recognise fraudulent documents more easily.

**7 Sample package of required documents**

In order to facilitate the provision of sample packages, the possibility of including a section on the Secure Portal of the HCCH website, where Central Authorities of Contracting States and States that become Parties can upload and update such a sample package, may be explored.

**8 Creation of mechanisms, tools, and procedures for the verification of documents**

The competent authority presented with a document should review and scrutinise its validity, accuracy, and completeness: *e.g.*, verify that the document is signed and stamped, and that the information provided in the document is complete. If that is not the case, they should request clarification from the issuing authority. It is important to raise any concerns with the competent authority of the other State.

Some States of origin require extensive authentication of documents (*e.g.*, notarisation, confirmation from the Embassy and / or Ministry of Foreign Affairs of the receiving State) with stamps and other requirements on each page. States may consider accepting a single verification (one stamp) on the document, both on the original and the translated version. Where States do not have the resources to verify the validity of document(s), for immigration or citizenship purposes, these States may consider using private, duly authorised, reputable investigative companies to verify their validity.

**9 Assurance of authentication of documents**

It is recommended that States which are not yet Parties to the HCCH 1961 Apostille Convention consider acceding to this Convention.

**10 Standardised birth registration documents**

For example, the multilingual and coded extracts from civil-status records and certificates of the [Conventions from the International Commission on Civil Status \(ICCS\) on the issue of multilingual extracts from civil-status records](#) (Nos 16 and 34) could be useful.

**11 Illiteracy and poor education**

Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter or translation, or poor education. They would have to rely on the information provided to them by the person asking them to sign the documents, which could result in forgery or falsification of documents; *e.g.*, the parents sign a document which is then used to falsify other documents.

**12 Free education to all**

See FS 4 “Identity”, endnote 18.



## FACT SHEET 6

### Failure to give due Consideration to Subsidiarity

On this topic, see also:  
FS 10 "Matching" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Failure to give due consideration to one or both aspects of the principle of subsidiarity (HC, Art. 4(b));<sup>1</sup>
2. - by directing children to adoption without due consideration for reintegration in the family;
3. - when reintegration in the family is not possible, by directing children to intercountry adoption without due consideration for other suitable (permanent) family-based placements within the State of origin;
4. - by falsely declaring children as having "special needs" in order to include them in a fast-track procedure and accelerate the process (see also orange box 17 of this FS).<sup>2</sup>

Enact and properly implement **legislation, regulation, policies and procedures** to ensure that both aspects of the principle of subsidiarity are given due consideration.



RS  
SO

Ensure that the Central Authority in the receiving State **verifies** that the State of origin has given due consideration to the principle of subsidiarity before agreeing that the adoption may proceed under Article 17(c) of the HC. To this end, the Central Authority in the State of origin should ensure that sufficient details are provided to allow for such verification.

See also green box 17 of this FS.

5. Prioritising intercountry adoptions because the adoption is intrafamily without due consideration of whether the child is actually in need of a family; of the adoptability of the child; and / or of suitable domestic family permanent options.<sup>3</sup>



RS

Establish clear policies on subsidiarity for **intrafamily adoptions**.

Carefully consider each intrafamily adoption case.

SO

Consider whether **migration pathways** may be a better solution for a child for whom only a better education and / or a better life in the receiving State is sought.

6. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>4</sup>



RS

Establish and properly implement clear policies and procedures for **emergency situations**:<sup>5</sup>

SO

- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;
- publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.



## Enabling factors and possible preventive actions

### I. At the **CHILD PROTECTION** level<sup>A</sup>

7. Lack of or inadequate regulations, policies and / or procedures on subsidiarity.



so

Establish and properly implement **regulations, policies and procedures** on the principle of subsidiarity.

8. Lack of an effective and adequate child protection system.

9. Lack of, limited or inadequate resources and procedures to allow the competent authorities and bodies to properly give due consideration to the subsidiarity principle.



so

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support, family reintegration and permanent domestic family options for children who cannot be reunited with their family.<sup>6</sup>

Ensure that the competent authorities and bodies have adequate **human and material resources** to properly give due consideration to the subsidiarity principle.

10. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



so

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child, and a mechanism to ascertain whether they (parents or family, if identified) are able and wish to care for the child.<sup>7</sup>

<sup>A</sup> In order to present both aspects of the principle of subsidiarity in the correct order, the child protection level appears first in this FS.

11. Lack of, limited or inadequate resources and procedures for family support and prevention of separation programmes, and family reunification and reintegration.<sup>8</sup>



SO

Establish and properly implement effective **family support programmes**, including family preservation services, arrangements for temporary care and counselling, including appropriate publicity and accessibility<sup>9</sup> to these services, supports and programmes.

12. Timing issues:

- Insufficient time to carry out a proper assessment of family reunification.
- Once it is clear that the child cannot be reunited with their family, there is insufficient time to find suitable domestic alternative care before having to decide whether intercountry adoption is the best option.<sup>10</sup>
- Overall, failure to make all efforts to find a suitable permanent solution for the child in a timely manner.<sup>11</sup>



SO

Closely monitor the **length of time that children remain in temporary care**, ensure a regular and thorough review of the appropriateness of the care, and the number of placements over a defined period.<sup>12</sup>

Ensure that when it is determined that children cannot be reunited with their families, **permanency planning** should be undertaken as quickly as possible, and updated regularly.<sup>13</sup>

13. Lack of a protocol or timeframe for the best interests of the child assessment.



SO

Establish a protocol for a timely **best interests of the child assessment**.<sup>14</sup>

14. Reliance on institutionalisation of children by default and / or as the primary alternative care option available for children, with (or without) the view of facilitating the adoption of children.<sup>15</sup>



SO

Ensure **gatekeeping and de-institutionalisation** of children by giving due consideration to the principle of subsidiarity as established in Article 4 of the HC, including by promoting parental care, family support and family reintegration.

## II. At the **ADOPTION** level

15. Lack of, limited or inadequate resources and procedures to assess and decide on the appropriateness of domestic care options (preferably family type and permanent), including looking for PAPs in other parts of the State, before intercountry adoption is considered (including for children with special needs).<sup>16</sup>



SO

Ensure that the competent authority deciding that a child can be proposed for intercountry adoption should only do so after verifying that all steps were taken to duly consider **domestic alternatives** and that these steps and alternatives were not successful.<sup>17</sup>

16. Lack of a centralised database and / or system that allows for efficient matching to find suitable domestic options before turning to intercountry adoption, and / or lack of knowledge on how to use them.



SO

Establish and properly implement a **centralised database or record system** for children brought into care that includes information on how, why and by whom they were brought into care, and ensure that personnel using it, and doing the matching, are duly trained (for example, in professions such as social work, psychology or community work).<sup>18</sup>

17. Allowing a fast-track procedure or expeditious programme for children with special needs, without due consideration of the principle of subsidiarity and without appropriate safeguards (see also red box 4 of this FS).



SO

Clearly define what **special needs** are / entail in national legislation, policies or regulations.

Ensure that a child is only assessed as having special needs after a **thorough evaluation**.<sup>19</sup>

Ensure that even where there is an **expeditious programme** for children with special needs, due consideration is given to the principle of subsidiarity, and all necessary safeguards are respected, before a child enters such programme.

18. Failure to control financial benefits that may create incentives for AABs, childcare institutions or officials to prioritise intercountry adoption.



RS  
SO

Remove **financial incentives** that may influence AABs, childcare institutions or State of origin officials in giving preference to intercountry adoption.<sup>20</sup>

19. Specific childcare institutions exclusively for adoptable children and / or childcare institutions which are financially supported or operated only by AABs.<sup>21</sup>



SO

Prohibit **childcare institutions** exclusively for adoptable children, and childcare institutions financially supported or operated only by AABs.

20. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving failure to give due consideration to subsidiarity.



SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving failure to give due consideration to subsidiarity.

### III. At the **GENERAL** level

21. Biased view that life in a receiving State is necessarily better than in the State of origin.



RS  
SO

**Promote** that children grow up with their birth parents, family and community, as this is the best environment to support their development and health, when this environment is protective, loving and nurturing.

**Raise awareness** of the benefits of family support and reintegration programmes and the impact of family separation and alternative care on children.

**Raise awareness** of the importance of the principle of subsidiarity, and in particular the importance of culture and identity for adoptees.<sup>22</sup>

## FS 6 “Subsidiarity” – additional information (endnotes)

- 1 Failure to give due consideration to subsidiarity**  
 See HC, Preamble & Art. 4(b); CRC, Art. 21(b); GGP No 1, Section 2.1.1; UN Guidelines. The first level of subsidiarity requires that a child should be raised by their birth family or extended family whenever possible. An active investigation to locate the child’s (extended) family, and reintegrate the child in their family, should be done in a timely manner and before considering any other solution.

The second level requires authorities to actively search, for a reasonable period of time, for a suitable (permanent) family-based domestic solution and fail to find any, before considering intercountry adoption.

Directing children to intercountry adoption without considering these two levels threatens the integrity of the intercountry adoption process and is not in the best interests of the child.
- 2 Fast-track procedure**  
 When different procedures are put in place for children with special needs, there might be a risk that children who do not have special needs are assessed as having special needs in order to fast track the procedure.
- 3 Intrafamily adoption procedures**  
 This is the case, for example, where the child who is to be adopted by a family member in another State is declared adoptable too quickly, *i.e.*, without a full investigation as to whether the child could have remained with their birth parent(s) or whether there was a suitable domestic permanent family option which would have been in the best interests of the child.
- 4 Emergency situations**  
 If an adoption takes place in an emergency situation, it can be very difficult or impossible to give due consideration to the principle of subsidiarity. See further FS 2 “Circumventing the Convention”, endnote 5.
- 5 Emergency situations**  
 See FS 2 “Circumventing the Convention”, endnote 6.
- 6 Establishment of a national child protection system**  
 See GGP No 1, Chapter 6, and UN Guidelines, Chapter IV and para. 2, which underline the importance of “support[ing] efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and *kafala* of Islamic law”, as well as “ensur[ing] that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child’s full and harmonious development”. States should promote kinship care and domestic adoption as preferred permanent alternative care, if family preservation or reunification are not possible, and if it is in the best interests of the child.
- 7 Mechanism facilitating searches for the child’s family**  
 In some States, deadlines are established for searching for the family in order to avoid that the child remains unnecessarily too long in care. It is key that during this time, all efforts are made to find the family, and that the period is not used as a “waiting period” prior to moving to the next stage. The period should be used to find the family and, if relevant, assess their suitability to care for the child; efforts to both find and assess the family should be documented. See also FS 4 “Identity”, endnote 13, and FS 8 “Unknown Parents”, endnote 11.
- 8 Lack of resources for family support and prevention of separation**  
 See GGP No 1, Section 6.2.

9

**Accessibility**

Ensure that geographical location, disability, language, safety and financial issues are not barriers to access services.

10

**Insufficient time to find suitable domestic alternative care solutions**

This is a particular risk for very young children, and for children with special needs, where due to local beliefs, customs or cultural norms, domestic solutions are thought to be impossible, or very difficult, to find.

11

**Timely solution for children**

The longer it takes to find an alternative permanent care solution for the child, the more difficult it becomes to place the child with a suitable family (through, for example, kinship care, adoption, foster care) which may result in the child staying in an institution.

12

**Monitoring the length of temporary care**

See GGP No 1, para. 53; UN Guidelines, Chapter VI. Long-term institutionalisation is generally not in the best interests of a child, thus States should try to arrange for permanent family care as soon as possible after it is clear that the child will not be able to reintegrate within their family. Children are usually placed in temporary care when there is a chance that they will be able to reintegrate within their family. While in temporary care, the State should review the child's situation on a regular basis (preferably at least every three months). If family preservation or reunification is not possible, planning should commence as soon as possible to find a permanent home for the child.

See also UN Guidelines, para. 67 "States should ensure the right of any child who has been placed in temporary care to regular and thorough review – preferably at least every three months – of the appropriateness of his/her care and treatment, taking into account, notably, his/her personal development and any changing needs, developments in his/her family environment, and the adequacy and necessity of the current placement in these circumstances. The review should be carried out by duly qualified and authorized persons, and should fully involve the child and all relevant persons in the child's life".

13

**Permanency planning**

See GGP No 1, para. 286, Sections 6.4.1 and 6.4.2; UN Guidelines, Chapter VI.

14

**Assessment of the best interests of the child**

See GGP No 1, Section 2.1.1, para. 51; UN Guidelines, paras 21-23. Any placement should be in the best interests of the child and respect their fundamental rights. As a general rule, family placements are preferred, if they are assessed to be in the best interests of the child. Temporary or permanent placement outside the family will depend on whether the child can be reintegrated within their family.

15

**Default reliance on institutionalisation**

The consequences of reliance on institutionalisation of children without making efforts to locate and / or support the child's family can be that a child is declared to be in need of adoption, while such adoption may not have been necessary if proper efforts had been made to locate and / or support the family.

In some cases, institutions may look for children with the view of proposing them to intercountry adoption, instead of taking care of them for a short period while the birth parents are supported and empowered to reunite with their children and raise them.

16

**Lack of accurate assessment of the special needs of a child**

In order to facilitate and expedite intercountry adoptions, there have been situations where children have been determined to have special needs when in reality they did not, or to have more important special needs than they actually did. In addition, the (perceived) difficulty of finding a family in the State of origin is often expected and therefore insufficient efforts are made to look for a domestic option for the child.

17

**Verification of all steps**

See HC, Art. 4(a) & (b). The competent authorities should investigate whether possibilities for placement of the child within the State of origin have been given due consideration (*e.g.*, whether the child has been proposed to several domestic adoptive families, or whether no domestic families were found within a reasonable period of time, before the child can be proposed for intercountry adoption), and whether a determination has been made by the appropriate authorities that intercountry adoption was in the best interests of the child. If a competent authority has doubts, it should communicate with the relevant authorities before taking any further steps.

18

**Databases**

A database of adoptable children and PAPs habitually resident in the State of origin will facilitate the matching process and therefore also promote domestic adoption and the principle of subsidiarity.

19

**Children with special needs**

See GGP No 1, Section 7.3. The assessment of whether a child has special needs should not be made by an AAB or a childcare institution. A child with special needs should only be proposed for intercountry adoption if it was not possible to find a suitable permanent family for them domestically.

20

**Removal of financial incentives**

See GGP No 1, Chapter 5; Note on Financial Aspects, and FS 3 "Financial Gain". This involves limiting and strictly monitoring fees, costs, donations, contributions and cooperation projects related to the adoption process.

21

**Specific childcare institutions only for adoptable children and AABs financing childcare institutions**

Specific childcare institutions exclusively for adoptable children tend to receive more funds (from various actors) than other childcare institutions, authorities, bodies, etc, and may thus be more interested in declaring more children adoptable and placing them in these institutions, rather than supporting the reintegration of these children with their family.

If AABs finance childcare institutions, the institution may feel encouraged to find adoptable children for the AAB, without properly supporting family reintegration efforts or giving due consideration to domestic family placements. See also FS 2 "Circumventing the Convention", endnote 18.

22

**Awareness-raising on the principle of subsidiarity**

For example, States may want to raise awareness on the importance of this principle with the child protection authorities, or when providing training to PAPs, to ensure they understand why intercountry adoption is not the first solution to be in the best interests of children.





## FACT SHEET 7

### Adoptability: Lack of, or Deficient, Consent

On this topic, see also:  
FS 4 "Identity" and FS 5 "Documents"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

**General** (i.e., for all persons (including the child, the birth parents), institutions and authorities whose consent is required)<sup>1</sup>

#### 1. Lack of consent (HC, Art. 4(c) & (d); CRC, Art. 21(a)).

For each individual case, **identify who needs to give consent**, and verify that all those whose consent is needed have given their consent.

Ensure that all those whose consent is needed:

- specify in the consent form (or declaration of consent) the **reasons for giving the consent**, to which type of adoption they are consenting, and the effects of such an adoption;<sup>2</sup>
- are provided with **special assistance** if they are unable to independently complete consent forms (e.g., due to illiteracy, language inadequacy).



Make sure that the **Central Authority of the State of origin**:

- ensures that the **consents have been obtained** in accordance with the Convention; and
- transmits **proof of the consents** to the receiving State with the report on the child.<sup>3</sup>

#### 2. Consent received without:

- proper counselling being provided; or
- parties being duly informed of the effects of adoption (HC, Art. 4(c) & (d); CRC, Art. 21(a)).<sup>4</sup>

3. Providing false advice to the birth parents in order to obtain their consent (e.g., making a false promise that the child will return at some point after receiving an education and medical treatment; giving the biased view that life in a receiving State is better than in the State of origin) (HC, Art. 4(c) & (d); CRC, Art. 21(a)).



SO

Ensure that all those whose consent is needed are **fully informed and properly counselled** (in a language that they understand, and in the case of the child, also taking into account their age and maturity), including about the existence of support programmes, alternatives to adoption and the effects of their consent, in particular whether or not the adoption will result in the termination of the legal relationship between the child and their family of origin.<sup>5</sup>

Ensure that all those whose consent is needed **understand the effects** and consequences of their decision.<sup>6</sup>

4. Consent is not given freely (e.g., due to inducements, pressure from society, the community at large or the family, misrepresentations) (HC, Art. 4(c) & (d); CRC, Art. 21(a) & (d)).



SO

Ensure that all those whose consent is needed give their **consent voluntarily, freely** and not due to pressure or in exchange for financial or other gain and not based on misrepresentation.<sup>7</sup>

5. Consent is not given in the required legal form, nor expressed or evidenced (including for illiterate persons) in writing (HC, Art. 4(c) & (d); CRC, Art. 21(a)).



SO

Ensure that the consent of all those whose consent is needed has been given in the **required legal form**, and is expressed or evidenced in writing, using a standardised form.<sup>8</sup>

6. Failure to control or verify the identity of the child and the person(s) consenting, including when they use thumbprints to consent.



SO

Ensure that all those whose consent is needed, including the child, have their **identity confirmed** by a competent authority.

7. Failure to control or verify the relationship between the child and the person who consents to the adoption.



so

Always **verify the relationship** between the child and those consenting to the adoption of the child.

Where possible, provide **DNA tests** for the child and the birth parents.<sup>9</sup>

#### Child (having regard to their age and degree of maturity)

8. The wishes and opinions of the child have not been given due consideration (HC, Art. 4(d)(2)).



so

Ensure that consideration is given to the **wishes and opinions of the child**, according to their age and maturity.

#### Mother

9. Consent of the mother, where required, is given before the birth of the child (HC, Art. 4(c)(4)).



so

Ensure that the consent of the parent(s) is obtained only after a **reasonable period** has elapsed following the birth of the child.<sup>10</sup>

#### Withdrawal of consent

10. Lack of or insufficient information provided to the parents or the child on the possibility to withdraw their consent.

11. Reliance on consent which has been withdrawn (HC, Art. 4(c)(3)).



so

Ensure that all those whose consent is needed:

- have been informed of the **withdrawal period**;<sup>11</sup> and
- have not withdrawn their consent during the withdrawal period.

12. Reliance on consent when the period for withdrawal has not elapsed or is not final.

✓ so Ensure that the period of withdrawal has elapsed, and the **consent is final**, before declaring the child adoptable.

13. Withdrawal of consent involves a fee for the birth parents.

✓ so Establish in law or regulation that withdrawal of consent is **free of charge**.

## Enabling factors and possible preventive actions ✓

### I. At the **ADOPTION** level

14. Lack of or inadequate legislation and / or regulations concerning consent.

15. Withdrawal of consent is not possible and / or the period for withdrawal is insufficient.

✓ so Enact and properly implement **legislation and / or regulations** on:

- who must consent (*e.g.*, birth parents, child), and to whom (*i.e.*, a competent authority);
- how consent should be given;
- who should provide counselling and information;
- the appropriate period to be able to withdraw consent; and
- when consent becomes final.<sup>12</sup>

16. Lack of or inadequate policies or procedures to ensure free and informed consent to adoption, including counselling (see also orange boxes 31 and 32 of this FS).

✓ so Establish and properly implement adequate **policies or procedures** to ensure free and informed consent is given after proper counselling.

17. Lack of or inadequate standardised documentation to collect the consent.

✓ so Establish and properly implement **standardised documentation** to collect consent.<sup>13</sup>

18. Lack of or inadequate qualifications, training or experience of the person or authority receiving the consent.
19. Lack of or inadequate rules on conflict of interest and effective policies to ensure their implementation.
20. Consent given to a person who, or an authority which, has a conflict of interest (e.g., to the director of a childcare institution, to an AAB, etc).



SO

Ensure that **competent authorities and bodies that provide counselling and receive the consent** are appropriately qualified, experienced, and trained; have adequate powers and resources; and high ethical standards and no conflict of interest.<sup>14</sup>

21. Consent taken before a proper assessment is made of the child's need to be adopted and before a life plan is developed (i.e., premature consent).



SO

Ensure that all those whose consent is needed give their consent only after a **proper assessment of the child's need** to be adopted and a life plan has been developed.

22. Failure to verify that both parents have consented, where needed (e.g., relying on the consent of one parent without locating the other).



SO

Ensure that, where their whereabouts are unknown, reasonable efforts are made to **locate all those whose consent is needed**, with all efforts documented.<sup>15</sup>

23. Consent motivated solely by financial and / or material poverty.<sup>16</sup>



SO

Ensure that all those whose consent is needed have received **appropriate support**, through family support programmes with alternatives to relinquishment, before their consent can be received.

24. Failure to control or verify if there has been payment or compensation of any kind.



SO

Verify that all those whose consent is needed give their **consent voluntarily, freely** and not in exchange for financial or other gain.<sup>17</sup>

25. Consent given without the support, when needed, of an interpreter in the parents' native language (with no conflict of interest).

26. Lack of properly trained interpreters in the parents' native language to assist them giving consent, where necessary.



SO

Ensure that all those whose consent is needed have access to the services of a trained, qualified and **independent interpreter** if needed, with no conflict of interest.

27. Failure to add all the consent forms to the child's file.



SO

Ensure that all consent forms (or declarations of consent) have been added to the **child's file**.

28. AABs having direct contact with the birth family (e.g., in birth clinics, in childcare institutions) and lack of or inadequate application of measures to prevent such contact.<sup>18</sup>



RS

Prohibit AABs from having direct **contact with the birth family**.

SO

Prohibit the adoption through an AAB that has had direct contact with the birth family.

29. Not facilitating the participation of the child, according to their age and degree of maturity, in their adoption.



SO

Establish and properly implement **child-friendly procedures** to ensure that the child, according to their age and degree of maturity, is given information, understands and can effectively participate throughout their adoption if they so wish.

30. Lack of or inadequate government processes and / or political will to identify, prevent and respond to irregularities regarding consent.



RS

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to irregularities regarding consent.

SO

## II. At the **CHILD PROTECTION** level

31. Lack of, limited or inadequate family support programmes, which may lead to consents being motivated solely by poverty.



so

Establish and properly implement effective **family support programmes** with alternatives to relinquishment.<sup>19</sup>

32. Lack of or limited awareness of the support available to families.



so

Establish and properly implement a system to **publicise services** for families in need (e.g., preservation services, temporary care, counselling).

## III. At the **GENERAL** level

33. Cultural and familial norms and expectations that result in the birth parents consenting (or being forced to consent) to the adoption of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>20</sup>



so

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

34. Poverty.<sup>21</sup>



so

Address, through a plan and adequate allocation of resources, the root causes of **poverty**.<sup>22</sup>

35. Illiteracy and poor education of persons who have to consent.<sup>23</sup>



so

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>24</sup>

## FS 7 “Consent” – additional information (endnotes)

- 1 Lack of consent**

When references are made to the consent of the child and / or the parents, it is to be understood that such references only apply in cases where the consent of the child and / or the parents is required. If the consent of both parents is required, relying on the consent of only one parent is an illicit practice.

It should also be noted that the responsibility lies with the competent authority – not the parents or the child– to prevent the illicit practices mentioned in this FS. The parents and child should not be penalised for the illicit practice, but should be assisted by the competent authorities to find alternatives to relinquishment, and if they decide to consent to an adoption, they should be assisted to do so in accordance with the Convention and the domestic legislation.
- 2 Reason for giving consent**

The competent authority should document the alternatives which were offered and discussed with the parent(s) and the circumstances of the parent(s)' or other persons' decision to relinquish the child. The consent form (or declaration of consent) should also specify whether the consent is given to a domestic and / or an intercountry adoption and to a simple and / or full adoption.
- 3 Consent obtained in accordance with the Convention**

See HC, Art. 16(1)(c) & (2). The Central Authority of the State of origin must ensure that the consents have been obtained in compliance with Art. 4 of the Convention before transmitting the report on the child to the receiving State. It is important that competent, reliable and ethical personnel oversee the consent procedure. If there are any doubts about the consent(s), the Central Authority should not transmit the report on the child to the receiving State and should not give its approval under Art. 17 of the Convention. Transmitting proof of the consents to the receiving State Central Authority will also be very useful afterwards for the life story and possible search for origins and identity of the child.
- 4 Counselling and information**

In some cases, the person(s) giving the consent is / are not made aware whether they are giving consent (1) for alternative care or for adoption, (2) for domestic adoption only, or for domestic and intercountry adoption, and (3) for simple or for full adoption.
- 5 Counselling and information by specialists**

See HC, Art. 4(c)(1); CRC, Art. 21(a); GGP No 1, para. 78. Proper counselling of parents is particularly important, especially where they may be illiterate and may not be able to read and understand the documents they are signing. The meaning and effects of adoption should be explained clearly to the parents (*e.g.*, that the child will have “new” parents; if it is a full adoption, that they will no longer be the legal parents; if it is a “closed adoption”, that they will no longer see the child).
- 6 Understanding the effects of the adoption**

See HC, Art. 4(c)(1) and GGP No 1, para. 77.
- 7 Free and voluntary consent**

See HC, Art. 4(c)(2) & (3); CRC, Art. 21(d); OPSC, Art. 3(1)(a)(ii); GGP No 1, paras 85-87. The OPSC creates an international and joint responsibility for States to fight against the sale of children as a result of induced consent for adoption.
- 8 Standardised documentation**

See HCCH Model Form “Statement of Consent to the Adoption” available at [www.hcch.net](http://www.hcch.net) under “Adoption”.
- 9 DNA test**

See FS 4 “Identity”, endnote 3.



**10 Consent given after a reasonable period of time following the birth**

See HC, Art. 4(c)(4); GGP No 1, para. 77. Practice has shown that parents need to be given a reasonable period of time after the birth in order to prevent decisions concerning consent being made too hastily due to strain, anxiety or pressure. States are encouraged to raise the minimum standard period of time “after the birth” established in the Convention, and provide more time before the consent is given (e.g., the *2008 European Convention on the Adoption of Children* establishes that this period should not be less than six weeks after the birth).

**11 Adequate period of withdrawal**

See HC, Art. 4(c)(3). States are encouraged to establish in legislation a reasonable period of time for withdrawal of consent and how consent can be withdrawn. Parents should be informed about this period during counselling and when giving their consent to the child’s adoption.

**12 Legislation on the consent of the child**

See HC, Art. 4(d); GGP No 1, paras 77 and 80. Legislation may include a minimum age for requiring the consent of the child (e.g., many States require the consent of the child who is at least 10-12 years old). Some States also require the consent of children who are below the minimum age if they are sufficiently mature. Particular attention should be given to properly informing and counselling the child, in a way that they can understand to what they are giving consent.

**13 Standardised documentation**

See HCCH Model Form “Statement of Consent to the Adoption” available at [www.hcch.net](http://www.hcch.net) under “Adoption”.

**14 Consent given to competent authorities**

See GGP No 1, Section 2.2.3. States can decide which authority is competent to receive the consent (e.g., a court). There should be no fee charged to the parent(s) for the use of this service.

**15 Search for those whose consent is necessary**

Determining which persons’ or authorities’ consent is necessary in a given case (e.g., those with parental responsibility, legal custodians or guardians) is a matter for the domestic law of the State concerned.

If the whereabouts of the persons whose consent is required are unknown, reasonable efforts should be made to locate them (e.g., if the consent of both parents is required, but only one parent has consented, reasonable efforts should be made to locate the other parent). If the persons are found, they should be properly informed and counselled about the possible options for the child and, if required, they should provide their consent.

There should be a defined period to locate persons whose consent is required, at the end of which it can be concluded that it was not possible to locate them. States’ laws may differ as to what it means for the child (i.e., in terms of their adoptability) in the event that these persons cannot be found.

**16 Consent motivated by poverty**

In most of the cases where people decide to relinquish their child they do so because they “are confronted with an accumulation of disruptive life events leading to a point of desperation (e.g., loss of income, health problems, disability, an unexpected pregnancy, gendered constructions of daughters, etc.)”, and not solely because of poverty (see ISS, “Qualitative research into the root causes of child abandonment and child relinquishment in Viet Nam”, 2015). See also UN Guidelines on Alternative Care, para. 15: “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 [their] reintegration, but should be seen as a signal for the need to provide appropriate support to the family”; the [2019 UNGA Resolution on the Rights of the Child](#), para. 30, and GGP No 1, Chapter 6.2.3.

17

**Free and voluntary consent**

See HC, Art. 4(c)(2) & (3); CRC, Art. 21(d); OPSC, Art. 3; GGP No 1, paras 85-87. The OPSC creates an international and joint responsibility of States to fight against the sale of children as a result of induced consent for adoption.

18

**AABs in direct contact with birth family**

AABs may put pressure on the birth parents and / or on the birth family to influence the birth parents' consent.

19

**Family support programme**

See further FS 6 "Subsidiarity", green box 11 and GGP No 1, Section 6.2.

20

**Discrimination**

See FS 4 "Identity", endnote 16.

21

**Poverty**

Poverty, usually combined with other factors (e.g., lack of or inadequate family support or alternatives to abandonment and relinquishment) can lead to abuses and / or to consent being motivated solely by material and / or financial poverty, and may create situations where children are more susceptible or vulnerable to exploitation. See GGP No 1, Section 6.2.3.

22

**Addressing poverty**

Financial and material poverty should be addressed to ensure that it is not the sole motivation for the consent.

23

**Illiteracy and poor education**

Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter, poor education or because the document is written in a language which they do not understand. In such cases they would be forced to rely on the information provided by the person asking them to sign the documents, which could result in a lack of or deficient consent; e.g., the parents are told that their child will be sent to a foreign State to receive a better education and / or will be able to return and help them financially (without informing them that the child will be adopted).

24

**Free education to all**

See FS 4 "Identity", endnote 18.

## FACT SHEET 8

### Misrepresentation of Adoptability of Children of Unknown Parents

On this topic, see also:  
FS 1 "Abduction", FS 4 "Identity" and FS 6 "Subsidiarity"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Falsely characterising children as having unknown parents to make them available for adoption.<sup>1</sup>



so

Enact and properly implement **legislation, regulations and procedures** to identify, prevent and address the misrepresentation of the child or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

Where possible, provide **DNA tests**<sup>2</sup> for the child to include the relevant data in a register for missing children.

2. Failure to investigate cases of children of allegedly unknown parents by not trying to locate the parents or other family members.<sup>3</sup>



so

Competent authorities should require sufficient documentation and **investigate** sufficiently before declaring the child to be of unknown parents.

3. Failure to (re-)establish the identity and provide valid identity documents to children of unknown parents.



so

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system** and a procedure to (re-)establish speedily the identity of children of unknown parents.<sup>4</sup>

4. Declaring a child of unknown parents adoptable, without having made a thorough investigation, and without having (re-)established the child's identity.



SO

Ensure that competent authorities that may **declare a child of unknown parents adoptable**<sup>5</sup> must only do so after a thorough investigation (e.g., having exhausted all available information and options) has been done, and after the child's identity has been accurately (re-)established.

5. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>6</sup>



RS

SO

Establish and properly implement clear policies and procedures for **emergency situations**:<sup>7</sup>

- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;
- publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

6. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.
7. Lack of, limited or inadequate procedures for the voluntary relinquishment of children.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards.<sup>8</sup>

8. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving a misrepresentation of the adoptability of a child of unknown parents.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving a misrepresentation of the adoptability of a child of unknown parents.

## II. At the **CHILD PROTECTION** level

9. Lack of an effective and adequate child protection system.



SO

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support and family reintegration and addresses the reasons for abandonment.<sup>9</sup>

10. Lack of, limited or inadequate resources and procedures for family support and prevention of separation programmes, and family reunification and reintegration.



SO

Establish and properly implement effective **family support programmes** with alternatives to relinquishment and abandonment of children.<sup>10</sup>

11. Lack of or limited awareness of the support available to families.



SO

Establish and properly implement a system to **publicise services** for families in need (e.g., preservation services, temporary care, counselling).

12. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child of unknown parents.<sup>11</sup>

13. Measures which allow for the anonymous abandonment of children (e.g., baby boxes, anonymous or secret births).<sup>12</sup>



SO

Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>13</sup>

Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).

Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>14</sup>

Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected and preserved.<sup>15</sup>

14. Lack of a central database or registry for missing children.



SO

Establish, and properly implement and maintain a centralised and up-to-date **database** or registry for missing children.

### III. At the **GENERAL** level

15. Cultural and familial norms and expectations that result in mothers feeling they need to hide their pregnancy and / or the birth of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>16</sup>



SO

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

16. Misconception that many children living in childcare institutions are orphans and are therefore adoptable.<sup>17</sup>



RS

SO

**Raise awareness** on (1) the fact that many children living in childcare institutions have at least one living parent,<sup>18</sup> (2) the process by which children are declared adoptable and (3) how childcare institutions function.

17. Poverty.<sup>19</sup>



SO

Address, through a plan and adequate allocation of resources, the root causes of **poverty**.

## FS 8 “Unknown Parents” – additional information (endnotes)

- 1 False characterisation of children as children of unknown parents**  
 In this FS, children of unknown parents include children who have gone missing from their families, who have been separated from their parents, or who have been abandoned anonymously and whose parents are not known. See also the Glossary of this Toolkit for definitions of abandonment and relinquishment.
- 2 DNA tests**  
 See FS 4 “Identity”, endnote 3.
- 3 Failure to investigate**  
 There are differing degrees of negligence which vary from lack of reasonable care in actions, wilful blindness to gross acts of negligence leading to criminal acts. While failure to investigate such cases of children of allegedly unknown parents is an illicit practice, the lack of a proper investigation (lack of reasonable care), if unintentional, may in some cases be considered an enabling factor (and not an illicit practice).
- 4 Establishment of a birth registration system and (re-)establishment of identity**  
 The child shall be registered immediately after birth (CRC, Art. 7). See also CRC, Art. 8; FS 4 “Identity”, endnote 15.
- 5 Declaration of adoptability**  
 Sufficient documentation may include, *e.g.*, the child’s birth certificate, police reports, comprehensive reports on the child prepared by qualified personnel, a declaration of abandonment. If the competent authorities are not satisfied with the documentation received, they should communicate with other competent authorities to get additional information (see FS 5 “Documents”).

If documents are not available, the competent authorities should, subject to the circumstances of the case, take steps to verify whether the parents of the child are unknown as it is claimed. Where it is necessary to search for family members, an inability to find them should only be declared following a sufficient investigation to track them down in a timely manner.
- 6 Emergency situations**  
 If an adoption takes place in an emergency situation, it can be very difficult or impossible to give due consideration to the principle of subsidiarity. See further FS 2 “Circumventing the Convention”, endnote 5.
- 7 Emergency situations**  
 See FS 2 “Circumventing the Convention”, endnote 6.
- 8 Legislation and procedures concerning child relinquishment**  
 See also FS 7 “Consent”. The impact of such legislation should also be analysed to ensure that they actually prevent abandonment of children without identifying information.
- 9 Establishment of a national child protection system**  
 See FS 6 “Subsidiarity”, endnote 6. See also UN Guidelines, Chapter IV; GGP No 1, Chapter 6.
- 10 Family support programme**  
 See further FS 6 “Subsidiarity”, green box 11.
- 11 Mechanism for facilitating searches for a child’s family**  
 States should establish a standard mechanism such that each time a child is found, there is a procedure to search for their family. Such mechanism should include training the actors who will be involved in this search. It is important to ensure that the procedure does not jeopardise the safety of the parents or the extended family, in particular as a result of discrimination.



When a member of the family is found but refuses to disclose the identity of one or both parents, efforts should be made to understand the reason for such refusal so as to find solutions leading to the disclosure of the parent(s) identity. See also FS 4 “Identity”, endnote 13.

**12 Anonymous abandonment of children**

See FS 4 “Identity”, endnote 8.

**13 Policies on abandonment of children**

See FS 4 “Identity”, endnote 9.

**14 Confidential hospital births**

See FS 4 “Identity”, endnote 10.

**15 Information regarding cases of anonymous birth**

See FS 4 “Identity”, endnote 11.

**16 Discrimination**

See FS 4 “Identity”, endnote 16.

**17 Misconception about abandoned children**

Most children in institutions have living parents (*i.e.*, they are not orphans) who may have placed their child in the institution due to poverty and / or to gain an education, but not with the intention of forsaking their parental rights (*i.e.*, relinquishment). In such situations, the childcare institution may be tempted to declare the child abandoned or orphaned so that the child can be put up for adoption.

**18 Children in institutions**

According to Lumos, it is “assum[ed] [that] these institutions, or ‘orphanages’, are there to support orphans, but over 80% of the children have a living parent. The majority could be reunited with their families given the right support” (Lumos, Fact Sheet “[Children in institutions](#)”, 2017). See also UNICEF, [Children in alternative care](#), which states that “Many children in orphanages are not orphans and have at least one parent or other relative”.

**19 Poverty**

Poverty, usually combined with other factors (*e.g.*, lack of / or inadequate family support or alternatives to abandonment and relinquishment), can lead to parents abandoning their children. See GGP 1, Section 6.2.3.



## FACT SHEET 9

### Circumventing the Procedure to Apply for Adoption, the Preparation and Assessment of PAPs, as well as the Socialisation Period

On this topic, see also:  
FS 2 "Circumventing the Convention" and FS 10 "Matching"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Lack of assessment of the PAPs' eligibility and suitability to adopt.
2. A professional agreeing to and / or knowingly misrepresenting the PAPs' suitability.



RS

Establish and properly implement **procedures** to verify the eligibility and individually assess the suitability of the PAPs in accordance with the legislation and regulations of the receiving State.

3. PAPs intentionally mislead, lie to, or deceive the competent authority, body or professional (e.g., social worker) that is conducting the assessment of their circumstances (e.g., their habitual residence, their eligibility and suitability to adopt).



RS

SO

Ensure that PAPs provide **supporting documents**.

**Verify the information** provided by the PAPs. The professional assessing the PAPS should follow the established criteria and verify information where necessary (e.g., speak with other family members, older children).

Warn PAPs about **possible consequences** (e.g., refusal of their application to adopt) should they mislead, lie to or deceive authorities and ensure they have a full knowledge / awareness of the consequences.<sup>1</sup>

Establish and properly implement a mechanism for the determination of the **habitual residence** of the PAPs, including for intra-family adoptions;<sup>2</sup> and duly scrutinise their habitual residence.

4. Authorising or tolerating direct contact by PAPs with State of origin's authorities and / or bodies without the PAPs having first applied for an intercountry adoption to the Central Authority in the State of their habitual residence (HC, Art. 14).<sup>3</sup>



RS

Establish and properly implement clear mechanisms for persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, to apply to the Central Authority in the State of their **habitual residence** (HC, Art. 14) before having any contact with the State of origin's authorities and bodies.



SO

Ensure that where persons habitually resident in a Contracting State have made direct contact with the Central Authority in the State of the child's habitual residence, this Central Authority does not engage in the request and instead, directs these persons to the **Central Authority in the State of their habitual residence**.

5. Contact between the PAPs and the child's parents (or any other person who has care of the child) takes place before:

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.



RS

SO

**Prohibit any contact between the PAPs and the birth parents** (or person who has the care of the child) before the Article 29 requirements have been satisfied (with the exceptions<sup>4</sup> mentioned in HC, Art. 29), namely that:

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

6. PAPs abuse or neglect the child during the socialisation period.



RS  
SO

Establish and properly implement procedures for the **socialisation period**, including regular monitoring of the socialisation process through visits, support and counselling.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

7. Lack of or inadequate regulations and / or guidelines on the assessment of eligibility and suitability of PAPs.

8. Inadequate assessment of the PAPs' eligibility and suitability to adopt.

9. Assessment of PAPs focusing on their financial wealth, rather than their actual ability to take care of a child.



RS

Establish and properly implement clear and comprehensive **regulations or guidelines** on eligibility and suitability of the PAPs, that may include a home study, a psychological, mental health and emotional assessment and criminal background checks.

10. Discriminatory eligibility and / or suitability criteria.<sup>5</sup>



RS

Ensure that the **regulations or guidelines** on eligibility and suitability of the PAPs are not discriminatory but based on objective criteria.

11. Lack of or inadequate information and / or counselling provided to the PAPs.

12. Lack of or inadequate support provided to the PAPs and the child after the matching procedure.



RS  
SO

Provide appropriate **information, counselling and support** to the PAPs throughout the adoption procedure and after the adoption has been finalised.<sup>6</sup>

13. Submitting applications of PAPs suitable to adopt children with a certain profile (e.g., young children) when adoptable children in the State of origin have other profiles (e.g., children with special needs).<sup>7</sup>

14. Prioritising the needs of the PAPs rather than the needs of the children.

Ensure that only applications of PAPs are submitted to the State of origin where the **profile of children** the PAPs are suitable to adopt corresponds to the profile of children in need of adoption in the State of origin.<sup>8</sup>



RS  
SO

Ensure that the State of origin makes clear to all its partner receiving States what the **general needs of adoptable children** are in its State.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the qualities of the PAPs can respond to the needs of the child, including for intrafamily adoption.<sup>9</sup>

15. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>10</sup>

Prevent practices leading to **pre-identification of children** for adoption by PAPs:



RS  
SO

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).

- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>11</sup>

- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

16. PAPs pressure the Central Authority and / or AAB to circumvent or accelerate the intercountry adoption procedure.<sup>12</sup>



RS  
SO

**Inform and educate PAPs** about the Convention, including the necessity to apply its safeguards and procedures.

17. Lack of or inadequate government processes and / or political will to identify, prevent and respond to irregularities regarding the assessment of PAPs.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to irregularities regarding the assessment of PAPs.

18. Misconception that children in the State of origin need to be “saved”.



RS  
SO

**Promote** that children grow up with their birth parents, family and community, as this is the best environment to support their development and health, when this environment is protective, loving and nurturing.

**Raise awareness** of the benefits of family support and reintegration programmes and the impact of family separation and alternative care on children.

## II. At the **CHILD PROTECTION** level

19. Voluntourism (see orange box 15 of this FS).



RS  
SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>13</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.

### III. At the **GENERAL** level

#### 20. Culture of secrecy around the child's adoption.<sup>14</sup>



RS  
SO

Establish and properly implement policies to address the reasons for a **culture of secrecy** around the child's adoption.

Inform and counsel PAPs about the importance to **speak to the child** about their adoption, and how they intend to do so in an age-appropriate manner.

Raise awareness on **benefits of openness** in adoption and preservation of the child's right to identity.



## FS 9 “PAPS” – additional information (endnotes)

- 1 Warning PAPS about possible consequences**  
In addition, one State mentioned that States should ensure that PAPS have full knowledge / awareness of the possible consequences (*e.g.*, by signing a form to that effect).
- 2 Determination of the habitual residence**  
See HCCH Note on Habitual Residence.
- 3 Direct contact of the PAPS with the State of origin**  
See FS 2 “Circumventing the Convention”, endnote 1.
- 4 Exceptions regarding contact under the Convention**  
See FS 10 “Matching”, endnote 3.
- 5 Discriminatory eligibility and / or suitability criteria**  
For example, determining that PAPS of a specific socio-economic class or religion are ineligible.
- 6 Counselling to PAPS**  
Counselling to PAPS should also include information concerning the preservation of the child's cultural background, the question of access to origins, courses against racism and about adopted children's possible traumas.
- 7 Submission of applications not fitting the profile of adoptable children**  
This practice may put pressure on the State of origin to match PAPS with children who have needs to which the PAPS are not able to appropriately respond, which can lead to higher chances of a breakdown in the adoption.
- 8 Sending file of PAPS to State of origin**  
GGP No 1, para. 332.
- 9 Comprehensive reports and evaluations**  
See FS 10 “Matching”, endnote 4.
- 10 Summer camps, hosting programmes and voluntourism**  
See FS 10 “Matching”, endnote 12.
- 11 Summer camps and hosting programmes**  
See FS 10 “Matching”, endnote 13.
- 12 Pressure to circumvent or accelerate procedures**  
For example, in the case of emergency situations; see further FS 2 “Circumventing the Convention”, red box 7.
- 13 Voluntourism**  
See FS 10 “Matching”, endnote 24.
- 14 Culture of secrecy**  
A culture of secrecy might lead to situations where PAPS do not want to inform their adopted child about the adoption or the context of their adoption, which may prevent adoptees from having access to information about their origins.



## FACT SHEET 10

### Circumventing Matching

On this topic, see also:  
FS 9 "PAPs" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Bypassing or pre-empting the matching process, *e.g.*:



RS  
SO

Establish and properly implement **guidelines and procedures** for matching.<sup>1</sup>

2. - Children selected or chosen by the PAPs (*e.g.*, by photo listing, visiting a childcare institutions) instead of matched by a competent authority or body;<sup>2</sup>



RS  
SO

**Prohibit PAPs from selecting or choosing a child.**

3. - Private arrangements on matching between AABs, childcare institutions and / or persons.



RS  
SO

**Prohibit private arrangements** on matching between AABs, childcare institutions and / or persons.

**Inform** AABs, childcare institutions and persons that a privately arranged adoption application will be refused by the State of origin and the receiving State.

4. Contact between the PAPs and the child's parents (or any other person who has care of the child) takes place before:
  - the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
  - the child has been declared adoptable (HC, Art. 4(a)); and

- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

**Prohibit any contact between the PAPs and the birth parents** (or person who has the care of the child) before the Article 29 requirements have been satisfied (with the exceptions<sup>3</sup> mentioned in HC, Art. 29), namely that:



RS

SO

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

5. Submitting false or outdated information about the child or the PAPs in order to favour PAPs being matched with a particular child.



RS

SO

Always **verify that the information** provided about the child and / or the PAPs is correct, and the source of this information is confirmed.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the PAPs are not favoured on the basis of false or outdated information in order to be matched with a particular child.<sup>4</sup>

6. Matching done by persons who have a conflict of interest.



SO

Ensure that **competent authorities and bodies doing the matching** are appropriately qualified, experienced, and trained; have adequate powers and resources; and high ethical standards and no conflict of interest.

7. Private and independent adoptions.<sup>5</sup>



RS

SO

**Prohibit private and independent adoptions.**<sup>6</sup>

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

8. Lack of, or inadequate, regulations or guidelines on matching, or their inadequate implementation.



RS  
SO

Establish and properly implement clear **regulations or guidelines** on matching and ensure transparent procedures.<sup>7</sup>

9. Matching done by persons who lack professional qualifications.<sup>8</sup>



SO

Build on the capacity of social workers and other appropriate professionals (e.g., psychologists, community workers) to **assess accurately and comprehensively** the legal, psycho-social and medical needs of children in order to improve the matching process.

10. Matching done by only one person (including by a government official).<sup>9</sup>



RS  
SO

Ensure that matching is done by a trained and **multidisciplinary team**.

11. Matching done by the childcare institution.

12. Matching done by AABs, if this task has not been delegated to them by the Central Authority, and / or is done without supervision.<sup>10</sup>



SO

**Prohibit matching by childcare institutions, AABs** and other persons or bodies not explicitly and specifically authorised and qualified to carry out this task.<sup>11</sup>

13. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>12</sup>

Prevent practices leading to **pre-identification of children** for adoption by PAPs:



RS  
SO

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).
- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>13</sup>
- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

14. Lack of individual assessment and evaluation of the child and their special needs.<sup>14</sup>



SO

Ensure that there is an **individual assessment and evaluation** of the child and their special needs. Ensure also that there is an interview with the child taking into account their age and degree of maturity.<sup>15</sup>

See also green box 15 of this FS.

15. Allowing a fast-track procedure or expeditious programme for children with special needs, without due consideration of the principle of subsidiarity and without appropriate safeguards.<sup>16</sup>



RS  
SO

Clearly define what **special needs** are / entail in national legislation, policies or regulations.<sup>17</sup>

Ensure that a child is only assessed as having special needs after a **thorough evaluation**.<sup>18</sup>

Ensure that even where there is an **expeditious programme** for children with special needs, due consideration is given to the principle of subsidiarity, and all necessary safeguards are respected, before a child enters such programme.

16. Submitting applications of PAPs suitable to adopt children with a certain profile (e.g., young children) when adoptable children in the State of origin have other profiles (e.g., children with special needs).<sup>19</sup>
17. Prioritising the needs of the PAPs rather than the needs of the children.
18. Insufficient information available about the child and / or the PAPs, due to negligence, lack of capacities or resources, lack of comprehensive and detailed questionnaires, or lack of cross-checking of information.



RS  
SO

Ensure that only applications of PAPs are submitted to the State of origin where the **profile of children** the PAPs are suitable to adopt corresponds to the profile of children in need of adoption in the State of origin.

Ensure that the State of origin makes clear to all its partner receiving States what the **general needs of adoptable children** are in its State.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the qualities of the PAPs can respond to the needs of the child, including for intrafamily adoption.<sup>20</sup>

19. Lack of a centralised database and / or system that allows for efficient matching, and / or lack of knowledge on how to use it.



SO

Establish and properly implement a **centralised database or record system** for children brought into care that includes information on how, why and by whom they were brought into care, and ensure that personnel using it, and doing the matching, are duly trained.<sup>21</sup>

20. Announcement of adoptable children over the Internet (photo listing).<sup>22</sup>



SO

Prohibit the announcement of adoptable children over the Internet (**photo listing**).<sup>23</sup>

21. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving circumvention of the matching process.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving circumvention of the matching process.

## II. At the **CHILD PROTECTION** level

### 22. Voluntourism (see orange box 13 of this FS).



RS

SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>24</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.



## FS 10 “Matching” – additional information (endnotes)

- 1 **Matching procedure**  
See GGP No 1, Section 7.2.5.
- 2 **Children selected or chosen by the PAPs**  
A few Contracting States have found that photo listing, for example, can be used in limited circumstances and with proper safeguards (e.g., protected website), to aid in the legitimate matching process. See GGP No 1, para. 65.
- 3 **Exceptions under the Convention regarding contact**  
Contacts are exceptionally permitted if “the adoption takes place within a family [or where] the contact is in compliance with the conditions established by the competent authority of the State of origin” (HC, Art. 29). Authorities should establish clear conditions under which any form of contact between the birth parents and the PAPs could be permitted and monitored to ensure strict compliance with these conditions. In any case, it is recommended to apply this exception very restrictively.
- 4 **Comprehensive reports and evaluations**  
See GGP No 1, Section 7.2.5. Matching must be done on the basis of the reports on the child and the PAPs. Having a centralised list of adoptable children may also facilitate the ability of authorities in the State of origin to match a child with suitable PAPs, and avoid bypassing the matching process.
- 5 **Private and independent adoptions**  
See the Glossary of this Toolkit; GGP No 1, Sections 8.6.6 and 10.1.1.6, and FS 2 “Circumventing the Convention”, endnote 2.
- 6 **Private and independent adoptions**  
See FS 2 “Circumventing the Convention”, endnote 3.
- 7 **Regulations and guidelines on matching**  
See GGP No 1, para. 356. The matching process requires precise sequencing. The State of origin does the matching on the basis of the reports and evaluations of the adoptable child and the PAPs. It then sends the proposal to the Central Authority or the AABs of the receiving State, which in turn notifies the PAPs. The PAPs must accept the proposed match before the adoption process may proceed. Each of these steps should be transparent and documented. See also GGP No 1, paras 316 and 394, regarding the reversal of the flow of the files.
- 8 **Lack of professional qualifications**  
See GGP No 1, para. 357.
- 9 **Matching by one person**  
See GGP No 1, para. 357.
- 10 **Matching done by the AAB without supervision**  
See GGP No 1, para. 361.
- 11 **Prohibition of matching by childcare institutions and by persons or bodies not authorised and / or qualified to do so**  
See GGP No 1, paras 357 and 361. A person working in a childcare institution who knows a child well may be invited by the Matching Committee to participate in the specific matching session, but this is an exception to the rule. Only the assigned professional team should be permitted to perform matching. Preferably, it should be done within the Central Authority.
- 12 **Summer camps, hosting programmes and voluntourism**  
“**Summer camps**” is a practice in which adoptable children and PAPs attend an event (usually a camp) in the PAPs’ State of habitual residence (*i.e.*, the receiving State) or in the State of origin, usually for a period of several weeks. In “**Hosting programmes**” (including “respite care” programmes to improve

the physical and psychological well-being of children) adoptable children are hosted by families living abroad, usually for a period of several weeks. "**Voluntourism**" refers to the practice of an person travelling to another State to volunteer in that State. One common practice is to travel to volunteer in a childcare institution.

In all these situations, PAPs, hosting families and volunteers may subsequently wish to adopt one or more children with whom they were in contact during these activities. This circumvents the matching process as the PAPs have been in contact with the child before matching is decided. In addition, these persons may not have been declared eligible and suitable to adopt. Such pre-selection encourages private and / or independent adoptions, which are contrary to the principles of the Convention. See also GGP No 1, Sections 7.2.5 and 8.8.9.

2022 SC, C&R No 14: "A majority of delegations specifically raised concerns regarding participation in summer camps" as well as hosting programmes.

### 13 **Summer camps and hosting programmes**

See GGP No 1, Sections 7.2.5 and 8.8.9. Most States do not organise summer camps or hosting programmes where PAPs can identify a child as this can lead to circumventing the Convention and to illicit practices. However, those States which do organise them report that such programmes, when carried out with sufficient safeguards, have proven helpful for the adoption of older children and / or children with special needs for whom no family (domestically or intercountry) could be found. Safeguards include the strict monitoring by the Central Authorities of the State of origin and the receiving State; ensuring that children and PAPs who participate in such programmes do so only if: the children have been declared adoptable; after careful consideration it has been determined that such a programme would not be harmful to them; the PAPs have been declared eligible and suitable to adopt; and the PAPs selected to host a child have been carefully selected based on criteria that fit the needs of the particular child.

### 14 **Lack of accurate assessment of the special needs of a child**

In order to facilitate and expedite intercountry adoptions, situations have occurred where children have been determined to have special needs when they did not, or to have more important special needs than they actually did.

### 15 **Individual assessment and evaluation**

See also FS 6 "Subsidiarity".

### 16 **Fast-track procedure**

See also FS 6 "Subsidiarity", red box 4.

### 17 **Defining special needs**

See also FS 6 "Subsidiarity", endnote 16.

### 18 **Children with special needs**

See FS 6 "Subsidiarity", endnote 17. See GGP No 1, Section 7.3. The assessment of whether a child has special needs should not be made by an AAB or a childcare institution.

### 19 **Submission of applications not fitting the profile of adoptable children**

See FS 9 "PAPs", endnote 7.

**20 Comprehensive reports and evaluations**

See *supra* endnote 4 of this FS.

**21 Databases**

A database of adoptable children and PAPs in the State of origin would facilitate the matching process and therefore also promote domestic adoption and the principle of subsidiarity.

**22 Photo listing**

See GGP No 1, paras 65, 357, Annex 3-4 (3.1.3.4); GGP No 2, Section 3.8. Such sites are generally not safe as they allow PAPs to identify and (pre-)select a child themselves, which prevents professional and independent matching. In addition, the practice of photo listing can violate the child's right to privacy.

**23 Prohibition of photo listing**

PAPs should not be allowed to (pre-)select a child, including by photo listing. See GGP No 1, para. 65: "Matching should not be done by the PAPs, [...] by selecting an appealing child [...] through a photo listing. Although photo listings can be a useful method of promoting adoption generally, [...] [States] of origin should be careful that the actual matching decisions are made by professionals and are based on the needs of the child with the qualities of the adoptive parents".

However, there have been situations where some States have found photo listings helpful to generally promote the adoption of older children or children with special needs. If, nevertheless, a State decides to allow photo listing for promoting adoption generally for such children, it should be regulated by both the State of origin and the receiving State, and it should in any case not permit the PAPs to select or choose a child through that process. For example, proper privacy protection measures should be in place to ensure confidentiality and anonymity of the child; the photo listing should be strictly monitored by the Central Authorities; information on adoptable children should never be shared publicly (as this promotes the selection of a child by PAPs, which circumvents the matching process); Central Authorities should take necessary actions towards agencies that operate such sites. See further GGP No 2, Section 3.8.

**24 Voluntourism**

Persons who have participated in voluntourism programmes should not be permitted to adopt children who are resident in the particular institution(s) in which they volunteered, or any other children that they might have pre-selected while volunteering.

Where legislation of receiving States does not permit them to prohibit actions taken by their citizens abroad, receiving States should nevertheless strongly and actively discourage their citizens from taking part in such practices. Furthermore, they should prohibit the operation of organisations established in their State which arrange voluntourism activities in other States.



## FACT SHEET 11

### No Preservation of, or Unlawful Denial of Access to, Information regarding Origins

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On this topic, see also:  
FS 4 "Identity", FS 5 "Documents", FS 7 "Consent", FS 8 "Unknown Parents" and FS 10 "Matching"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Failure of competent authorities to:<sup>1</sup>

2. - take all appropriate measures to collect and preserve information about the situation of the child and the PAPs as necessary to complete the adoption (HC, Art. 9);<sup>2</sup>



RS  
SO

Ensure that all information about the situation of the child and the PAPs which is necessary to complete the adoption is **collected and preserved**.

Enact and properly implement **legislation, regulations and procedures** for the preservation of information on origins.<sup>3</sup>

3. - preserve information they hold concerning the child's origins (e.g., identity of parents, medical history) for a sufficient period of time (HC, Arts 9 & 30(1));<sup>4</sup>



RS  
SO

Ensure that all information and belongings relevant to the child are preserved and transmitted to a **repository**.

Ensure that information is preserved for a sufficient period of time, and ideally in **perpetuity**.<sup>5</sup>

4. - preserve the records of an AAB when it ceases to operate and / or a childcare institution when it closes;



RS  
SO

Establish a **centralised public database** or registry with all adoption records of that State.

Ensure that **records of AABs and childcare institutions** which cease to operate are preserved, preferably in a centralised public database operated by the State.

5. - ensure that the adoptee, or their representative, has access to information about their origins, under appropriate guidance, in so far as is permitted by the law of that State (HC, Art. 30(2)).<sup>6</sup>



RS  
SO

Establish and properly implement a mechanism that ensures that the adoptee, or their representative, has **access to information** about their origins, under appropriate guidance, in so far as is permitted by the law of the relevant State.

Ensure that **clear information** about access to information is provided to adoptees (including their descendants), birth parents and adoptive parents.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

6. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.<sup>7</sup>

7. Laws, regulations or policies that do not allow parents to reconsider their decision not to leave information for their child.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards, including making it possible for the birth parents to add information to the child's record at a later stage.

8. Lack of, limited or inadequate resources and procedures to properly preserve information (*i.e.*, inadequate record keeping).<sup>8</sup>



RS  
SO

Ensure resources and establish and fully implement procedures to **preserve information** properly.

Enact and properly implement legislation, regulations and procedures to ensure against **misrepresentation** of the adoptee or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

9. Lack of trained personnel to provide appropriate guidance to adoptees who (want to have) access to records.



RS  
SO

Establish and properly implement **guidelines** on how to provide counselling to adoptees who (want to have) access to such records, and ensure that the guidance is provided by appropriately qualified and trained persons.

10. Lack of a central database or registry for adoption records.

11. Records kept only by private institutions or AABs involved in the intercountry adoption process and not kept by a single centralised public authority.<sup>9</sup>



RS  
SO

Establish and properly implement a **centralised public database or registry** with all adoption records of that State, and ensure that all records are kept there.

12. Failure to provide access to information regarding origins free of charge.<sup>10</sup>



RS  
SO


Ensure that access to information is available **free of charge**.

13. Failure to take all appropriate measures to promote the development of adoption counselling and post-adoption services (HC, Art. 9(c)), including support in the search for origins.<sup>11</sup>




RS  
SO


Establish and properly implement **guidelines and procedures** to counsel and assist adoptees in their search for origins.

- 
RS  
SO
Provide **information and counselling to birth family / parents** who are searching for the adoptee or who have initiated the search for the adoptee.

14. Failure to record or keep track of the attempts made by the birth parents or the adoptee to find each other.<sup>12</sup>


- 
RS  
SO
Create a **registry** of who is searching for information on adoptions.

15. Lack of cooperation between receiving States and States of origin to assist adoptees and birth families in accessing information.<sup>13</sup>


- 
RS  
SO

**Promote cooperation** between States of origin and receiving States, through designated contact persons, to facilitate access to information.<sup>14</sup>  
 Provide **information and counselling to birth family / parents** who are searching for the adoptee or who have initiated the search for the adoptee.

16. Misconceptions that birth parents do not want to be contacted.

- 
RS  
SO
Provide **information and counselling to adoptees** and adoptive families about possible contact with birth parents and birth family.

17. Misconceptions that adoptees will reject their adoptive parents if the adoptee meets their birth family.

- 
RS
Before declaring **PAPs** eligible and suitable to adopt, address the question of access to origins through counselling and / or education (see also green box 5 of this FS).

18. Lack of or inadequate legislation, regulations and procedures on preservation of information on origins.

- 
RS
Enact and properly implement **legislation, regulations and procedures** for the preservation of information on origins.<sup>15</sup>



19. Lack of or inadequate legislation, regulations and procedures on access to information on origins, which:
- limits the possibility for adoptees to obtain information about their origins;
  - limits the possibility for interested persons (adoptees, adoptive family or birth family) to obtain information that could address concerns about suspected irregularities in the adoption process.



so

Consider reviewing legislation, regulations and practices to **permit access to information** on origins.<sup>16</sup>

20. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving no or inadequate preservation of, or unlawful denial of access to, information on origins.



so

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving no or inadequate preservation of, and / or unlawful denial of access to, information on origins.

## II. At the **CHILD PROTECTION** level

21. Measures which allow for the anonymous abandonment of children (e.g., baby boxes, anonymous or secret births).<sup>17</sup>



so

**Address reasons** why birth parents may not want to disclose their identity.

Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>18</sup>

Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).

Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>19</sup>

Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected in order to preserve as much information as possible regarding their identity.<sup>20</sup>

22. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child.<sup>21</sup>

### III. At the **GENERAL** level

23. Culture of secrecy around the child's adoption.<sup>22</sup>



RS

Establish and properly implement policies to address the reasons for a **culture of secrecy** around the child's adoption.

SO

Inform and counsel PAPs about the importance to **speak to the child** about their adoption, and how they intend to do so in an age-appropriate manner.

Raise awareness on **benefits of openness** in adoption and preservation of the child's right to identity.

24. Discrimination or reprisals against birth parents or birth parents being cast out by their family or community if the existence and / or adoption of their child is revealed.<sup>23</sup>



SO

Provide **information, counselling and support** to birth parents if the existence and / or adoption of their child is revealed.

**Raise awareness** in the community of the importance to not discriminate against, take reprisals or cast out birth parents.

Enact and properly implement legislation prohibiting **discrimination against birth parents** and take necessary measures to support and empower them against such discrimination (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

25. Lack of or inadequate legislation, regulations and procedures on data protection.

26. Lack of appropriate control over the use of records.<sup>24</sup>



RS

SO

Enact and properly implement legislation, regulations and procedures on **data protection**.<sup>25</sup>

## FS 11 “Origins” – additional information (endnotes)

### 1 **Failure to comply with duties**

There are differing degrees of negligence which vary from lack of reasonable care in actions, wilful blindness to gross acts of negligence leading to criminal acts. While failure to comply with the duties mentioned in the FS is an illicit practice, the inadequate performance of these tasks (lack of reasonable care in actions) if unintentional may, in some cases, be considered as an enabling factor (and not an illicit practice).

### 2 **Not collecting, preserving or exchanging information on the child and on the PAPs**

Information about the child includes, for example, identity, adoptability, background, social environment, family history, medical history, special needs (see HC, Art. 16(1)(a)), any police report(s), the adoption order, and results of DNA tests. Information about the PAPs includes, for example, identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care (see HC, Art. 15).

The failure to collect, preserve and exchange information hinders the adoption procedure and the possible future access to such information.

### 3 **Establishment of laws, policies and procedures for the preservation of information**

These laws, policies and procedures should address, at a minimum:

- which authority will be responsible for preserving the information;
- what information shall be preserved (the 2010 SC meeting recommended that records should contain, at a minimum, the information referred to in Art. 16 of the Convention and, to the extent possible, any other information or personal items relating to the child or their birth family, see 2010 SC, C&R No 28);
- how the information should be preserved; and
- the length of time the information should be preserved (see endnote 5 of this FS for the recommendation of the 2010 SC).

### 4 **No preservation of information about the child's origins**

If information is not preserved, the child may not be able to fully enjoy their right to identity. If information is kept only for a short period of time, it may not be available when the adoptee is older and wishes to access such information.

### 5 **Preservation of adoption records in perpetuity and how to preserve them**

See 2010 SC, C&R No 28: The Special Commission “recommended that receiving States and States of origin preserve adoption records in perpetuity. The record must contain the information referred to in Article 16 and, to the extent possible, any other information or personal items relating to the child or [their] birth family.”

Competent authorities should scan any paper copies, and ensure that backups of records are kept.

### 6 **No access to information**

Conditions regarding access to information may however differ among States.

### 7 **Legislation on child relinquishment**

See also FS 4 “Identity”.

### 8 **Inadequate record keeping**

For example, misplacement of records in the registry; loss of records; inadequate computer equipment; lack of a record keeping policy; insufficient space for record management; ineffective means of retrieving records; inadequate record management; inadequate security for records;

inadequate professionally trained records managers; and inadequate resources to facilitate proper record management practices.

- 9 No centralised registry of records**  
Information kept by private institutions (e.g., childcare institutions) and AABs without backup at the governmental level could potentially be lost (e.g., if the private institutions or AAB close down or their records are destroyed). This could limit adoptees' access to information about their origins. Not having a centralised registry at governmental level can also be a source of irregularities.
- 10 Access to records and assistance with the search for origins not free of charge**  
If there are costs associated with accessing records, this may prevent adoptees from having access to information concerning themselves.
- 11 Failure to assist adoptees**  
The failure to take all appropriate measures to promote support in the search for origins may lead ill-intentioned persons to take advantage of adoptees, e.g., requesting high fees to assist them in their search, providing them with false information.
- 12 Failure to keep track of search attempts**  
The failure to record or keep track of attempts made by birth parents and / or adoptees to find each other may prevent them from knowing their whereabouts and / or origins, or delay their reunion.
- 13 Lack of cooperation**  
For example, a lack of cooperation between the State of origin and the receiving State may prevent adoptees from knowing how they can access their records or from receiving appropriate guidance when accessing their records.
- 14 Cooperation between States of origin and receiving States**  
It is important to ensure that when an adoptee goes before the authorities of one State, they receive support in accessing information, in particular, advice on whether information may have been preserved, in the other State. States of origin and receiving States should cooperate to ensure that adoptees have access to their records and receive appropriate support.
- 15 Establishment of laws, policies and procedures for the preservation of information**  
See endnote 3.
- 16 Establishment of laws, policies and procedures for access to information**  
See 2022 SC, C&R No 32: "The SC encouraged Contracting Parties to provide adoptees with as much information as possible regarding their origins to the extent allowed by laws pertaining to the protection of confidentiality and privacy. The SC heard from a number of delegations about the need to provide greater access and invited States to consider reviewing their laws and practices in this regard".
- 17 Anonymous abandonment of children**  
See FS 4 "Identity", endnote 8. The anonymous abandonment of children may make it impossible for the adoptee to have access to information about their origins.
- 18 Policies on abandonment of children**  
See FS 4 "Identity", endnote 9.
- 19 Confidential hospital births**  
See FS 4 "Identity", endnote 10.
- 20 Information regarding cases of anonymous birth**  
See FS 4 "Identity", endnote 11.

21

**Mechanism for facilitating searches for a child's family**

See FS 4 “Identity”, endnote 13 and FS 8 “Unknown Parents”, endnote 11.

22

**Culture of secrecy**

A culture of secrecy may lead to situations where little information is preserved and where no appropriate guidance is provided to adoptees when trying to access their records.

23

**Discrimination**

See FS 4 “Identity”, endnote 16.

24

**Lack of a control mechanism**

When there is no control mechanism in place, records may be accessed by third persons who use them for purposes other than those for which they were created.

25

**Establishment of laws, policies and procedures on data protection**

These laws, policies and procedures should address, at a minimum:

- how data should be protected;
- who is permitted to have access to the records and for what purpose; and
- the possibility of using the data for general information (e.g., statistics).



## Part II



## Checklist to Assist Decision Making by Central Authorities

## Checklist to assist decision making by Central Authorities

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- 1 This Checklist aims at assisting Central Authorities in taking decisions in individual cases involving children for whom an intercountry adoption is considered. In States where Central Authority duties are performed in whole or in part by public authorities or AABs, this Checklist will also assist them in their decision-making process. References to Central Authorities should therefore be read as including public authorities or AABs, where appropriate (HC, Art. 22(1)).
- 2 The Checklist is divided into eight distinct steps. Each step focuses on a specific aspect of the intercountry adoption process falling under the purview of either the State of origin or the receiving State. However, as part of the overall joint responsibility of working to ensure that the adoption process fully conforms to the legal and procedural safeguards of the Convention, steps 5 to 8 should allow Central Authorities to double-check that proper verifications and decisions have been made in both States before matching is proposed and agreement to proceed with an adoption is given.
- 3 For each step, the Checklist sets out what the Central Authority should watch out for when reviewing a child's and / or PAPs' situation and what actions it should take, including where further clarification may be needed. The Central Authority should satisfy itself of the regularity of the situation before turning its mind to the next aspect of the intercountry adoption process. This proactive step-by-step approach should allow for closer scrutiny of the child's situation to more effectively prevent illicit activity from permeating or influencing the intercountry adoption process.<sup>1</sup>

Where, at any step in the intercountry adoption process, reasonable doubts of illicit activity arise, Central Authorities should immediately suspend any further decision regarding the child's life plan and refer to Part III "*Model Procedure*" and Part IV "Guidelines", for guidance on possible actions to be taken in light of the particular circumstances. Central Authorities should also refer to these tools where reasonable doubts of illicit activity arise after the adoption order and the certificate of conformity have been issued.

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<sup>1</sup> It is however still important to keep in mind that following all the steps presented in this Checklist does not guarantee the absence of illicit practices. In any case, States should do their utmost, including referring to all the tools in the Toolkit, to prevent the occurrence of illicit practices.

## Checklist

- 4 The manner in which Central Authority duties are performed may differ from one State to another depending on domestic rules and procedures and / or the specific aspects of the intercountry adoption process under review. In some instances, for example, the role of the Central Authority may be to verify that the competent authorities have properly documented their determinations or decisions in light of applicable best practices. In other instances, the Central Authority may be directly responsible for, or involved in, certain verifications.

While the rules of the 1993 Adoption Convention should always apply, Central Authorities may need to adapt the Checklist to facilitate its application in their jurisdiction.

States are encouraged to also refer to Part I "*Fact Sheets*", which provides more detailed information on how to identify and prevent illicit practices.

For each specific step, references are made to the specific correlated Fact Sheets.

In addition, it is to be noted that other overarching Fact Sheets are intended to cover the entire procedure (*i.e.*, FS 1 "Abduction"; FS 2 "Circumventing the Convention"; FS 3 "Financial Gain"; FS 5 "Documents").

### Step 1 – Verification of the child's identity by the Central Authority of the State of origin (*see further FS 4 "Identity"*)

- 5 Ensuring that the identity of the child has been verified and documented based on reliable information. The identity of the child includes that of their parent(s).

#### *What to watch out for*

- 6 Of the **documentary evidence provided** (*e.g.*, a birth registration, birth certificate), whether the document appears to be **authentic**. This could be done, at a minimum, by verifying that:
- the form and content of the document are consistent with authentic domestic documents (by contacting the competent authority, where appropriate);
  - if more than one document is provided, there are no inconsistencies regarding the identity of the child or their parent(s);
  - if there is late registration, everything was done following the laws and procedures, and the necessary documents were issued;

- there are no indications, such as a variation in pen pressure or signs of electronic manipulation, that the document may have been forged or altered.
- 7 **In all cases**, whether reasonable steps were taken to **verify the information on the identity of the child, and their parent(s), or the person accompanying the child** when that child was taken into care (referred to below as “person”) and whether such steps were documented. This could have been done, for example, by:
- requesting documentary evidence as to their identity, residence and / or employment;
  - conducting appropriate interview(s) with the parent(s) or the person;
  - requesting written statement of the parent(s) or person and if feasible, DNA testing;
  - seeking corroborative information from hospital birth records and / or other government records;
  - seeking corroborative information from extended family and / or leader(s) of the local community.
- 8 **In the case of a child of unknown parents**, whether reasonable steps were taken to **verify the identity of the child** and whether such steps were documented. This could have been done, for example, by:
- seeking assistance from law enforcement or child welfare authorities;
  - issuing notices to find the parents or extended family, or to identify the child using widely accessible media, including multimedia platforms, as appropriate and consistent with privacy considerations;
  - reviewing the report on how and where the child was found and, if possible, interviewing those that found the child;
  - seeking corroborative information from leader(s) of the local community.

### *What actions may be taken*

- 9 **If the birth of the child** has been registered *and* the **legal parentage** of the child has been recorded *and* the **identity of the child** has been verified based on reliable information that has been documented: go to step 2.

- 10 **If the birth of the child** has *not* been registered *and / or* their legal parentage has *not* been recorded *but* the **identity of the child** has been verified based on reliable information that has been recorded:

request the registration of the child's birth and / or of the child's legal parentage;

once registration is done, go to step 2.

- 11 If the identity of the child cannot be verified based on reliable information that has been documented:

suspend any further decisions;



request that the competent authority(ies) undertake proper verifications to establish the identity of the child, register the birth of the child and legal parentage, and develop a suitable life plan for the child.<sup>2</sup>

## Step 2 – Verification of the principle of subsidiarity by the Central Authority of the State of origin (see further FS 6 “Subsidiarity”)

- 12 Verifying that appropriate efforts were made in view of family reunification (level 1 of subsidiarity) and, where this was not possible, that suitable, permanent and family-based domestic solutions (e.g., kinship care and domestic adoption) (level 2 of subsidiarity) were duly considered within a reasonable time<sup>3</sup> in light of the circumstances of each case. Step 2 refers to the verification by the Central Authority that the principle of subsidiarity was duly considered by the competent authorities at levels 1 and 2.

### What to watch out for

- 13 Whether appropriate efforts to give due consideration to the principle of subsidiarity were made within a reasonable time and whether such efforts have been documented. This could be done, for example, by examining indications that the principle of subsidiarity was not given due consideration, such as:
- the child is an infant or a toddler;
  - a parent or another family member is still involved in the child's life, for both intrafamily adoptions and non-intrafamily adoptions;
  - from the moment the child entered into care, no or insufficient time was taken to effectively consider reunification (level 1 of subsidiarity);
  - domestic solutions (level 2 of subsidiarity) do not exist in the State of origin;

<sup>2</sup> The development of a suitable life plan for the child may, after all efforts have been made to verify the child's identity, include adoption.

<sup>3</sup> The term “reasonable time” is used to refer to the fact that a balance needs to be found between giving too little time to try to find a suitable and permanent domestic solution (as it could mean that such a solution is not found while it could have been possible) and giving too much time (as it could mean that the child would stay in a temporary solution too long which could affect the possibility to then find a permanent solution).

- if domestic solutions exist in the State of origin, whether no or insufficient time was taken to effectively consider them (level 2 of subsidiarity), from the moment reunification had effectively been considered and had been deemed not possible;
- for intrafamily adoptions:
  - > an intercountry adoption appears to be pursued as an alternative to other immigration pathways;
  - > pressure was put on the Central Authority or other competent authorities by family members in both the State of origin and the receiving State (e.g., pressure to determine the child as being in need of adoption);
- signs of possible inducement by pressure, coercion, payment or compensation of any kind;
- insufficient information or lack of proper assessment to support a determination of special needs; and
- a determination of special needs that is inconsistent with observations of the child's development and / or the child's wishes having regard to their age and degree of maturity, were not considered.

### What actions may be taken

14 If appropriate efforts to give due consideration to the principle of subsidiarity have been made: go to step 2.

15 If there are indications that appropriate efforts to give due consideration to the principle of subsidiarity within a reasonable time may not have been made:

suspend any further decisions and seek additional information;

once additional information is received, if it is determined that:

→ appropriate efforts to give due consideration to the principle of subsidiarity have been made: go to step 3.

→ appropriate efforts to give due consideration to the principle of subsidiarity have not been made:

→ request that the competent authority(ies) make appropriate efforts to give due consideration to the principle of subsidiarity within a reasonable time and document such efforts;

→ if, after proper efforts to give due consideration to the subsidiarity principle, the decision regarding the child's life plan includes an intercountry adoption: go to step 3.

- 16 If there are indications of irregularities in the assessment of the child's needs and / or in the consideration of the child's wishes having regard to their age and degree of maturity:

suspend any further decisions and request a full assessment of the child's needs by (a) qualified expert(s) and / or consider the child's wishes;

once such assessment is received, if it is determined that:

→ the child's needs and / or wishes described in the original assessment were accurate: go to step 3.

→ the child's needs and / or wishes are different from those described in the original assessment:

→ discuss with the competent authority(ies) whether giving new consideration to the principle of subsidiarity would be in the child's best interests;

→ if, after giving new consideration to the principle of subsidiarity, the decision regarding the child's life plan includes an intercountry adoption: go to step 3.

**Step 3 – Verification by the State of origin's Central Authority of the determination of adoptability of the child made by the competent authority in the State of origin (see further FS 7 "Consent" and FS 8 "Children of unknown parents")**

- 17 Ensuring that the child is adoptable based on valid consent(s) and / or a valid decision by the competent administrative or judicial authority.
- 18 Please note that step 3 only considers the child's "legal" adoptability in terms of consent and / or valid decision. However, it is also extremely important that other aspects of the adoptability of the child are considered, assessed and verified. These may include the child's psychological, social and / or medical adoptability.<sup>4</sup>

<sup>4</sup> For further information, see GGP No 1, para. 328.



### Step 3A – Where the adoptability is based on consent(s) to adoption<sup>5</sup> – Verification of the consent(s)

- 19 Ensuring that the consent(s) were taken in accordance with the requirements of Article 4 of the Convention, under appropriate conditions and has / have not since been withdrawn.

#### *What to watch out for*

- 20 Whether the authenticity of the consent(s) can be verified and documented. This could be done, for example, by verifying that:
- the person who apparently received the consent(s) is effectively the competent authority in the State;
  - there are no apparent misrepresentations about the identity of the child or their parent(s);
  - the form and content of the document(s) are consistent with authentic domestic documents;
  - there are no indications, such as a variation in pen pressure or signs of electronic manipulation, that the document may have been forged or altered.
- 21 Whether the conditions for obtaining the consent(s) were appropriate and documented. This could be done, for example, by verifying that the competent authority that took the consent(s) documented the following:
- all persons, institutions or authorities whose consent(s) is / are legally required under the law of the State of origin, provided such consent(s);
  - the person(s), institutions or authorities who signed the consent form(s) was / were the person(s), institutions or authorities whose consent(s) is / are legally required under the law of the State of origin;
  - no indication that the parent(s) and the child (where the child's consent is required) may not have had the legal capacity to give consent;
  - the parent(s) and the child (where the child's consent is required) were counselled as may be necessary and duly informed of the effects of their consent in a language that was understood by them;
  - no indication that the parent(s) and the child (where the child's consent is required) may not have had the intellectual capacity to understand the information they were given;
  - the parent(s) and the child (where the child's consent is required) were given the opportunity to further reflect on the options for the child's life plan after receiving counselling and before giving consent;

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<sup>5</sup> Consent to adoption means a consent given to the termination of the legal relationship between the child and their birth parent(s) (in the case of a full adoption), with the understanding that, after due consideration is given to the principle of subsidiarity, the child may be adopted internationally by eligible and suitable adoptive parent(s).

- if requested by them, the child and / or their parents were provided with additional legal counselling;
- the consent(s) has / have been given in the required legal form, and expressed or evidenced in writing;
- the consent(s) of the parent(s) (where required) has or have been given only after the birth of the child and only after a reasonable period has elapsed following the birth of the child;<sup>6</sup>
- the parent(s) and the child (where the child's consent is required) confirmed that the consents were not induced by pressure, coercion, payment or compensation of any kind; and
- except where the adoption is an intrafamily adoption, the parent(s) confirmed that they have not had any contact with PAPs.

22 Whether there are any indications that:

- the consent(s) may have been induced by pressure, coercion, payment or compensation of any kind;
- the consent(s) may have since been withdrawn.

### *What actions may be taken*

23 If the authenticity of the consent(s) has been verified and the consent(s) was / were taken under appropriate conditions and there are no indications that the consent(s) may have been withdrawn: go to step 5.

24 If there are indications that the consent(s): may not be authentic or may not have been taken under appropriate conditions or may have been withdrawn:

suspend any further decisions and seek additional information;

once additional information is received, if it is determined that:



the consent(s) is / are authentic *and* taken under appropriate conditions *and* not withdrawn: go to step 5.



the consent(s) is / are authentic but was / were not taken under appropriate conditions:

<sup>6</sup> For further information, see Part I "Fact Sheets", FS 7 "Consent", orange box 9.



discuss with the competent authority(ies) whether it may be possible to obtain new consent(s) under appropriate conditions:



if such consent(s) is/are obtained: go to step 5.



if such consent(s) cannot be obtained: request that the competent authority(ies) reassess(es) the situation and take(s) appropriate decisions regarding the child's life plan.



the consent(s) is / are not authentic or the consent(s) has / have been withdrawn:



request that the competent authority(ies) reassess(es) the situation and take(s) appropriate decisions regarding the child's life plan.



if, after reassessing the situation, the decision regarding the child's life plan remains an intercountry adoption and the child's adoptability is properly established through new consent(s) and / or a valid administrative or judicial decision: go to step 5.

### Step 3B – Where the adoptability is based on an administrative or judicial decision – Verification of the decision

- 25 Ensuring that the administrative or judicial decision was issued by the competent authority, that the document is authentic, and that there are no irregularities.

#### *What to watch out for*

- 26 Whether the authenticity of the decision can be verified and documented. This could be done, for example, by verifying that:
- the decision was effectively issued by the competent authority in the State (by contacting the officers of the court or the administrative authority, if appropriate);
  - the form and content of the document(s) is / are consistent with authentic domestic documents;
  - there are no indications, such as a variation in pen pressure or signs of electronic manipulation, that the document may have been forged or altered.
- 27 Whether there are any indications that:
- the identity of the child or their parent(s) may have been misrepresented;

- the decision may have been induced by pressure, coercion, payment or compensation of any kind;
- where consent(s) to adoption were given, such consent(s) may have been taken under inappropriate conditions as described in paragraph 21;
- where the decision is based (in whole or in part) on a previous decision removing the parent(s)' parental responsibility, that the document recording such decision may not be authentic.

### What actions may be taken

28 If the authenticity of the decision has been verified and there are no indications that: the decision may have been induced by pressure, coercion, payment or compensation of any kind; the identity of the child or their parent(s) may have been misrepresented; where consent(s) to adoption were given, such consent(s) may have been taken under inappropriate conditions; or, where the decision is based on a previous decision removing the parent(s)' parental responsibility, the document recording such decision may not be authentic: go to step 5.

29 If there are indications that: the decision may not be authentic; the decision may have been induced by pressure, coercion, payment or compensation of any kind; the identity of the child and / or their parent(s) may have been misrepresented; where consent(s) to adoption were given, such consent(s) may have been taken under inappropriate conditions; or, where the decision is based on a previous decision removing the parent(s)' parental responsibility, the document recording such decision may not be authentic:

suspend any further decisions and seek additional information;

once additional information is received, if it is determined that:



the decision is authentic and not induced by pressure, coercion, payment or compensation of any kind; the identity of the child and their parent(s) have not been misrepresented; the consent(s) were taken under appropriate conditions; and any document recording a previous decision removing the parent(s)' parental responsibility was authentic: go to step 5.



the decision is not authentic, or the decision is authentic but: the decision was induced by pressure, coercion, payment or compensation of some kind; the identity of the child and / or their parent(s) has been misrepresented; the consent(s) were taken under inappropriate conditions; or any document recording a previous decision removing the parent(s)' parental responsibility was not authentic:



request that the competent authority(ies) reassess the situation and take appropriate decisions regarding the child's life plan;



if, after reassessing the situation, the identity of the child and their parent(s) is properly verified *and* the decision regarding the child's life plan remains an intercountry adoption *and* the child's adoptability is properly established through valid consent(s) and / or a judicial decision: go to step 5.

#### **Step 4 – Verification by the Central Authority of the receiving State of the assessment of eligibility and suitability to adopt (see further FS 9 “PAPs”)**

- 30 Ensuring that the PAPs have undergone a proper assessment and have been found suitable and eligible to adopt internationally.

##### *What to watch out for*

- 31 Whether the PAPs have been duly assessed and found to be eligible and suitable. This could be done, for example, by verifying whether:
- the licensed professional was duly authorised and qualified to assess eligibility and suitability;
  - there are no indications that the assessment contains misrepresentations regarding the PAPs' identity, habitual residence, marital status, personal situation or other;
  - there are no indications that the assessment or the required documentation provided by the PAPs (e.g., identity documents; financial statements; medical reports) may have been forged or falsified;
  - there are no indications that the licensed professional or a third party (e.g., physician, psychologist) may have accepted payments to produce a positive assessment or report; and
  - there are no indications that the PAPs are requesting an assessment after having travelled to the State of origin to identify a child to adopt (independent or private adoption).

##### *What actions may be taken*

- 32 If a proper assessment of eligibility and suitability has duly been conducted: go to step 6.

- 33 If there are indications that a proper assessment of eligibility and suitability may not have been duly conducted:

suspend any further decisions and, depending on the circumstances, consider:



refusing the adoption application; or



requesting an updated assessment in light of any new information:



if an updated assessment is requested and is satisfactory: go to step 6.

### **Step 5 – Decision on matching of the Central Authority (or competent authority) of the State of origin (see further FS 9 “Matching”)<sup>7</sup>**

- 34 Identifying PAPs approved under Article 15 of the Convention to meet the child's special needs and transmitting the child proposal to the receiving State.

#### *What to watch out for*

- 35 Whether the PAPs have been duly approved under Article 15 of the Convention. This could be done, where necessary, by communicating directly with the Central Authority of the receiving State.
- 36 Whether the matching process may have been circumvented. This could be done, for example, by looking out for possible indications of:
- a private arrangement (through a person, an AAB or a childcare institution) to match PAPs to the child;
  - inducement by pressure, coercion, payment or compensation of any kind, including the origin of any funding or income received by the childcare institution;
  - the child being matched to PAPs who had not been duly approved for the special needs and / or age of the child; and
  - the PAPs travelling to the State of origin, including to volunteer at a childcare institution, or being in contact with the child or the parent(s) of the child, either directly

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<sup>7</sup> In some situations where no suitable PAPs may have been found for a particular child, the State of origin may ask receiving States if they have other PAPs whose profile could correspond to the needs of that child. Such situations are usually referred to as the “reversal of the flow”. The final matching decision, however, should still be made by the Central Authority (or competent authority) of the State of origin. If such situations arise, it is important to ensure that all aspects of the matching process are still respected (e.g., PAPs should not be proposed if they had not been approved for the special needs and / or age that the particular child would have) and that it does not create “competition” between States and PAPs for a specific child.

or through an extended family member or friend living in the State of origin, before or after the consent(s) to adoption.<sup>8</sup>

### *What actions may be taken*

37 If the PAPs have been duly approved and there are no indications that the matching process may have been circumvented:

proceed with matching with the approved PAPs, send the proposal to the Central Authority of the receiving State and wait for the response;

if the response from the Central Authority of the receiving State is positive: go to step 6, if the adoption order is to be made in the State of origin.

38 If the PAPs have not been duly approved:

consider matching the child with other duly-approved PAPs.

39 If the PAPs have been duly approved but there are indications that the matching process may have been circumvented:

consider matching the child with other duly approved PAPs while seeking additional information;

once additional information is received, if it is determined that:



the matching process had not been circumvented: consider the PAPs for a match with this child or another child;

the matching process had been circumvented: consider whether the PAPs may nevertheless be duly matched with another child.

<sup>8</sup> See Part I "Fact Sheets", FS 2 "Circumventing the Convention", orange box 17; FS 9 "PAPs", orange box 16 and FS 10 "Matching", orange box 13.

## Step 6 – If required, approval of the proposed match by the Central Authority of the receiving State<sup>9</sup>

- 40 Ensuring that the child proposal is made in accordance with Article 16 of the Convention and that the PAPs are suited to meet the child's special needs.

### *What to watch out for*

- 41 Whether the child proposal was made in accordance with Article 16 of the Convention. This could be done, where necessary, by communicating directly with the Central Authority of the State of origin.
- 42 Possible indications that the principle of subsidiarity (levels 1 and 2) may not have been given due consideration in the State of origin, including for intrafamily adoptions.
- 43 Whether the PAPs were duly approved in accordance with Article 15 of the Convention and whether they are suitable to meet the special needs of the child.

### *What actions may be taken*

- 44 If the child proposal was made in accordance with Article 16 of the Convention and there are no indications that: the principle of subsidiarity may not have been given due consideration; and the PAPs were not approved or may not be suited to meet the special needs of the child:

approve the proposed match and inform the Central Authority of the State of origin: go to step 7.

- 45 If the child proposal was not made in accordance with Article 16 of the Convention or there are indications that: the principle of subsidiarity may not have been given due consideration or the PAPs were not approved, or may not be suited to meet the special needs of the child:

suspend the approval of the proposed match and seek additional information;

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<sup>9</sup> See Art. 17(b) of the Convention for when the approval by the Central Authority of the receiving State is required (*i.e.*, it may be required by the law of the receiving State or by the Central Authority of the State of origin). In some States, Steps 6 and 7 may also be combined and done at the same time.



once additional information is obtained, if it is determined that:



the apparent irregularities have been satisfactorily addressed:



approve the proposed match and inform the Central Authority of the State of origin: go to step 7.



the apparent irregularities have not been satisfactorily addressed:



withhold the approval of the proposed match and inform the Central Authority of the State of origin.

### **Step 7 – Acceptance that the adoption may proceed by the Central Authorities of the State of origin and the receiving State (see further FS 4 “Identity”; FS 6 “Subsidiarity”; FS 7 “Consent”; FS 8 “Unknown Parents”; and FS 10 “Matching”)**

- 46 Ensuring that the conditions for accepting to proceed with the adoption are met before issuing the agreement under Article 17(c) of the Convention.

#### **What to watch out for**

- 47 Any indications of apparent irregularities that may affect the identity of the child, their adoptability or the intercountry adoption process generally. This could be done, for example, by carefully reviewing all documents to verify that:
- there are no possible indications that the documentary evidence (e.g., a birth registration, birth certificate, death certificate(s)) may not be authentic;
  - there are no indications of possible inconsistencies amongst the various documents regarding identifying information on the child or their legal parents and / or regarding the child's life story (e.g., birth and / or death certificate(s); consents to adoption; report on the child; medical reports; judicial decision on adoptability);
  - there are no indications that the principle of subsidiarity may not have been given due consideration, including in the case of intrafamily adoption;
  - in the case of a child of unknown parents, there are no indications that the applicable procedures of the State of origin to verify the identity of children in such cases were not duly followed;
  - there are no indications of possible inconsistencies between the form and content of the consent(s) and standard forms normally received from the State of origin;
  - where the child was declared adoptable as a result of a judicial or administrative decision, there are no possible concerns regarding the authenticity of that decision, or of any document recording a previous decision on removing the parent(s)' parental

responsibility; this supposes that a certified copy of the decision(s) has / have been provided to the receiving State;

- there are no indications that there may have been contact between the parent(s) and the PAPs prior to the consent(s) being given, unless the adoption is an intrafamily adoption or the contact was in accordance with the conditions established by the State of origin;
- there are no indications of possible contact between the child and the PAPs prior to the child being declared adoptable and the PAPs declared eligible and suitable to adopt, or, after such declarations were made, that any such contact was not authorised and supervised by the competent authorities;
- there are no indications that the PAPs were not properly assessed;
- there are no indications that the matching process was circumvented; and
- there are no possible indications of inducement by pressure, coercion, payment or compensation of any kind, or of corruption.

48 Acceptance by the PAPs of the child proposal.

### *What actions may be taken*

49 If there are no indications of apparent irregularities regarding the identity of the child, their adoptability or the intercountry adoption process generally, and the adoption appears to be in the child's best interests:

agree that the adoption can proceed and inform the Central Authority of the other State: go to step 8.

50 If there are indications of apparent irregularities regarding the identity of the child, their adoptability or the intercountry adoption process generally:

suspend any further decisions and seek additional information;

once additional information is obtained, if it is determined that:



the apparent irregularities have been satisfactorily addressed:



agree that the adoption can proceed and inform the Central Authority of the other State: go to step 8.



the apparent irregularities have *not* been satisfactorily addressed:



withhold agreement that the adoption can proceed and inform the Central Authority of the other State.

## Step 8 – Issuance of a certificate of conformity by the competent authority of the State where the adoption order was made

- 51 Verifying that the adoption was made in conformity with the Convention before issuing a certificate of conformity (Art. 23 of the Convention).

### *What to watch out for*

- 52 Whether an adoption order was issued by the competent authority and is valid under the law of the State where that order was issued.
- 53 Whether indications about the adoption not having been made in conformity with the Convention, including concerns about the identity of the child and / or their adoptability, may have been raised since the agreements to proceed with the adoption were given (see above step 7).

### *What actions may be taken*

- 54 If an adoption order has been issued and there are no indications that the adoption may not have been made in conformity with the Convention:

issue the certificate of conformity.

- 55 If an adoption order has been issued but there are indications that it may not have been made in conformity with the Convention:

withhold issuing the certificate of conformity and communicate with the Central Authority of the other State concerned to discuss any concerns;

if the concerns are satisfactorily addressed, issue the certificate of conformity.

if the concerns cannot be satisfactorily addressed, re-evaluate each step of the adoption process with the relevant competent authorities and the Central Authority of the other State concerned, and consider whether attempting to heal any irregularity(ies) would be possible and in the child's best interests;

if the irregularity(ies) cannot be healed or attempting to do so would not be in the child's best interests, evaluate possible options in light of the best interests of the child, including seeking the revocation of the adoption order, if such recourse is legally available.

## Checklist Work Sheet<sup>10</sup>

### Step 1 – Verification of the child's identity by the Central Authority of the State of origin

- documentary evidence is provided** (e.g., a birth registration, birth certificate): steps were taken to verify and document its authenticity:
- confirmation that the document corresponds to a valid registration;
- AND
- if more than one document is provided, no inconsistencies were found regarding the identity of the child or their parent(s);
- AND
- if there was late registration, the laws and procedures were correctly followed and the necessary documents were issued;
- AND
- no indications have been found that the document may have been forged or altered.
- in all cases:** reasonable steps were taken to **verify and document** the information on **the identity of the child, and their parent(s), or the person accompanying the child** when that child was taken into care (referred to below as "person"):
- documentary evidence as to their identity, residence and / or employment was obtained;
- AND
- appropriate interview(s) with the parent(s) or the person were conducted;
- AND, WHERE APPLICABLE:
- written statement(s) of the parent(s) or the person and, if feasible, DNA testing were obtained;
  - corroborative information from hospital birth records or other government records was obtained;
  - corroborative information from extended family and / or leader(s) of the local community was obtained;
  - other \_\_\_\_\_.

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<sup>10</sup> Please keep in mind that checking all the relevant boxes of this Work Sheet does not guarantee that the adoption will not be vitiated by any illicit practices and States should do their utmost to prevent their occurrence.

- in the case of a child of unknown parents:** reasonable steps were taken to **verify and document the identity of the child and their parent(s):**
- assistance from law enforcement or child welfare authorities was obtained;
- AND
- notices to find the parents or extended family, or to identify the child were issued using widely accessible media, including multimedia platforms, as appropriate and consistent with privacy considerations;
- AND
- the report on how and where the child was found was reviewed and where possible, those that found the child were interviewed;
- AND WHERE APPLICABLE:
- corroborative information from leader(s) of the local community was obtained;
  - other \_\_\_\_\_

COMMENTS:

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## Step 2 – Verification of the principle of subsidiarity by the Central Authority of the State of origin

- appropriate efforts to give due consideration to the principle of subsidiarity appear to have been given because:
  - sufficient consideration seems to have been given to:
    - maintaining or reunifying the child with their birth parent(s) (level 1 of subsidiarity);
    - domestic alternative care arrangements (placement into care of extended family; domestic adoption) (level 2 of subsidiarity);
  - the possible indicators in the Checklist (Step 2 above, para. 13) seem to have been given due consideration;
  - the assessment to support a determination of the child's special needs seems to have been properly done and has sufficient information;

AND

- observations of the child's development are consistent with the determination of special needs and, where relevant, the child's wishes, having regard to their age and degree of maturity, seem to have been considered;

AND

- no indications have been found of possible inducement by pressure, cohesion, payment or compensation of any kind.

COMMENTS:

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### **Step 3 – Verification by the State of origin's Central Authority of the determination of adoptability of the child made by the competent authority of the State of origin**

#### **Step 3A – In all cases where the adoptability is based on consent(s) to adoption<sup>11</sup>**

##### *Verification of the consent(s):*

- the authenticity of the consent(s) was verified and documented:
  - the person who received the consent(s) is a competent authority in the State;
  - AND
  - there are no apparent misrepresentations about the identity of the child or their parent(s);
  - AND
  - the form and content of the document(s) are consistent with authentic domestic documents;
  - AND
  - there are no indications that the document(s) may have been forged or altered.
- the conditions for obtaining the consent(s) were appropriate and documented by the competent authority that took the consent(s):
  - all person(s) whose consent(s) is / are legally required under the law of the State of origin provided such consent(s);
  - AND
  - the person(s) who signed the consent form(s) was / were actually the person(s) whose consent is legally required under the law of the State of origin;
  - AND
  - no indications have been found that the parent(s) and the child (where the child's consent is required) may not have had the legal capacity to give consent;

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<sup>11</sup> See *supra* note 5.

AND

- the parent(s) and the child (where the child's consent is required) were counselled as necessary and duly informed of the effects of their consent in a language that was understood by them;

AND

- no indications have been found that the parent(s) and the child (where the child's consent is required) did not have the intellectual capacity to understand the information they were given;

AND

- the parent(s) and the child (where the child's consent is required) were given the opportunity to further reflect on the options for the child's life plan after receiving counselling and before giving consent;

AND

- if so requested by them, the child and / or their parent(s) were provided additional legal counselling;

AND

- the consent(s) has / have been given in the required legal form, and expressed or evidenced in writing;

AND

- the consent(s) of the parent(s) (where required) was / were given only after the birth of the child and only after a reasonable period following the birth had elapsed;

AND

- the parent(s) and the child (where the child's consent is required) confirmed that the consents were not induced by pressure, coercion, payment or compensation of any kind;

AND

- except where the adoption is an intrafamily adoption, the parent(s) confirmed that they have not had any contact with PAPs.

AND

- no indications have been found that the consent(s) of the parent(s) and the child (where the child's consent is required) was / were induced by pressure, coercion, payment or compensation of any kind;

AND

- no indications have been found that the consent(s) may have since been withdrawn.

COMMENTS:

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### Step 3B – In all cases where the adoptability is based on an administrative or judicial decision

#### Verification of the decision:

- the authenticity of the decision was verified and documented:
- the decision was issued by the competent authority in the State;
- AND
- the form and content of the document(s) are consistent with authentic domestic documents;
- AND
- there are no indications that the document may have been forged or altered.
- no indications have been found that the identity of the child or their parent(s) may have been misrepresented;
- AND
- no indications have been found that the decision may have been induced by pressure, coercion, payment or compensation of some kind;
- AND
- no indications have been found that where consent(s) to adoption was / were given, such consent(s) may have been taken under inappropriate conditions;
- AND
- no indications have been found that where the decision is based (in whole or in part) on a previous decision removing the parent(s)' parental responsibility, the document recording such decision was not authentic.

COMMENTS:

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### Step 4 – Verification by the Central Authority of the receiving State of the assessment of eligibility and suitability to adopt

- the PAPs have been duly assessed and found to be eligible and suitable:
- the licensed professional was duly authorised and qualified to assess eligibility and suitability;
- AND
- the assessment does not appear to contain misrepresentations regarding the PAPs' identity, habitual residence, marital status, personal situation or other;

AND

- the assessment or the required documentation provided by the PAPs (e.g., identity documents; financial statements; medical reports) do not appear to have been forged or falsified;

AND

- no indications have been found that the licensed professional or a third party (e.g., physician, psychologist) may have accepted payments to produce a positive assessment or report;

AND

- no indications have been found of a possible independent or private adoption.

COMMENTS:

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**Step 5 – Decision on matching of the Central Authority (or competent authority) of the State of origin**

- the PAPs have been duly approved under Article 15 of the Convention;

AND

- no indications have been found of a private arrangement to match PAPs to the child (through a person, an AAB, a childcare institution);

AND

- no indications have been found of possible inducement by pressure, coercion, payment or compensation of any kind;

AND

- no indications have been found of the child having been matched to PAPs who had not been duly approved for the special needs and / or age of the child;

AND

- no indications have been found of the PAPs having travelled to the State of origin to, for example, volunteer at a childcare institution, or being in contact with the child or the parent(s) of the child, either directly or through an extended family member or friend living in the State of origin, before or after the consent(s) to adoption.

COMMENTS:

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### **Step 6 – If required, approval of the proposed match by the Central Authority of the receiving State<sup>12</sup>**

- the child proposal was made in accordance with Article 16 of the Convention;
- AND
- no indications have been found that the principle of subsidiarity (levels 1 and 2) was not given due consideration in the State of origin, including for intrafamily adoptions;
- AND
- the PAPs were duly approved in accordance with Article 15 of the Convention and they are suitable to meet the special needs of the child.

### **Step 7 – Acceptance that the adoption may proceed by the Central Authorities of the State of origin and the receiving State**

- documentary evidence (*e.g.*, a birth registration, birth certificate, death certificate(s)) and consent(s) are transmitted and appear to be authentic;
- AND
- no indications have been found of potential inconsistencies or irregularities that may affect the identity of the child, their adoptability, or the intercountry adoption process generally;
- AND
- no indications have been found that the principle of subsidiarity may not have been given due consideration, including in the case of intrafamily adoption;
- AND
- in the case of a child of unknown parents, the applicable procedures in the State of origin to verify the identity of the child appear to have been duly followed;
- AND
- no indications have been found of inconsistencies between the form and content of the consent(s) and standard forms normally received from the State of origin;
- AND
- where the child was declared adoptable as a result of a judicial or administrative decision, no indications have been found that the decision declaring the child adoptable and, if applicable, any document recording a previous decision on removing the parent(s)' parental responsibility, is / are not authentic;

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<sup>12</sup> See *supra* note 9.

AND

- no indications have been found of possible contact between the parent(s) and the PAPs prior to the consent(s) being given, except for intrafamily adoptions or if the contact was in accordance with the conditions established by the State of origin;

AND

- no indications have been found of possible contact between the child and the PAPs prior to the child being declared adoptable and the PAPs declared eligible and suitable to adopt, or, after such declarations, of any such contact that was not authorised and supervised by the competent authorities;

AND

- no indications have been found that the PAPs were not properly assessed;

AND

- no indications have been found that the matching process was circumvented;

AND

- no indications have been found of possible inducement by pressure, coercion, payment or compensation of any kind, or of corruption;

AND

- the PAPs accepted the child proposal.

COMMENTS:

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**Step 8 – Issuance of a certificate of conformity by the competent authority of the State where the adoption order was made**

- the adoption order was issued by the competent authority and is valid under the law of the State where that order was issued;
- the adoption appears to have been made in conformity with the Convention (e.g., no concerns about the identity of the child and / or their adoptability).

COMMENTS:

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## Part III



## Model Procedure to Respond to Illicit Practices

## Model procedure to respond to illicit practices

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- 1 This Model Procedure presents what actions State actors should consider taking to effectively address and respond to situations involving suspected or actual cases of illicit practices under the 1993 Adoption Convention.
- 2 The circumstances relating to each individual intercountry adoption will be unique, and the needs of each adoptee,<sup>1</sup> the birth parents (/ family) and adoptive parents (/ family)<sup>2</sup> may differ. In working to address the various issues, it is important to focus on the best interests of the child which should be the paramount consideration,<sup>3</sup> while remaining sensitive to the concerns of birth families and adoptive families. It is also important to consider “not only the short, but also the long-term effects on the adoptee of any action taken to address the illicit practice”.<sup>4</sup>
- 3 This Model Procedure presents a wide array of measures and is deliberately general, so as to encourage States to develop their own procedure adapted from this Model Procedure (for example, States may elaborate specific protocols on the applicable procedures to facilitate responses to illicit practices, both for individual cases as well as patterns of illicit practices), and to widely disseminate it to all State actors involved in intercountry adoption. It has to be noted that “not all services and measures may be available in all States and that each State may develop its own procedure based on its own legislative and institutional framework, as well as their available resources”.<sup>5</sup>
- 4 The order of the steps and actions presented in this Model Procedure may need to be adapted according to the nature of the case, the national system, and the different authorities and bodies involved at the national or local level. For example, certain actions may be relevant throughout the procedure, some may need to occur simultaneously or in a different order.
- 5 The Model Procedure is designed to apply, in principle, to any situation, whether an individual case or a more generalised problem (*i.e.*, a pattern) is suspected. Where appropriate, additional information, mainly relevant to responding to cases affected by a pattern of illicit practices, has been included in box format (see green boxes below).

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<sup>1</sup> The Model Procedure is also applicable to suspected illicit practices when the adoption procedure is taking place, but the child has not yet been adopted (*i.e.*, the child is not yet an “adoptee”); however, for ease of reference the word “adoptee” is used also to refer to these children.

<sup>2</sup> The Model Procedure sometimes refers to “parents (/ family)” to indicate that the action specifically refers to (birth or adoptive) parents, but in some cases, it may also involve other members in the (nuclear) family (see definition of “family” in the Glossary of the Toolkit).

<sup>3</sup> See CRC, Art. 21; and UNHCR, “[Guidelines on Assessing and Determining the Best Interests of the Child](#)”, 2021.

<sup>4</sup> Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 8–10 July 2020) (2020 WG Report), para. 22.

<sup>5</sup> *Ibid.*, para. 21.

### Potential obstacles to disclosing possible illicit practices and / or responding to illicit practices

Various factors can make it difficult to disclose and / or respond in an effective manner when illicit practices are suspected to have occurred, for example:

1. **lack of resources**, lack of established **frameworks** (such as protocols), **denial of responsibility** or **mandate**, and **lack of political will**, to identify, confront, investigate, address and respond to illicit practices;
2. **lack of access to documents and records**, especially when bodies concerned cease their activities or refuse to cooperate;
3. **lack of accessible complaints mechanisms**;
4. **lack of protection for witnesses**;
5. **statute of limitations**<sup>6</sup> (*i.e.*, the maximum time after an event within which legal proceedings may be initiated has elapsed);
6. **fears** that investigation may lead to **children** being **returned** to the State of origin;
7. **fears** that investigation may lead to **litigation**;
8. **fears** that the adoption may be **revoked**, and the adoptee becomes **stateless**;
9. **fears** that investigation may **jeopardise** intercountry adoption **relations** between States and / or lead to the **suspension** of an intercountry **adoption programme** between States (or that an individual case will be blocked);
10. **failure** to fully acknowledge and to properly implement the **co-responsibility** of States to prevent and address illicit practices;
11. **environment of impunity**;
12. **power imbalances** which may exist in intercountry adoption and, in particular, the difficulty for birth families to have their voices heard.

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<sup>6</sup> Despite the statute of limitations for criminal charges or a criminal investigation, a Central Authority could nevertheless investigate and, based on the available information, determine whether an illicit practice occurred. If such practice did occur, the Central Authority may be able to take certain measures to address the situation, depending on the nature of the illicit practice and the powers of the Central Authority.



### Confidentiality and rules of privacy

States should ensure that the information collected during the disclosure of suspected cases of illicit practices and in the course of an investigation is protected and managed in accordance with the relevant rules on privacy and the sharing of information of the State concerned.

Unless the law of the State provides otherwise, the sharing of any identifying information should be subject to appropriate consents.<sup>7</sup> This may be particularly important if the case is receiving media attention. In addition, unless the law of the State provides differently, confidentiality should not be used to hinder or prevent investigation.

## 1. Step 1: Disclosure and recording of suspected cases of illicit practices

### 1.1. How may suspicions of illicit practices arise?

- 6 Suspicions of illicit practices may arise as a result, among others, of the following:<sup>8</sup>
- observations of irregularities in intercountry adoption cases;
  - comments made by an adoptee about their background;
  - concerns about an ongoing or already finalised intercountry adoption raised by an adoptee, a birth family, PAPs, an adoptive family, an authority, a community member or anyone related to that adoption;
  - reviews or investigations conducted by authorities or bodies in the State of origin or the receiving State, international organisations, or other;
  - monitoring, supervision and audits of AABs;
  - media reports;
  - legal proceedings;
  - law enforcement activity;
  - DNA testing;
  - searches for origins.
- 7 In addition, the presence of **multiple enabling factors** may be the precursor to suspicions of illicit practices.

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<sup>7</sup> See Australian Central Authority's *Protocol for Responding to Allegations of Illicit or Illegal Practices in Intercountry Adoption*, 2021 (Australian Protocol).

<sup>8</sup> *Ibid.*

### 1993 Adoption Convention

"A competent authority which finds that any provision of the **Convention** has not been respected or that there is a serious risk that it may not be respected, shall **immediately inform the Central Authority of its State**. This Central Authority shall be responsible for ensuring that appropriate measures are taken." (Art. 33)

### In addition, in the context of disclosure of a (suspected) pattern of illicit practices:

The **disclosure** of a **single** illicit practice may further **reveal** a **pattern** of illicit practices: therefore, wherever an illicit practice is disclosed, it is important to always verify whether this illicit practice is an isolated case or whether it might be part of a pattern (*i.e.*, question if, depending on the illicit practice and its circumstances, the concern which arose in a particular case may also have arisen in other cases (and review these other cases)).

## 1.2. Which authority should record suspected cases of illicit practices?

- 8 Central Authorities should record any suspicions of practices or activities that may potentially be illicit and that they discover or that are brought to their attention by any interested person, authority or body. Central Authorities should take any reasonable allegations or concerns seriously. Central Authorities may also consider using diplomatic channels to raise their concerns regarding suspicions involving their counterpart in the other State.
- 9 States should also designate an alternative competent authority (*e.g.*, an administrative tribunal, an investigative authority, an ombudsman) to report to in the case that there are suspicions that the Central Authority may be involved in a suspected illicit practice.

## 1.3. What actions should States take to facilitate the disclosure of illicit practices?

- 10 To improve the likelihood that suspected cases of illicit practices are disclosed and properly recorded, States should:
  - designate a person (or persons) within the Central Authority to serve as the **official point of contact** on matters relating to illicit practices, and provide such persons with appropriate training to help them recognise indications of potential illicit practice (*e.g.*, training on illicit practices, children's rights, child-friendly procedures);

- establish easily **accessible means of reporting**, whether orally (*e.g.*, via a hotline) or in writing (*e.g.*, by means of a complaint registry), in the Central Authority (or other competent authority), and widely publicise its existence and the relevant contact information;
- establish automatic and / or institutionalised **feedback mechanisms** for adoptive parents once the adoption is finalised (*e.g.*, through an online form to the Central Authority);
- remind competent authorities of their **duty to inform the Central Authority** of their State immediately upon learning about possible illicit practices or if anything of concern is suspected (see HC, Art. 33);
- encourage all **persons and bodies** involved in the intercountry adoption process (*e.g.*, adoptees, birth parents (/ family), PAPs, adoptive parents, AABs, childcare institutions) to **report promptly** to the Central Authorities or other relevant authority whenever a potential illicit practice is suspected or anything of concern<sup>9</sup> is raised, and ensure such persons and bodies have proper protection (*e.g.*, confidentiality of their names) so they are **free from harassment and retaliation**;
- ensure that all **information** that is disclosed by any of the above means is properly **recorded** and **preserved**, in order to prevent impacted persons from having to provide the information repeatedly;
- provide **information** to adoptees, birth families, PAPs and adoptive families about illicit practices, the importance of disclosing suspected illicit practices as early as possible, and on what to do when they suspect that an illicit practice has taken place;<sup>10</sup>
- include **training** on how to identify / report illicit practices in information sessions for (prospective) adoptive **parents**;
- include **training** on how to identify / report illicit practices as part of the accreditation and authorisation process for **AABs** and licensing of childcare institutions; staff of AABs and institutions should also receive such training;
- establish **channels of communication** with counterparts in the Central Authorities of other States to discuss possible illicit practices, and exchange information on a regular basis about how to facilitate the disclosure of illicit practices and how to prevent and address them.

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<sup>9</sup> For example, what seems to be a simple incoherence for (prospective) adoptive parents might actually be an illicit practice.

<sup>10</sup> This may also include, for example, the development of brochures or other materials.

### **In addition, in the context of disclosure of a (suspected) pattern of illicit practices:**

States may wish to do the following:

- the authority responsible for a register (see para. 10) should ask any person making a complaint if they suspect a possible pattern;
- if a Central Authority identifies possible patterns as part of its investigation, it should consider contacting the Central Authority(ies) of other State(s) concerned;
- include additional information in existing materials (e.g., brochures), or develop specific materials, about the disclosure, record and possible avenues in case of patterns on illicit practices.

## **2. If appropriate: considerations of temporary child protection measures**

### **2.1. Temporary protection measures for the child for ongoing adoption processes and already finalised adoptions**

- 11 From the moment credible allegations or suspicions of illicit practices are disclosed and until final measures following the investigation can be taken, any potential child protection concerns should be **promptly reported** to the competent authorities of the State concerned.
- 12 The competent authorities of the State where the child is physically present should have primary responsibility for the protection of the child but should cooperate with the other States concerned. In accordance with their domestic law, they should assess the situation and determine what, if any, **temporary measures** may be needed to protect the child (e.g., temporary arrangements for the child's care) pending the results of the investigation.<sup>11</sup>

### **2.2. Additional considerations regarding ongoing adoption processes**

- 13 If suspicions of illicit practices are disclosed during an ongoing adoption process (*i.e.*, the adoption is not yet completed):
- it may be desirable to immediately **halt** the adoption process from the moment suspicion of illicit practice is disclosed (with the assistance, where appropriate, of the Central Authority (or competent authority) of the other State);

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<sup>11</sup> See "Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases", [2012 Australian Discussion Paper](#), p. 8. See also UN Guidelines for the Alternative Care of Children.

- Central Authorities should **not issue the Article 17(c)** agreement to proceed, nor should the competent authorities issue the adoption decision and issue the Article 23 certificate;
  - if warranted, the Central Authority (or competent authority) of the State of origin where the child is physically present should consider taking steps to **prevent the removal** of the child from their State while the matter is being investigated.
- 14 A final decision on whether the adoption process can be resumed should only be made after the investigation has been completed or when the investigation clearly shows that the illicit practice does not have any incidence on the possible continuation of the particular adoption case (see further below Section 6 and Part II "Checklist"). In addition, if a suspected illicit practice potentially involves the PAPs initially selected, consideration should be given as to whether the child may be adopted by other PAPs if there are no other concerns about the child's adoptability and need for an intercountry adoption.

### 3. Ongoing step: services to impacted persons<sup>12</sup>

- 15 Professional support is key when facing (suspicions of) illicit practices given the complexities of such situations. Services or sources of assistance and support should therefore be available to adoptees, birth parents, PAPs and adoptive parents who may be confronted with a situation where suspicions of an illicit practice are raised or an illicit practice is confirmed following an investigation.<sup>13</sup> When providing such services, assistance and support, a child-friendly approach in which the child can participate in accordance with their age and maturity should be adopted.
- 16 Some Central Authorities may themselves be able to provide (some of) the services mentioned below. If they cannot, or do not, provide these services, the Central Authority may help impacted persons identify appropriate support and advocacy, where appropriate. A protocol or other form of formal advice regarding where to get assistance, could also be established. Adoptees, birth families and adoptive families may also wish to access other services or resources. Central Authority personnel and the staff (and others acting on behalf) of AABs should receive training on how to assist impacted persons, including by directing them to available and appropriate services and support.
- 17 The following paragraphs provide a list of the services, support and assistance<sup>14</sup> that may be available and to which Central Authorities and AABs should direct adoptees, birth

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<sup>12</sup> Multiple terms can be used (e.g., victims, persons with lived experience).

<sup>13</sup> Impacted persons may include the adoptee, a child in need of adoption, the birth parents and the (prospective) adoptive parents. In some cases, it may also include other members of the birth family or adoptive family (e.g., siblings). Some of the services presented in this Model Procedure may also be available to other impacted persons who are members of the family but who are neither the (birth or adoptive) parents nor the adoptee. Each State should specify to whom the services will be addressed in that particular State.

<sup>14</sup> States may also consider developing a protocol regarding where impacted persons may find assistance. See for example the Australian Protocol, *supra* note 7, which includes many of the services mentioned in this section.

parents (/ families), PAPs and / or adoptive parents (/ families),<sup>15</sup> as appropriate, on a case-by-case basis and, if the adoptee is still a child, taking into account their best interests.

- 18 For some, this may involve point-in-time support when a particular illicit practice is disclosed. For others, it may involve support over several years, even after actions have been taken to respond to the illicit practice. Support should be available as long as it is deemed necessary.
- 19 **Counselling and casework support services:** the Central Authority should provide counselling and casework support by qualified professionals (or direct impacted persons to qualified professionals who can provide such counselling and casework support in case it cannot provide it itself). The nature and scope of available services may be adapted on a case-by-case basis and may vary from one State to another.<sup>16</sup>
- 20 **Mediation:** when a suspected illicit practice is disclosed, adoptees, birth parents and adoptive parents may have conflicting needs and desires. Where appropriate, mediation with a trained impartial mediator may be made available to help them reach a satisfactory outcome.<sup>17</sup>
- 21 **Legal assistance:** impacted persons may need the assistance of a legal practitioner with experience in family law or children's issues to deal with their case. The adoptee, in particular if they are below 18 years of age, may need to have a separate representative to avoid conflicts of interest. Upon request, the Central Authority should direct them to the referral service of the private bar or other available resource for assistance in finding legal information and / or a legal practitioner.
- 22 **Financial assistance:** legal and other related costs may be incurred by adoptees and their families in accessing services. General information about possible financial assistance should be provided by the Central Authority (e.g., some States may offer some services for free, others may provide for legal aid or for other low-cost services, or subsidise services provided by other authorities or bodies). Queries about whether any applicable financial assistance options apply under the circumstances of a case should be directed to the relevant Central Authority or competent authority.
- 23 **Other forms of assistance:** other assistance such as translation of documents and interpretation may also be made available. Where relevant, information about such assistance and where to apply to obtain it should be provided by the Central Authority to the adoptee, the birth parents and / or the (prospective) adoptive parents.
- 24 **Maintaining contact between the authorities and the persons concerned:** the suspicion of illicit practice may be raised by 1) the adoptee and / or the birth parent(s) and / or the (prospective) adoptive parent(s) or 2) by someone else.

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<sup>15</sup> Adoptees, birth families and adoptive families may choose to access other services or resources.

<sup>16</sup> See Australian Protocol, *supra* note 7 and the [Australian Government-funded Intercountry Adoptee and Family Support Service](#).

<sup>17</sup> See C. Baglietto, N. Cantwell, M. Dambach (Eds.), *Responding to illegal adoptions: A professional handbook*, ISS, Geneva, Switzerland, 2016 ISS Handbook, Chapter 3. See also a [list by country of international mediators](#) established by the ISS.

In the first case, the competent authority should ensure appropriate contact with the adoptee, the birth parents and / or the (prospective) adoptive parents (depending on by whom the suspicion was raised) throughout the procedure. The Central Authority (or the competent authority) may be the primary contact for providing updated information about the progress of the investigations (where such updates are available) or responding to further questions or concerns. It would be useful to designate a contact person within the relevant authority who could be in charge of contacting the affected families.

In the second case, once it is decided to reach out to the adoptee (see para. 41 below), birth parents and / or (prospective) adoptive parents, contact between the authorities and the persons concerned should be maintained.

In both the above cases, such contact may also require appropriate support.

- 25 **Contact facilitation between the adoptee and their birth family:** following the disclosure of a (suspected) illicit practice, upon request, the competent authorities and bodies should direct adoptees, birth families and adoptive families to counselling and support services available in their State. The availability, scope and nature of such services (e.g., searching, tracing, DNA testing) may vary from one State to another.
- 26 **Managing media attention:** concerns about illicit practices may be raised in the media. Intercountry adoption often attracts media attention, and this can present additional challenges when dealing with illicit practices. If this does occur and assistance is required in managing that interest, the Central Authority may be able to provide some assistance in the first instance, depending on the circumstances.
- 27 **Associations, support groups and NGOs:** associations, support groups and NGOs may provide important support and assistance to impacted persons. Where available, the Central Authority should therefore direct impacted persons to such associations, groups or organisations. They should also consider encouraging the organisation of such associations and groups to develop networks between themselves and establish a community or communities of practice.

**In addition, in the context of a (suspected) pattern of  
illicit practices:**

States may wish to provide **additional services** and / or adapt their services for impacted persons where there is a (suspected) pattern.

#### 4. Step 2: investigation

- 28 The Central Authority (or other competent authority) of the State where an illicit practice may have occurred should initiate (or ask the relevant authority to initiate) an investigation as soon as possible, in coordination with the relevant authorities, to determine whether the

illicit practice occurred and, if so, what action(s) may be required.<sup>18</sup> It should be made clear who is responsible for leading the investigation. It is also important that the investigation is carried out in a timely manner. The Central Authorities of other States concerned should assist to the extent possible and cooperate in such investigation.

- 29 Depending on the type of illicit practice that is suspected, initial questions that might need to be considered include, for example:<sup>19</sup>
- Is a valid birth certificate available?
  - Was the child properly declared adoptable (HC, Art. 4)?
  - Were suitable permanent family alternative care options, other than intercountry adoption, given due consideration in the State of origin (HC, Art. 4)?
  - Were the birth parents counselled and duly informed of the effect of their consent (HC, Art. 4)?
  - Did authorities ensure that the consents were not obtained under false pretences or as a result of coercion, or inducement by payment or compensation of any kind (HC, Art. 4)?
  - Were the PAPs and the child habitually resident in different States (HC, Art. 2)?
  - Was the child pre-identified by the PAPs before the matching process?
  - Was the legal adoption procedure in the States concerned followed?
  - Have the authorities in the State of origin or receiving State approved the adoption (HC, Art. 17)?

#### 4.1. Different aspects of investigation

- 30 **Review of documentation:**<sup>20</sup> the authority responsible for conducting the investigation should closely review all documents relating to the intercountry adoption for possible irregularities. In doing so, it should consider whether there are irregularities or information on file to suggest that further action is required. A review of the adoption documentation alone may not suggest any obvious irregularities that could amount to an illicit practice (*i.e.*, the available information on file may appear consistent with established practice and procedures for an adoption from a State at that particular time). Careful consideration should nevertheless be given if, despite the existence of appropriate adoption documentation, reasonable concerns continue to suggest possible illicit practice. The type

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<sup>18</sup> ISS Handbook, *ibid.*, Chapter 7. In a State with a federal system, this should include coordination with the relevant jurisdictions within the State. Adoptees, birth families and (prospective) adoptive families may undertake private enquiries about illicit practice concerns, through the law enforcement authorities, private investigators, NGOs, or other channels. This may occur in addition to, or instead of, formal investigation made through the Central Authority. Where private enquires are pursued, the Central Authority should be notified of any illicit practice concerns, as there may be broader implications to be considered.

<sup>19</sup> See also Part II "Checklist" of this Toolkit where more questions are included to assist decision making by CAs and ISS Handbook, *supra* note 17, Chapter 5.

<sup>20</sup> See Australian Protocol, *supra* note 7.



of illicit practice and the circumstances may suggest the need to review the documentation in other files to see if possible patterns arise.

- 31 **Outreach:** the authority responsible for conducting the investigation should contact the relevant authorities, the adoptee, the birth family, the (prospective) adoptive parents, AABs concerned, childcare institutions and other relevant actors, as appropriate and in a timely manner. If there is an Embassy or a Consulate of the investigating State located in the other State concerned, it may be requested to provide all possible assistance. The adoptee, birth family, PAPs and adoptive family should be approached in a respectful and careful way, and contact with children should also be made in a child friendly and age-appropriate manner.
- 32 **Preservation of records:** regardless of the outcome, the information and records of the investigation should always be documented, recorded and preserved (if possible, indefinitely) by the investigating authority. This information could be valuable in possible future cases.<sup>21</sup> Likewise, any information and records received by a State in the course of an investigation conducted in another State should be documented, recorded and preserved.
- 33 **Verification of identity:** where appropriate and necessary, and resources permitting, DNA testing<sup>22</sup> could be carried out to verify the identity of the child and the birth parents (/ family).
- 34 **Referral to law enforcement:** any cases where potentially criminal activities are suspected should be referred to the appropriate law enforcement authorities.
- 35 **Request that another State make enquiries or investigation:** the Central Authority or competent authority conducting an investigation may request another State concerned to make appropriate enquiries or investigations into the circumstances surrounding the illicit practice, concerns or allegations.<sup>23</sup> If relevant, investigations should take place in both the State of origin and the receiving State. In this case, and if feasible, States concerned should consider collaborating in their respective investigations.
- 36 **Suspension of intercountry adoption programme:** depending on the circumstances, the type and seriousness of illicit practice that is suspected, States should consider suspending their intercountry adoption programme with the State concerned during the investigation.
- 37 **Suspension of accreditation and / or authorisation of AABs:** depending on the circumstances and the type of illicit practice that is suspected, States should consider suspending the authorisation and / or accreditation of AABs that are suspected to be involved in an illicit practice.

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<sup>21</sup> In that respect, States concerned should have legislation in place to determine which information may be collected by the Central Authority and other competent authorities and for what purposes. The legislation should also include rules regarding the retention and subsequent use of this information. See 2010 SC, C&R No 23 for the recommendation to preserve adoption records in perpetuity.

<sup>22</sup> See ISS, "[The use of DNA tests: A sufficient safeguard to determine the identity of the child and their biological parents?](#)" in *ISS/IRC Monthly Review No 222*, June 2018.

<sup>23</sup> *Ibid.*

### In addition, in the context of a (suspected) pattern of illicit practices:

The **investigation** may be done specifically for each **individual** case or **collectively** for all cases falling in the same pattern, taking into account options available in the State(s) concerned.<sup>24</sup>

#### 4.2. Identification of the potential illicit practice and assessment of its nature and gravity

- 38 At the conclusion of the investigation, the investigating authority should usually be able to determine if an illicit practice has occurred under the law of the investigating State,<sup>25</sup> and the nature of such practice. If an illicit practice has indeed occurred, this information will be critical to determine the **future actions** to be taken, including whether administrative or penal sanctions may be applicable.

#### 5. At the appropriate time: informing authorities, bodies and persons concerned

- 39 Communication, cooperation, and coordination amongst different relevant counterparts (e.g., Central Authorities, competent authorities, law enforcement authorities) within a specific State, as well as between the States concerned, should happen throughout the process of responding to the illicit practice.<sup>26</sup> To facilitate communication, the Central Authority may identify a person or body which will act as the contact point for all matters relating to illicit practices.

##### 5.1. Information exchange between Central Authorities of different States

- 40 The Central Authorities of the State of origin and the receiving State should, as far as possible and unless inappropriate given the particular circumstances, inform each other as soon as information is available on the alleged illicit practice and / or as soon as the particular circumstances of the case permit. Thereafter, the Central Authorities should keep

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<sup>24</sup> A few States have put, or are putting, in place government processes (e.g., a Commission) to investigate patterns of illicit practices (e.g., France, Netherlands ([Committee Investigating Intercountry Adoption in the past](#)), Sweden and Switzerland). See 2022 SC, C&R No 18.

<sup>25</sup> The law of the investigating State would include its domestic legislation and regulation, but also any regional or international treaty to which it may be a Party, i.e., including the 1993 Adoption Convention and the CRC. The 'investigating authority' may involve the combined actions of the Central Authority and relevant law enforcement authorities.

<sup>26</sup> See GGP No 1, Section 2.3.3.

each other informed of developments in the investigation and the response to the illicit practice. They may also consider meeting to cooperate and exchange information in the investigation of the case (see Part IV, “Guidelines”).

### 1993 Adoption Convention

“[Central Authorities] shall take directly all appropriate measures to [...] **keep one another informed** about the **operation** of the Convention and, as far as possible, **eliminate any obstacles** to its application.” (Art. 7(2)(b))

“Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to [...] **reply**, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for **information** about a **particular adoption situation**.” (Art. 9(e))<sup>27</sup>

### In addition, in the context of a (suspected) pattern of illicit practices:

The Central Authorities involved may **contact other Central Authorities concerned** at an appropriate time and manner. For example:

- The Central Authority of a State of origin that suspects that a childcare institution has falsified or still is falsifying the consents of birth parents should contact the Central Authorities of the receiving States where children from this institution have been adopted or are in the process of being adopted to properly investigate the situation. If it is the Central Authority of a receiving State that has a suspicion, it should communicate it to the Central Authority of the State of origin.
- A State of origin that suspects that an AAB working in its State has participated in illicit activities should reach out to the receiving State where the AAB is accredited to initiate a proper investigation. The Central Authority of the receiving State may need to contact other States of origin where the AAB is also working as part of its investigation. If it is a receiving State that suspects that their own AAB has participated in illicit activities in (a) State of origin(s), it should inform and consider seeking the cooperation of the State(s) of origin concerned.

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<sup>27</sup> Emphasis added.

- Depending on the circumstances, the Central Authority of a State that is aware that illicit practices have occurred in its partner State should consider informing the Central Authorities of other States working with that particular State.

## 5.2. Informing persons concerned

- 41 Suspected illicit practices may come to the attention of the Central Authority (or other competent authorities) without the knowledge of the adoptee, the birth family and / or the (prospective) adoptive parents. If this is the case, the competent authority should take action as appropriate. This could involve liaising with other authorities and may include the relevant authorities contacting the adoptee, birth family and / or (prospective) adoptive parents (see further para. 24 above).<sup>28</sup> In such cases, authorities should follow appropriate practices in light of the particular circumstances and needs of the person (e.g., trauma-informed practices) and, where appropriate, **provide support services**, such as **counselling**, or refer the adoptee, the birth family and / or the (prospective) adoptive parents to such support services (see above Section 3 "Services to impacted persons").

## 6. Step 3: possible actions following the investigation

- 42 Where an **investigation does not substantiate the concerns or allegations** of illicit practice,<sup>29</sup> depending on the circumstances, the Central Authority or other competent authority may still need to address one or more enabling factors to strengthen the intercountry adoption procedure (see Part I "Fact Sheets").<sup>30</sup> In addition, the adoptee, the birth parents and / or the (prospective) adoptive parents may want to seek post-adoption support services available to them (see above Section 3 "Services to impacted persons"). The Central Authority should direct them accordingly.
- 43 Where an **investigation substantiates the concerns or allegations** of illicit practice, possible actions by the competent authorities may vary depending on the particular circumstances and factors, such as:
- the best interests and fundamental rights of the child;
  - the type of illicit practice itself (see Part I "Fact Sheets");

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<sup>28</sup> See Australian Protocol, *supra* note 7.

<sup>29</sup> This covers situations where the investigation positively shows that an illicit practice was not committed; situations where there is some reliable evidence to support the allegation, but it is insufficient to fully substantiate the complaint; and situations where the investigation is inconclusive, which could be due in part to missing or incomplete records. See further *supra* note 6 for statutes of limitations.

<sup>30</sup> To assist them in this respect, authorities and bodies may use the Fact Sheets in this Toolkit. The competent authorities should do their utmost to follow the actions suggested in the Fact Sheets to prevent such enabling factors.

- the person who committed the illicit practice;
- the degree or level of knowledge or involvement of the various actors;
- the stage of the adoption at which the suspicion of the illicit practice was raised;
- the consequences of the illicit practice on the validity of the adoption or the adoption process;
- the short and the long-term effects of the illicit practice on the adoptee;
- where appropriate, the views of the persons concerned, *i.e.*, the adoptee, the birth parents or others with pre-adoption responsibility for the child, and the (prospective) adoptive parents; and
- consideration of not creating other harms.

44 In addition to the actions that may be taken regarding a particular case and adoptee, the State should also consider taking **measures to prevent the recurrence** of the illicit practice (which will be directed at future similar cases). Following an investigation, possible actions to be taken in a particular case may also depend on whether the illicit practice is an isolated incident or part of a pattern.

### 6.1. Actions regarding the adoptee (or adoptable child) and the families in a specific adoption case

#### 6.1.1. If the adoption has not yet been completed

- 45 **If it is in the best interests of the child** (including long-term considerations) and it does not affect the integrity of the adoption process, consideration should be given to assessing whether it is possible to **rectify the situation or “heal” the illicit practice** by doing what should have been done had the provisions of the 1993 Adoption Convention and applicable laws been respected (*e.g.*, obtain valid consent(s) *a posteriori*, give due consideration to the principle of subsidiarity retroactively, refund a specific amount).<sup>31</sup> If it is possible to rectify the situation and it is in the best interests of the child, the adoption process may then continue.
- 46 Rectification, however, should not be seen as an expedient alternative to compliance with the Convention. It should be an **exception** made, where practicable, to protect the best interests of the child. Contracting States have an international legal obligation to adhere to the Convention and apply its safeguards.<sup>32</sup> In addition, Contracting States have the obligation to apply their domestic laws and regulations. Consequently, depending on the nature of the illicit practice and the laws and regulations of the States concerned, rectification may not be possible.

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<sup>31</sup> See GGP No 1, para. 533.

<sup>32</sup> See [Note on Habitual Residence](#), para. 80. All States have also obligations under the CRC and / or the OPSC.

- 47 If it is **not possible to rectify** the situation or heal the illicit practice, and / or if it is not in the **best interests of the child** to do so, the following may be considered:
- the termination of the process, by one or both Central Authorities, by **not issuing the agreement to proceed** under Article 17(c) of the 1993 Adoption Convention or by **withdrawing** such agreement;<sup>33</sup>
  - **the non-issuance of the adoption decision** (usually made in the State of origin);
  - the establishment of a **new life plan for the child** by, for example:<sup>34</sup>
    - > ensuring that the best interests (including long-term considerations) and fundamental rights of the child are the paramount consideration (HC, Art. 1(a); CRC, Art. 21);
    - > making a comprehensive and rigorous assessment of the child's particular circumstances;
    - > taking into consideration the child's wishes, opinion and consent, considering their age and degree of maturity as well as their evolving capacities (CRC, Arts 5 and 12);
    - > depending on the nature of the illicit practice (*e.g.*, irregularities in the identity of the child or the consents to adoption) and the stage of the adoption process at which it was halted, assessing the need to involve the child's birth family;<sup>35</sup>
    - > considering possible options for care which may include:
      - the reintegration of the child with their birth parents, after appropriate counselling and support for all persons concerned;
      - a kinship placement with extended family;
      - a new placement of the child with a view to adoption;
      - suitable alternative long-term family care.

### 6.1.2. If the adoption has already been completed<sup>36</sup>

- 48 Possible actions will vary depending on the factors mentioned in the introduction to this Step 3. Some actions should apply only if the adoptee is still a child. In that case, the **best interests** and **fundamental rights** of the child should be the paramount consideration (HC, Art. 1(a); CRC, Art. 21). The considerations presented below may be taken in conjunction or independently.

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<sup>33</sup> See GGP No 1, para. 527.

<sup>34</sup> See further UN Guidelines for the Alternative Care of Children and the [2019 UNGA Resolution on the Rights of the Child](#).

<sup>35</sup> This may be the case if, for example, the consent of the child's birth parents was not obtained. However, it may not be relevant to involve the child's birth parents for an illicit practice that occurred during the socialisation period where the birth parents are not involved.

<sup>36</sup> This includes situations where the adoption has already been completed even though the Art. 23 certificate of conformity has not yet been issued.

### 6.1.2.1. Considerations regarding the non-issuance of the Article 23 certificate of conformity

49 In some cases, the illicit practice may be discovered **after the adoption decision** has been issued and the child is still in the State of origin, but the certificate of conformity of the adoption with the Convention (HC, Art. 23) has not been issued. In such cases, if it is not possible to rectify the situation or heal the illicit practice, and / or if it is not in the best interests of the child to do so (see Section 6.1.1), the competent authority may decide **not to issue the certificate of conformity** (see also the considerations under Sections 6.1.2.3 and 6.1.2.4).

### 6.1.2.2. Considerations regarding possible child protection concerns if the adoptee is still a child

50 Depending on the nature and circumstance of the illicit practice, and the situation of the child, child protection concerns (e.g., serious problems in the family, disruption or breakdown of the adoption, abuse or neglect in the family, adoptee refusing to continue living with the family<sup>37</sup>) may arise during, or as a result of, the investigation (see also above paras 11-14). Central Authorities or any other authorities that become aware of such concerns must **promptly** report them to the competent **child protection authorities** in the State of the **child's habitual residence**.<sup>38</sup> Such authorities should take the **necessary measures** to protect the child and handle the situation expeditiously in accordance with the child welfare legislation.

51 Where necessary to protect the child, and **after very careful consideration**, the child may be **removed from their home** and taken into care (in principle, placement within the wider family or community should be preferred).<sup>39</sup> Any such measures should be taken after a **full assessment**, which should at least include an assessment of the following:

- the alleged child protection concerns;
- the child's circumstances, needs, best interests, views and life plan;<sup>40</sup>
- the adoptive parents' parenting ability and capacity to address the child protection concerns;
- the extended family and social networks;
- whether the adoptive parents knew and / or were involved in the illicit practice.

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<sup>37</sup> See GGP No 1, para. 605.

<sup>38</sup> However, if the child is not present in their State of habitual residence and child protection concerns need to be urgently addressed, the competent authorities in the State where the child is physically present may have to be involved. The HCCH 1996 Child Protection Convention would be particularly helpful in such situations.

<sup>39</sup> If a child is taken into care, this should be done following the law of the State of habitual residence of the child, as well as the criteria and procedures set out in the UN Guidelines for the Alternative Care of Children.

<sup>40</sup> It may also be relevant to consider if the child is settled in their adoptive family, if a long period has elapsed since the adoption, if the child (of proper age and level of maturity) expressed their preference (or if appropriate, consent) to stay with the adoptive family.

- 52 Central Authorities should also **cooperate**, to the greatest extent possible and in accordance with applicable legislation and procedures, in this assessment, in order to find a solution that is in the best interests of the child. If needed, a new life plan for the child may be established.
- 53 Child protection measures, including taking the child into long-term care, affect the exercise of the **adoptive parents' parental responsibilities** but not the child's legal parentage.<sup>41</sup> In very serious situations, the legislation in the State of habitual residence may allow the taking of measures to extinguish the adoptive parents' parental responsibilities.

### 6.1.2.3. Considerations regarding the non-recognition of the adoption

- 54 The 1993 Adoption Convention establishes that "the recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child" (HC, Art. 24). Some States may consider that recognising an intercountry adoption where illicit practices occurred is contrary to their **public policy**, and therefore may refuse to recognise that adoption.
- 55 The States concerned should **collaborate in the investigation** steps to reduce the risk of arriving at different conclusions or views on the validity of the adoption. Before refusing to recognise an intercountry adoption, however, States should be mindful that such refusal would result in **limping parentage** (*i.e.*, different legal parentage in different States) if the adoption is not or cannot be revoked in the State where it was pronounced. Such situations may adversely affect the adoptee throughout their lifetime.
- 56 Therefore, "Non-recognition of the adoption would be an extreme sanction for **very exceptional cases**, for example, where there has been a violation of fundamental rights of the birth family"<sup>42</sup> and / or an illegal adoption. Some illicit practices may constitute such violations. Non-recognition should be balanced against the best interests of the child and the other different interests at stake. In assessing the best interests of the child, consideration should be given to the adoptee's wishes and opinion, having regard to their age and maturity.

### 6.1.2.4. Considerations regarding revocation or annulment of the adoption

- 57 Depending on the nature of the illicit practice and the possible consequences on the validity of the adoption, the **law of the State where the adoption was granted** and / or the **law of the State of the habitual residence** of the adoptee may allow for the revocation or annulment of the adoption. Such law will notably determine the following issues:
- the State and competent authority (usually a court) which have jurisdiction;

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<sup>41</sup> See Section 6.1.2.4. below for measures which may affect the child's legal parentage.

<sup>42</sup> See GGP No 1, para. 529, emphasis added.



- the person who may seek the revocation or annulment (*e.g.*, adoptee, birth parents, adoptive parents, the State through a competent authority);
- the grounds upon which revocation or annulment may be granted and the procedure involved (including whether there is an age limit or time limit within which to seek the revocation or annulment);
- the legal consequences of a revocation or annulment (*e.g.*, extinction of the legal parentage of the adoptive parents and termination of their parental responsibilities, possible restoration of the initial identity of the person), including regarding the nationality or nationalities<sup>43</sup> of the adoptee.

58 Where the applicable law would allow the State (through a competent authority) to seek the revocation or annulment of an adoption and the **adoptee is still a child**, any such decision should only be given consideration after:

- a full assessment by the competent child protection authority of the child's particular circumstances, needs and their best interests (including their views, and having regard to the age and degree of maturity, and if applicable, their consent);
- a determination by such authority that maintaining legal parentage with the adoptive parents is not in the best interests of the child; and
- the establishment of a new life plan, in consultation with, where appropriate and possible, all impacted persons.

59 The **new life plan for the child** after revocation or annulment may involve:

- securing the **return of the child to their birth family**, if the best interests of the child so require, depending, for example, on the current circumstances, and after appropriate counselling and support for all parties. In such case, the State of origin has to ensure that the birth family is capable of taking care of the child; this option would necessarily involve a significant degree of cooperation between the receiving State and the State of origin; or
- organising a **new placement** of the child with respect to **adoption**; or
- finding other alternative **long-term family care** or other suitable arrangement in the child's best interests.

60 Central Authorities should strongly encourage any adult adoptee, birth parent or adoptive parent who may be considering a revocation or annulment to **seek support and legal advice**, including concerning the possible consequences on the nationality or nationalities of the adoptee, before initiating legal proceedings. Where this is possible under applicable laws, States should try to ensure that adoptees do **not lose any benefits gained by the adoption** (*e.g.*, nationality) in the case of revocation or annulment.

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<sup>43</sup> Nationality refers to the legal status of a person belonging to a sovereign State with the legal rights and protection of the sovereign State's government. In some States this legal status is referred to as 'citizenship'. References to 'nationality' should therefore be understood as including 'citizenship'.

## 6.2. Actions regarding other actors<sup>44</sup>

### 6.2.1. Authorities

- 61 If the investigation reveals that **staff, volunteers, or other persons working** for the Central Authority or competent authority were involved in illicit practices, appropriate consideration should be given to what would be the most suitable action given the particular circumstances. For example, it could involve **corrective actions** and / or **disciplinary sanctions** such as demotion, suspension of functions or removal from position.

### 6.2.2. AABs

- 62 Where AABs, including their staff, representatives or volunteers, are involved in illicit practices, authorities should consider what the most appropriate action would be, given the particular circumstances, including the seriousness of the conduct:
- For less serious misconducts, sanctions may include a **letter of warning**, a request for **corrective action** or a **fine**.
  - For more serious misconducts, sanctions may include the **suspension** of the accreditation, authorisation, approval or license or the **withdrawal** (or refusal to renew) of such accreditation authorisation, approval or license.<sup>45</sup> In some cases, suspension may be imposed with the understanding that accreditation, authorisation, approval or license will be withdrawn if the body or institution concerned does not take certain steps to address the illicit practice that took place.<sup>46</sup> In either situation, provisions should be in place for another body or authority to deal with the cases being managed by the AAB.

### 6.2.3. Childcare institutions, independent professionals, and other actors

- 63 When childcare institutions, independent professional or other actors (*e.g.*, lawyers, middlemen, interpreters, drivers) are involved in illicit practices, authorities should consider what the most appropriate action would be, given the particular circumstances, including the seriousness of the conduct:
- For less serious misconducts, sanctions may include a **letter of warning**, a request for **corrective actions** or a **fine**.
  - For more serious misconducts, sanctions may include:
    - > For childcare institutions: the possibility that the childcare institution is **no longer permitted to take care of children** in need of adoption, or that the

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<sup>44</sup> See also Section 6.3.

<sup>45</sup> See GGP No 2, para. 324; if the accreditation and / or authorisation is withdrawn, the Permanent Bureau should be informed in order to update the HCCH website as necessary.

<sup>46</sup> *Ibid.*, para. 325.

childcare institution **is closed** (in some cases their licence or authorisation may be **suspended**, in others completely **withdrawn**).

- > For independent professionals and other actors: suspension or withdrawal of their licence, suspension or withdrawal of their affiliation to bar, demotion, suspension of functions, removal from position, etc.
- In the case of childcare institutions, appropriate and well-planned decisions should be made with regard to the children living in that institution.

### 6.3. Other actions

#### 6.3.1. Criminal prosecutions

- 64 Where the situation raises concerns about potential criminal activity, Central Authorities or other competent authorities should **alert the law enforcement authorities** in a timely manner, which will then conduct a criminal investigation. The decision to prosecute will be taken by the competent authority (usually the Attorney General) based on the available evidence in light of applicable criminal law provisions. Central Authorities should cooperate to the extent possible with any such investigation or prosecution.
- 65 States may refer to the Fact Sheets for further information about the **importance of legislating** in this area, including criminalising illicit practices and establishing penalties which are significant enough to deter all persons and actors involved in intercountry adoptions from engaging in them.<sup>47</sup> **Statutes of limitations** should be of sufficient length to be able to ensure prosecution of those involved in illicit practices. Although criminal prosecutions are an essential remedy, depending on the applicable laws, there may be additional and / or other remedies available for illicit practices.

#### 6.3.2. Civil suits

- 66 In some States, civil suits may be available to persons who have been impacted by illicit practices. As noted above,<sup>48</sup> Central Authorities or other competent authorities may direct persons seeking **information about possible recourses and remedies** to the referral service of the private bar or to other available resources, for assistance in obtaining legal information and / or finding a legal practitioner. They may also provide general information, where applicable, about available financial assistance (e.g., some States may offer some services pro bono, others may provide for legal aid or for other low-cost services, or subsidised services provided by other authorities or bodies).<sup>49</sup>
- 67 In some States, **possible remedies** may include restoration of the adoptee's identity, restoration of nationality of the State of origin (if applicable), the suspension of the wrongful

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<sup>47</sup> See ISS Handbook, *supra* note 17, Chapter 5.

<sup>48</sup> Para. 21.

<sup>49</sup> Para. 22.

activity, the revocation or annulment of the intercountry adoption, as well as monetary relief (e.g., damage compensation, refund of fees).

### 6.3.3. International and regional courts and other international bodies<sup>50</sup>

- 68 When cases of illicit practices are not addressed, persons may also be able to seek redress from international courts and other international bodies or mechanisms, to which the State is party.<sup>51</sup> Treaties providing complaint procedures for persons at the international level include the *Convention on the Rights of the Child* (CRC) (through its Optional Protocol on a Communications Procedure (OPIC)), the *International Covenant on Civil and Political Rights* and the *International Convention for the Protection of All Persons from Enforced Disappearances*. The *African Charter on the Rights and Welfare of Children*, the *European Convention on Human Rights* and the *Inter-American Convention of Human Rights* provide regional complaints mechanisms.
- 69 However, these mechanisms could only be relied upon for a violation as described in the international instrument on which the mechanisms are based and after all available domestic remedies are exhausted (as well as other admissibility criteria).

#### **In addition, in the context of a (suspected) pattern of illicit practices:**

Central Authorities and other competent authorities should be aware that if their State is party to the OPIC (as well as the CRC and / or the OPSC), the Committee on the Rights of the Child may initiate an inquiry procedure if it receives reliable information indicating grave or systematic violations of rights set forth in the CRC or the OPSC by the State. This may include a pattern of illicit practices in intercountry adoption. This information may be provided by any actors, and domestic remedies need not be exhausted for this procedure to commence. The Committee will seek the cooperation of the State party at all stages of the inquiry.

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<sup>50</sup> See *supra* note 24.

<sup>51</sup> See ISS Handbook, *supra* note 17, Chapter 5.

#### 6.3.4. Other measures<sup>52</sup>

##### **In the context of a (suspected) pattern of illicit practices:**

- For example, some States have issued a national apology. Decisions to do so are taken at the political level and are beyond the responsibility of CAs or other competent authorities responsible for the operation of the Convention.
- States may also wish to consider if restorative justice<sup>53</sup> and transitional justice<sup>54</sup> may be appropriate.

#### 6.4. Actions to strengthen the legal framework and address enabling factors

- 70 States should commit to addressing the factors that enable and / or facilitate illicit practices. To assist them in this aspect, States may request technical assistance (see Part IV “Guidelines”).
- 71 States should consider **modifications** to their laws, regulations, practices, procedures or protocols to make them more “robust” and effective in preventing and addressing any possible future illicit practices. They should also consider the addition of resources for training and the development of best practices.

#### 6.5. Actions regarding the other State(s) concerned

- 72 States may consider recommending that the other State concerned (either the State of origin or the receiving State) undertake an investigation as to the **legality of the adoption process** in its State.
- 73 Depending on the circumstances and the type of illicit practice, States may need to consider **suspending their intercountry adoption programme** with the State concerned, permanently or temporarily, until effective actions have been taken to address the situation. If this step is to be taken, States should also have a protocol for transition cases.

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<sup>52</sup> See *supra* note 24.

<sup>53</sup> Restorative justice aims to repair the harm caused by the crime by holding victim-offender mediation and, where appropriate, meetings with the wider community. An essential part of the process is confidentiality which promotes open and honest communication.

<sup>54</sup> Transitional justice seeks to promote truth, justice, reparation and guarantees of non-recurrence. Such measures might include prosecution initiatives, reparations, truth-seeking and institutional reform. For more information, see for example [www.ictj.org/about](http://www.ictj.org/about).

**In addition, in the context of a (suspected) pattern of illicit practices:**

- A decision to **suspend the intercountry adoption programme** may be even more relevant in the context of patterns of illicit practices.
- States where a pattern of illicit practices has been disclosed may also **wish to share with other States** what happened and how the situation was handled in a spirit of cooperation, so that lessons learned can be shared and that the other States can take measures to prevent those patterns from occurring in their own States. For example, if a particular AAB is involved in illicit practices in one State, other States of origin in which that AAB operates should take appropriate steps, and if necessary, limit its activities or suspend its operations. See further Part IV "Guidelines".

## Part IV



# Guidelines on Enhancing Cooperation and Coordination to Prevent and Address Illicit Practices, including Patterns

## Guidelines on enhancing cooperation and coordination to prevent and address illicit practices, including patterns

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- 1 These Guidelines present some examples of possible measures to enhance cooperation and coordination amongst States. In fact, inter-State cooperation – amongst States of origin and receiving States, amongst States of origin, or amongst receiving States – is an additional means to prevent and address illicit practices.
- 2 While cooperation and coordination may assist in individual cases, they are particularly relevant in the context of patterns of illicit practices as all States involved are interconnected. Indeed, if a potential pattern of illicit practices is disclosed in one State (either a receiving State or a State of origin), it may have repercussions for all the States with which that State cooperates.
- 3 These Guidelines complement the other parts of the Toolkit, and should therefore be read in conjunction with them.

## 1. Exchange of information

- 4 Inter-State cooperation is improved through the gathering and exchange of information. For example:
- 5 **Technology, recordkeeping, data systems and analysis of data** may prove particularly helpful in preventing illicit practices and in detecting them early on in the procedure so as to prevent them from spreading. To the extent permitted by the rules governing confidentiality and protection of data, competent authorities within a State may consider coordinating (and, if possible, combining) the data they individually collect and share such data with other States. States may also wish to cooperate in analysing that data.
- 6 The **exchange of public information** on adoption practices and procedures, reports on seminars and workshops, relevant law enforcement activities, etc, is also a good example of inter-State cooperation. This information could be made available on official websites of Central Authorities or international organisations (e.g., the HCCH).
- 7 Central Authorities (or competent authorities) may also wish to **exchange sensitive information** that may not be generally available to the public (e.g., information on their experiences with working with particular States or AABs; reports of missions including information about illicit practices; reports on suspected illicit practices; reports on the causes that enabled illicit practices to develop; results of investigations on illicit practices; actions taken as a result of investigations). This exchange of information should be done in a secure way (e.g., competent authorities may wish to use a secured platform to exchange such information).

## 2. Meetings, seminars and other gatherings of authorities, bodies and other persons

- 8 International meetings and other gatherings of authorities, bodies and persons may help to prevent and address enabling factors and illicit practices and are a very useful way to share good practices. These may include, for example:
  - **Seminars, conferences, trainings and workshops** to share practices and experiences focused on preventing and addressing illicit practices, including lessons learnt.

- **Meetings amongst States of origin and receiving States** cooperating together to better understand the working methods and procedures of the States they cooperate with, the possible enabling factors the States may be encountering and to facilitate communication afterwards. This may include travelling to the State of origin or receiving State to meet the Central Authority or other competent authorities, international organisations and NGOs working in the field of child protection and adoption.
- **Meetings amongst States of origin or amongst receiving States** to discuss topics of interests, working methods and procedures. These types of horizontal meetings are also a good opportunity to exchange practices and information on other States of origin / receiving States with which they cooperate.
- **Special Commission** meetings of Contracting States to review the practical operation of the 1993 Adoption Convention: these meetings are convened periodically by the Secretary General of the HCCH (HC, Art. 42), and are attended by a large majority of the Contracting States to the Convention, as well as States interested to join the Convention. They provide an avenue to discuss matters, and try to resolve issues, including illicit practices. At the end of each meeting, Conclusions and Recommendations are adopted, which aim at providing further guidance on how to best implement the Convention, raise standards and ensure that all States have a common understanding of the procedures and safeguards under the Convention.

### 3. Technical assistance

- 9 Technical assistance can help States in addressing reasons behind enabling factors and preventing and addressing illicit practices and patterns. States may request technical assistance from other States and / or from international organisations to improve their legislation and practices (e.g., review of legislation, training of authorities and bodies, drafting protocols and manuals, sharing experiences in dealing with cases).
- 10 To avoid any undue influence or pressure on States seeking technical assistance, or appearance of such, a State of origin that has developed good practices may provide such assistance to another State of origin that is dealing with problems and / or wishes to improve its practice (this practice is also known as **horizontal cooperation**). Experienced professionals from the State of origin with good practices may travel (and / or provide support by videoconferences or other online means) to the other State of origin to assist its professionals in their work, share experiences and recommend ways to overcome difficulties. In some cases, the professionals from the State of origin receiving technical assistance may travel to the State of origin with good practices.<sup>1</sup> This horizontal cooperation may also occur between receiving States.
- 11 To further support technical assistance, States may also share good practice documentation, policies, protocols and templates, etc., through a public or secure shared platform (see Section 1 "Exchange of information" above).

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<sup>1</sup> See GGP No 2, paras 596 and 597.

## 4. Coordination of activities amongst States, including a common response

- 12 Coordination can be an additional appropriate means to prevent and address illicit practices:
- In some cases, the State where illicit practices are occurring / have occurred may **not** be **aware** of the **situation**. Other States concerned should adequately **inform** that State and seek to coordinate a common response, if possible.
  - In some cases, the State may be aware of the illicit practices but neglect to address them or lack the **means** to do so. In such situations, other concerned States cooperating with that particular State may propose to take action collectively to prevent or address the illicit practices.
  - Coordination amongst States may be done through different means:
    - ⇒ **Meetings amongst all Central Authorities** concerned by the illicit practices;
    - ⇒ **Meetings of the Embassies and Consulates** in the State in which there is an illicit practice: Central Authorities may call on their respective State Embassies and Consulates, which have the benefit of being in-country and may be better able to liaise with the competent authorities in that State, to assist in coordinating a response between different States.
  - **Consultations with other organisations** (e.g., the HCCH, UNICEF, ISS) and **associations** (e.g., adoptee, birth parents or adoptive parents' associations): these bodies may provide an additional important perspective of the situation, as well as enable the inclusion of the voices of those with **lived experience of adoption**.
- 13 States may also wish to have a coordinated (and if possible common) response to illicit practices, including patterns of illicit practices. It may be appropriate for relevant States to **consult with each other about specific actions** to be taken against illicit practices, prior to taking such actions. This coordination should not be limited to sharing information or prior actions, but should also extend to harmonising or unifying actions to make them more effective.
- 14 Although it is important that each State individually addresses illicit practices, a **common response is central to a successful approach** as it can prevent each authority or State from responding differently. In addition, it can avoid sending the wrong message regarding the existence of illicit practices and what is the appropriate response. For example, if some receiving States suspend their intercountry adoption programmes with a certain State of origin because of a pattern of abuses, while other receiving States continue to process intercountry adoptions from that State of origin regardless of those abuses, the State of origin may not see the need to address the illicit practices. In such cases, cooperation with and coordination amongst all States and actors is particularly important and relevant in preventing or addressing the pattern of illicit practices. A coordinated response to illicit practices is therefore more likely to have a significant positive impact.
- 15 Responding to illicit practices may differ depending on **whether they are disclosed while they are still occurring or after they have occurred**. However, when addressing illicit practices that are ongoing the focus should be on ensuring that appropriate responses have been actioned before new adoptions (or adoptions in process) can be made.

16 Coordination may lead to different outcomes:

- **Unification of procedures:** if a pattern exists with respect to a specific illicit practice, States may decide that they will all apply the same procedure, in order to prevent the pattern from having any negative impact. For example, if a State charges fees that vary depending on the State with which it is cooperating, all States may specify that they will only engage in intercountry adoption with that State if the fee in question is the same amount for all States and if that fee is reasonable.
- **Common message:** all coordinating States may want to send a common message to the State in which illicit practices exist, to invite that State to review its legislation and / or practices to address the pattern.<sup>2</sup>
- **Suspension of intercountry adoption programmes:** States may also decide to suspend their intercountry adoption programmes with that State until it has addressed the illicit practice(s).
- **Technical assistance:** States in which best practice is demonstrated may wish to offer technical assistance. Alternatively, the State in which the illicit practice is present may request technical assistance (see Section 3 "Technical assistance" above).

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<sup>2</sup> For example, this is what was done at the 2005 Special Commission meeting regarding the situation in Guatemala. See 2005 SC, C&R No 22.

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