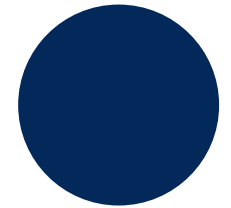




The HCCH Working Group on Illicit Practices

18 February 2022 | Webinar

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PRESENTATION OF THE WORKING GROUP



MEETINGS OF THE WORKING GROUP



met 4 times:

- 2016
- 2019
- 2020
- 2021



Working Group on Preventing and Addressing
Illicit Practices in Intercountry Adoption

The Hague, Netherlands

21 - 23 May 2019

OBJECTIVES OF THE WORKING GROUP



- Better **understanding** of:
 - how illicit practices **arise**,
 -  how they can be **identified** and **prevented**,
 -  and effective **steps** to take when they **occur**.
- Development of **practical guidance** through different tools

DRAFT TOOLKIT ON PREVENTING AND ADDRESSING ILLICIT PRACTICES



FACT SHEETS ON ILLICIT PRACTICES



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

At the ADOPTION level

1. Abduction of children for the purpose of intercountry adoption.
2. Sale of children for the purpose of intercountry adoption.²
3. Traffic in children for the purpose of intercountry adoption.

POSSIBLE PREVENTIVE ACTIONS

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.

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 (see further FS 3 "Financial Gain").¹

(Temporarily) **suspend intercountry adoption programmes** with States where suspected cases of abduction, sale of, and / or traffic in children have been disclosed.

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ENABLING FACTORS

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.
6. Inadequate training and / or lack of resources of actors involved in alternative care and adoption.
7. Lack of or inadequate supervision, monitoring and accountability of authorities and bodies involved in adoption.

POSSIBLE PREVENTIVE ACTIONS

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

See also line 1 of this FS, as well as "at the sanction level" below.

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

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

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Assist 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.

CHECKLIST



- Intended for **Central Authorities** and / or **AABs**
 - For each step of the ICA procedure, list of:
 - **issues** they should **watch out for**
 - **actions** they may take



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 the parent(s).

What to watch out for

6 Of the **documentary evidence provided** (e.g., a birth registration or birth certificate), whether the document appears to be **authentic**. This could be done, for example, by verifying that:

- the form and content of the document are consistent with authentic national 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 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.

What actions may be taken

9 If the **birth of the child** has been registered, 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.²

MODEL PROCEDURE TO RESPOND TO IP



3. ONGOING STEP: SERVICES TO IMPACTED PERSONS¹⁴

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.¹⁵

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 available to help them reach a satisfactory outcome.¹⁶

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 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.

6. STEP 3: POSSIBLE ACTIONS FOLLOWING THE INVESTIGATION

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

46 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

- Provide guidance on **how to respond** to cases of illicit practices that occurred in the past
- Individual cases and patterns

GUIDELINES ON COOPERATION AND COORDINATION



- Provide guidance on **cooperation** and **coordination** between States
- Individual cases and patterns



PART V: GUIDELINES ON ENHANCING COOPERATION AND COORDINATION TO PREVENT AND ADDRESS ILLICIT PRACTICES, INCLUDING PATTERNS

- 1 These Guidelines present some examples of possible measures to enhance cooperation and coordination between States. In fact, inter-State cooperation – amongst States of origin and receiving States, between States of origin, or between receiving States – is an additional means to prevent and address illicit practices.
 1. **Exchange of information**
- 4 Inter-State cooperation is improved through the gathering and exchange of information. For example:
 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.
 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
 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 concerned States should adequately inform that State and seek to coordinate a common response, if possible.

PRESERVATION OF THE CHILD'S IDENTITY



MISREPRESENTATION OF IDENTITY



Illicit practices	Enabling factors	Preventive actions
<ul style="list-style-type: none">• Pretending to be the parent of a child to give consent to the adoption.	<ul style="list-style-type: none">• NO / inadequate verification of the identities of the child and the birth parents.	<ul style="list-style-type: none">• Enact and implement legislation and procedures to verify the identity of the child and the birth parents.
<ul style="list-style-type: none">• Lying about the date of birth of the child.	<ul style="list-style-type: none">• NO / inadequate birth registration system (e.g., fees, distance, discrimination).	<ul style="list-style-type: none">• Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible birth registration system.

FORGERY AND FALSIFICATION OF DOCUMENTS



Illicit practices

- Use of **forged documents** in which the identity of the child is false.

Enabling factors

- **NOT reviewing nor scrutinising** the documents in the adoption procedure.

Preventive actions

- **Verify and confirm the source of the information** in the documents.
- **Review and scrutinise all documentation** about the child and the parents.
- Verify that there are **no inconsistencies** between documents.

NO PRESERVATION OF AND / OR ACCESS TO INFORMATION



Illicit practices

- Competent authorities do **NOT**:
 - **preserve** information, and/or
 - provide **access** information, in accordance with the law of the State.

Enabling factors

- **NO / inadequate legal framework** on preservation and / or access to information.
- Personnel **NOT** providing **appropriate guidance** to adoptees.

Preventive actions

- Enact and implement **legislation** on preservation and access to information
- Preserve all information and **belongings** of the child in **perpetuity**.
- Establish and implement **guidelines** on **counselling** adoptees.
- **Train** personnel.



Thank you!

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