

# Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption

## Part II

### Checklist to Assist Decision Making by Central Authorities



## Checklist to assist decision making by Central Authorities

Checklist.....	148
Step 1	Verification of the child's identity by the Central Authority of the State of origin ( <i>see further FS 4 "Identity"</i> ) .....148
Step 2	Verification of the principle of subsidiarity by the Central Authority of the State of origin ( <i>see further FS 6 "subsidiarity"</i> ) .....150
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 ( <i>see further FS 7 "Consent" and FS 8 "Children of unknown parents"</i> ).....152
Step 3A	Where the adoptability is based on consent(s) to adoption – Verification of the consent(s) .....153
Step 3B	Where the adoptability is based on an administrative or judicial decision – Verification of the decision .....155
Step 4	Verification by the Central Authority of the receiving State of the assessment of eligibility and suitability to adopt ( <i>see further FS 9 "PAPs"</i> )..... 157
Step 5	Decision on matching of the Central Authority (or competent authority) of the State of origin ( <i>see further FS 9 "Matching"</i> ) .....158
Step 6	If required, approval of the proposed match by the Central Authority of the receiving State..... 160
Step 7	Acceptance that the adoption may proceed by the Central Authorities of the State of origin and the receiving State ( <i>see further FS 4 "Identity"; FS 6 "Subsidiarity"; FS 7 "Consent"; FS 8 "Unknown Parents"; and FS 10 "Matching"</i> ) ..... 161
Step 8	Issuance of a certificate of conformity by the competent authority of the State where the adoption order was made.....163

<b>Checklist Work Sheet .....</b>	<b>165</b>
Step 1	Verification of the child's identity by the Central Authority of the State of origin .....165
Step 2	Verification of the principle of subsidiarity by the Central Authority of the State of origin ..... 166
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 .....167
Step 3A	In all cases where the adoptability is based on consent(s) to adoption.....167
Step 3B	In all cases where the adoptability is based on an administrative or judicial decision..... 169
Step 4	Verification by the Central Authority of the receiving State of the assessment of eligibility and suitability to adopt ..... 169
Step 5	Decision on matching of the Central Authority (or competent authority) of the State of origin .....170
Step 6	If required, approval of the proposed match by the Central Authority of the receiving State ..... 171
Step 7	Acceptance that the adoption may proceed by the Central Authorities of the State of origin and the receiving State ..... 171
Step 8	Issuance of a certificate of conformity by the competent authority of the State where the adoption order was made.....172



- 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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