

<b>Title</b>	Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meetings of 28-30 September and 8 November 2021)
<b>Document</b>	Prel. Doc. No 11 REV of November 2021
<b>Author</b>	Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption
<b>Agenda Item</b>	Item TBD
<b>Mandate(s)</b>	C&D No 24 of CGAP 2021
<b>Objective</b>	To report on the September and November 2021 meetings of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption
<b>Action to be Taken</b>	For Action <input type="checkbox"/> For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
<b>Annexes</b>	Annex I: <i>Aide-mémoire</i> of the September and November 2021 meetings of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption Annex II: List of participants of the September 2021 meeting of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption Annex III: List of participants of the November 2021 meeting of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption
<b>Related Documents</b>	Prel. Doc. No 12 for CGAP 2021, “Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 8-10 July 2020)”

## Table of Contents

I.	Introduction .....	3
II.	Conclusions and Recommendations .....	3
Annex I	.....	5
III.	Introduction .....	5
IV.	Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption .....	5
	A. Introduction to the Toolkit .....	5
	B. Fact Sheets on illicit practices .....	5
	1. General.....	5
	2. Fact Sheet on improper financial and other gain .....	6
	C. Checklist to assist decision-making by Central Authorities.....	6
	D. Model Procedure to respond to illicit practices.....	6
	E. Guidelines on enhancing cooperation and coordination.....	7
V.	Next Steps.....	7
Annex II	.....	8
Annex III	.....	14

# Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meetings of 28-30 September and 8 November 2021)

## I. Introduction

- 1 From 28 to 30 September 2021, the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (the Group) met via videoconference. The meeting was attended by 57 participants representing 25 States, including both States of origin and receiving States, and four international organisations, as well as members of the Permanent Bureau (PB).
- 2 On 8 November 2021, the Group met again via videoconference. The meeting was attended by 43 participants representing 22 States, including both States of origin and receiving States, and four international organisations, as well as members of the PB.
- 3 The mandate of the Group is “to consider the development of more effective and practical forms of cooperation between States to prevent and address specific instances of abuse”,<sup>1</sup> and more specifically, to develop a Toolkit containing the elements described in the previous Reports of the Working Group.<sup>2</sup>
- 4 At its 2021 meeting, the HCCH Council on General Affairs and Policy (CGAP) endorsed the proposal of the Group to hold another meeting.<sup>3</sup>

## II. Conclusions and Recommendations

- 5 The Experts’ Group invites CGAP to take note of the *Aide-mémoire* contained in Annex I prepared by the Chair based on the deliberations during the Working Group meetings.

---

<sup>1</sup> See “Conclusions and Recommendations adopted by the Third Meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-25 June 2010)” (C&R of the 2010 SC meeting), C&R No 2, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Adoption” then “All Special Commission meetings”; “Conclusions and Recommendations adopted by the Council on General Affairs and Policy (5-7 April 2011)”, C&R No 24, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Governance” then “Council on General Affairs and Policy”.

<sup>2</sup> See “Conclusions and Recommendations adopted by the Council on General Affairs and Policy (14-16 March 2017)”, C&R No 24 (see path indicated in note 1).

<sup>3</sup> See “Conclusions and Decisions adopted by CGAP (1-5 March 2021)”, C&D No 24 (see path indicated in note 1).

## **ANNEXES**

## Annex I

# ***Aide-mémoire* of the meetings of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption**

### III. Introduction

- 1 The 2021 meeting of the Group focused on discussing areas in the draft Toolkit where there are differing views, with the objective of presenting an advanced draft for the consideration of the next meeting of the Special Commission (SC) on the practical operation of the *Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993 Adoption Convention), tentatively scheduled for July 2022.

### IV. Draft Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption

#### A. Introduction to the Toolkit

- 2 The Group proposed some revisions to the definitions of illegal adoption and illicit practices in intercountry adoption.
- 3 The Group discussed how to specify that Contracting States might also consider referring to the Toolkit in dealing with suspected illicit practices arising from adoptions completed prior to the coming into force of the Convention in their State. The Group acknowledged that further discussion on this issue would be necessary at the 2022 Special Commission meeting .

#### B. Fact Sheets on illicit practices

##### 1. General

- 4 With regard to the Fact Sheets, the Group discussed the following:
  - the prohibition of direct contact between the prospective adoptive parents and the authorities in the State of origin before having first applied to the Central Authority in their State of habitual residence;
  - the prohibition of contact between prospective adoptive parents and birth parents and the exceptions included in Article 29 of the 1993 Adoption Convention;
  - the contact, without supervision, between prospective adoptive parents and the child before matching;
  - emergency situations and the need to focus on efforts to reunify the child with their family;
  - the title and scope of the Fact Sheet on prospective adoptive parents;
  - the examples of anonymous abandonment of children (e.g., baby boxes and anonymous or secret birth);
  - the situation where children are falsely assessed as having special needs in order to fast-track the adoption procedure;
  - the unlawful denial of access to records and the impact on the adoptee; and
  - the Fact Sheet on Improper financial and other gain, including whether there should be further discussion on financial aspects, in particular about raising some of the minimum standards.
- 5 The Group acknowledged that the issue of financial aspects would warrant further discussion at the 2022 Special Commission meeting. Other issues (such as the contact between prospective

adoptive parents and the child before matching as well as the unlawful denial of access to records) may also warrant further discussion.

## 2. Fact Sheet on improper financial and other gain

6 At the November meeting, the Group discussed this Fact Sheet on improper financial and other gain in more depth, in particular:

- how to present the different views that States may have with regard to the separation of contributions, donations and cooperation projects, from intercountry adoption;
- contributions, donations and cooperation projects aimed at supporting child institutions; and
- the impact of funding covering the maintenance and / or the medical (or other) assessment of the child.

7 The Group acknowledged that problems concerning the financial aspects of intercountry adoption still continue and, therefore, recommended that further discussion is needed, in particular, to properly implement the Convention which establishes that “[o]nly cost 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”.<sup>4</sup>

### C. Checklist to assist decision-making by Central Authorities

8 In the context of the Checklist, the Group discussed a new proposal to include an additional step where States should verify whether the Central Authority of the receiving State has approved the proposed match.

9 The Group also discussed what should be done when the identity of a child cannot be verified (e.g., whether the child may still be adopted), and whether there should be an additional verification that the birth parents and the child (in accordance with its age and maturity) were given an opportunity to consult a lawyer and / or other professionals before consenting to adoption.

10 The Group acknowledged that the reversal of the flow may warrant further discussion at the 2022 Special Commission meeting.

### D. Model Procedure to respond to illicit practices

11 With regard to the Model Procedure, the Group discussed the following:

- the references to confidentiality;
- in relation to possible actions following the investigation regarding the adoptee and the families, whether the difference between an adoption that has been completed or not completed depends on the issuance of the Article 23 certificate;
- how to address non-recognition of intercountry adoptions in situations of illicit practices; and
- whether to include references to possible political measures (e.g., Commissions, national apologies) and civil suits, and international mechanisms when national recourses have all been exhausted.

12 The Group acknowledged that political measures, possible remedies available through civil suits, and international mechanisms would warrant further discussion at the 2022 Special Commission meeting.

---

<sup>4</sup> See 2019 WG Report, 9

## **E. Guidelines on enhancing cooperation and coordination**

13 The Group did not discuss the Guidelines during this meeting since there was no specific point that warranted discussion.

## **V. Next Steps**

14 The Group agreed on the following next steps regarding the Toolkit:

- Participants will provide further written comments on the Fact Sheet on improper financial and other gain to the PB by 30 November 2021.
- The Toolkit will be revised in light of the comments received through written submissions before and during (as well as after for the Fact Sheet on improper financial and other gain) the September and November 2021 meetings.
- Once revised, the full Toolkit will be transmitted to all HCCH Members, Contracting Parties to the 1993 Adoption Convention, and Observers in preparation for the next Special Commission meeting tentatively scheduled for July 2022.
- After the Special Commission, the PB will make a final revision of the draft Toolkit in light of the comments made at that meeting. If needed, the revised Toolkit will be circulated one last time.
- The final version of the Toolkit will be submitted to CGAP for approval.

15 The Chair of the Group will report on the status of the Group's work to CGAP at its 2022 meeting.

## Annex II

### List of Participants of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 28-30 September 2021)

HCCH Members	<b>Australia</b>	Wale	Elisabeth	Assistant Director, Australian Central Authority	Department of Social Services
		Healy	Sarah	Acting Assistant Director, Australian Central Authority	Department of Social Services
		Elliot	Rosie	Policy Officer, Australian Central Authority	Department of Social Services
	<b>Belgium</b>	van den Berghe	Ariane	Director	Flemish Central Authority Adoption, Kind en Gezin
		Rummens	Koen	Staff member	Flemish Central Authority Adoption, Kind en Gezin
	<b>Canada</b>	Riendeau	Marie	Counsel, Constitutional, Administrative and International Law Section	Department of Justice Canada
		O'Donoghue-Given	Erin	Deputy Director, Intercountry Adoption Services, Federal CA Canada for Adoption Convention	Minister of Immigration, Refugees and Citizenship Canada
		Poirier	Geneviève	Directrice générale et Secrétaire à l'adoption internationale	Ministère de la Santé et des Services
	Goupil	Josée-Anne	Directrice générale adjointe des orientations et des programmes relatifs aux clientèles spécifiques et à l'action communautaire	Ministère de la Santé et des Services	



<b>HCCH Members</b>	<b>Chile</b>	Strobel	Martina	Head of International Affairs	National Service for the Protection of Minors
		Fernández	Marisol	Head of Unit, International Adoption Division	National Service for the Protection of Minors
		Orellana	Orietta	Lawyer, Adoption Division	National Service for the Protection of Minors
		García González	Diego	Diplomat	Embassy of Chile
	<b>China</b>	Wang	Dongliang	Division for Child Adoption, Department of Child Welfare	Ministry of Civil Affairs
		Qiu	Chengkai	Department of International Cooperation	Ministry of Civil Affairs
		Shu	Mengyao	Department of Treaty and Law	Ministry of Foreign Affairs
		leong	Ka Fai	Treaty Division	Ministry of Foreign Affairs
	<b>Croatia</b>	Tutić	Martina	Head of Service for International Cooperation in the field of Protection of Children	Ministry of Labour, Pension System, Family and Social Policy
		Majstorovic	Irena	Professor at the Faculty of Law	University of Zagreb
		Palić Babić	Jasna	Higher Counsellor Specialist	Ministry of Labour, Pension System, Family and Social Policy

<b>HCCH Members</b>	<b>Denmark</b>	Rønnow Søndergaard	Karin	Legal Adviser	National Social Appeals Board
		Haahr-Pedersen	Karina	Legal Adviser	National Social Appeals Board
	<b>France</b>	Rolland-Piegue	Etienne	Chef de la Mission de l'Adoption Internationale	Mission de l'Adoption internationale (MAI)
	<b>Italy</b>	Barberi	Alessandra	Executive service adoption - Technical Secretariat	Commission for International Adoption
		Moyersoén	Joseph	Focal Point on External relations and International cooperation - Technical Secretariat, Commission on Inter-Country Adoption	Commission for International Adoption
		Guerrieri	Anna	CAI Member	Commission for International Adoption
	<b>Malta</b>	Frendo	Denise	Legal Officer, Adoptions CA Office, CEO Office	Ministry for the Family, Children's Rights and Social Solidarity
		Vella	Roberta Valentina	Research Officer, Malta Central Authority	Ministry for the Family, Children's Rights and Social Solidarity
	<b>Mexico</b>	Mejía Cortés	Dulce María	General Director for Legal Representation and Restitution of the Rights of Girls, Boys and Teenagers	National System for the Comprehensive Development of the Family
		Reyes Moncayo	Miguel Angel	Coordinator of the Family Law's Office, General Direction of Consular Protection and Strategic Planning	Mexican Ministry of Foreign Affairs
	Pérez-Galeana	Patricia	First Secretary	Embassy of the United Mexican States	

HCCH Members	<b>Netherlands</b>	van Leur	Arjan	Policy Officer	Ministry of Justice and Security
	<b>Peru</b>	Cisneros Campoverde	Soledad	Assistant II, General Directorate of Adoption	Ministry of Women and Vulnerable Populations
		Ludeña Torres	Kerin	Lawyer, General Directorate of Adoption	Ministry of Women and Vulnerable Populations
	<b>Philippines</b>	Abejo	Bernadette	Executive Director	Inter-country Adoption Board (ICAB)
	<b>Portugal</b>	Costa Mendes dos Santos	Eliana	Legal Adviser of the Portuguese Central Authority	Instituto de Segurança Social, I.P.
		Sacur	Bárbara	Clinical Psychologist of the Portuguese Central Authority	Instituto de Segurança Social, I.P.
	<b>Sri Lanka</b>	Perera	Nirmalee	Probation Officer	Department of Probation and Child Care Services
	<b>Switzerland</b>	Schickel-Küng	Joëlle	Co-Head of the Private International Law Unit	Federal Office of Justice
	<b>United States of America</b>	Ferri Light	Marisa	Chief, Adoption Oversight Division, Office of Children's Issues	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs
		Rosalia	Carine	Attorney Adviser <b>(Chair of the Working Group)</b>	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs
Olson		Kjersti	Attorney, Adoption Oversight Division, Office of Children's Issues	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs	

<b>HCCH Members</b>	<b>Viet Nam</b>	Dang	Tran Anh Tuan	Acting Director General of the Department of Adoption	Ministry of Justice
		Pham	Thi Kim Anh	Deputy Director of the Department of Adoption	Ministry of Justice
		Phuong	Nguyen Minh	Deputy Head	Ministry of Justice
<b>HCCH Members non-Contracting Parties</b>	<b>Korea, Republic of</b>	Han	Hyunhee	Judge	Seoul Southern District Court
		Lee	Hwayon	Judge at Seongnam Branch Court, Suwon Family Court	Suwon District Court
<b>Non HCCH Members Contracting Parties</b>	<b>Cabo Verde</b>	Correia	José	President of the International Adoption Council (CAI)	Office of the Attorney General, Central Authority for Adoption
		Cardoso	Cátia	Psychologist, International Adoption Council (CAI)	Office of the Attorney General, Central Authority for Adoption
	<b>Haïti</b>	Guillaume	Andolphe Elie Ducarmel	Assistant Légal	Institut du Bien-être Social et de Recherches (IBESR)
	<b>Togo</b>	Tchilteme Toatre	Pascal	Président du CNAET	Comité National d'Adoption d'Enfants au Togo
		Djanguenane Epse Penn	Y. Falaman	Secrétaire Permanente du CNAET	Comité National d'Adoption d'Enfants au Togo

<b>Observers IGO</b>	<b>UNICEF</b>	Cantwell	Nigel	Senior Consultant for UNICEF	
<b>Observers NGO</b>	<b>Intercountry Adoptee Voices (ICAV)</b>	Long	Lynelle	Founder & Executive Director	Intercountry Adoptee Voices
	<b>International Social Service (ISS)</b>	Binder	Judith	Director International Reference Centre	International Social Service
		Wöllenstein-Tripathi	Jeannette	Deputy Director International Reference Centre	International Social Service
	<b>Nordic Adoption Council (NAC)</b>	Ingvarsson	Kristinn	Executive Director of IAS / NAC representative	Icelandic Adoption Society
<b>HCCH</b>	<b>Permanent Bureau</b>	Bernasconi	Christophe	Secretary General	HCCH
		Martinez-Mora	Laura	Secretary	HCCH
		Page	Capucine	Legal Officer	HCCH
		Borisova	Betina	Intern HCCH	HCCH
		Prénas	Mathilde	Senior Administrative Assistant	HCCH

## Annex III

### List of Participants of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 8 November 2021)

HCH Members	<b>Australia</b>	Healy	Sarah	Acting Director, Australian Central Authority	Department of Social Services
		Elliot	Rosie	Policy Officer, Australian Central Authority	Department of Social Services
	<b>Belgium</b>	van den Berghe	Ariane	Director	Flemish Central Authority Adoption, Kind en Gezin
		Rummens	Koen	Staff member	Flemish Central Authority Adoption, Kind en Gezin
	<b>Canada</b>	Riendeau	Marie	Counsel, Constitutional, Administrative and International Law Section	Department of Justice Canada
		O'Donoghue-Given	Erin	Deputy Director, Intercountry Adoption Services, Federal CA Canada for Adoption Convention	Minister of Immigration, Refugees and Citizenship Canada
		Poirier	Geneviève	Directrice générale et Secrétaire à l'adoption internationale	Ministère de la Santé et des Services
		Goupil	Josée-Anne	Directrice générale adjointe des orientations et des programmes relatifs aux clientèles spécifiques et à l'action communautaire	Ministère de la Santé et des Services
	<b>Chile</b>	Strobel	Martina	Head of International Affairs	National Service for the Protection of Minors

<b>HCHH Members</b>		Von Schakmann Cabrales	Carolina	Legal Officer, Adoption Division	National Service for the Protection of Minors
	<b>China</b>	leong	Ka Fai	Treaty Division	Ministry of Foreign Affairs
	<b>Croatia</b>	Tutić	Martina	Head of Service for International Cooperation in the field of Protection of Children	Ministry of Labour, Pension System, Family and Social Policy
		Majstorovic	Irena	Professor at the Faculty of Law	University of Zagreb
		Palić Babić	Jasna	Higher Counsellor Specialist	Ministry of Labour, Pension System, Family and Social Policy
	<b>Denmark</b>	Rønnow Søndergaard	Karin	Legal Adviser	National Social Appeals Board
		Haahr-Pedersen	Karina	Legal Adviser	National Social Appeals Board
	<b>France</b>	Rolland-Piegue	Etienne	Chef de la Mission de l'Adoption Internationale	Mission de l'Adoption Internationale
	<b>Italy</b>	Unable to attend			
	<b>Mexico</b>	Mejía Cortés	Dulce María	General Director for Legal Representation and Restitution of the Rights of Girls, Boys and Teenagers	National System for the Comprehensive Development of the Family
	Reyes Moncayo	Miguel Angel	Coordinator of the Family Law's Office, General Direction of Consular Protection and Strategic Planning	Mexican Ministry of Foreign Affairs	

<b>HCCH Members</b>	<b>Netherlands</b>	van Leur	Arjan	Policy Officer	Ministry of Justice and Security
	<b>Panama</b>	Mauad	Graciela	General Director of the National Secretariat for Children, Adolescents and the Family	National Secretariat for Children, Adolescents and the Family
	<b>Peru</b>	Ludeña Torres	Kerin	Lawyer, General Directorate of Adoption	Ministry of Women and Vulnerable Populations
	<b>Philippines</b>	Abejo	Bernadette	Executive Director	Inter-country Adoption Board (ICAB)
	<b>Portugal</b>	Costa Mendes dos Santos	Eliana	Legal Adviser of the Portuguese Central Authority	Instituto de Segurança Social, I.P.
		Sacur	Bárbara	Clinical Psychologist of the Portuguese Central Authority	Instituto de Segurança Social, I.P.
	<b>Sri Lanka</b>	Perera	Nirmalee	Probation Officer	Department of Probation and Child Care Services
	<b>Switzerland</b>	Schickel-Küng	Joëlle	Co-Head of the Private International Law Unit	Federal Office of Justice
		Javaux Vena	Maryse	Legal Advisor, Private International Law Unit	Federal Office of Justice
	<b>United States of America</b>	Ferri Light	Marisa	Chief, Adoption Oversight Division, Office of Children's Issues	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs
	Rosalía	Carine	Attorney Adviser (Chair of the Working Group)	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs	



<b>HCCH Members</b>		Olson	Kjersti	Attorney, Adoption Oversight Division, Office of Children's Issues	U.S. Department of State, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs
	<b>Viet Nam</b>	Dang	Tran Anh Tuan	Acting Director General of the Department of Adoption	Ministry of Justice
		Pham	Thi Kim Anh	Deputy Director of the Department of Adoption	Ministry of Justice
		Phuong	Nguyen Minh	Deputy Head	Ministry of Justice
<b>Non HCCH Members Contracting Parties</b>	<b>Cabo Verde</b>	Correia	José	President of the International Adoption Council (CAI)	Office of the Attorney General, Central Authority for Adoption
		Cardoso	Cátia	Psychologist, International Adoption Council (CAI)	Office of the Attorney General, Central Authority for Adoption
	<b>Haïti</b>	Guillaume	Andolphe Elie Ducarmel	Assistant Légal	Institut du Bien-être Social et de Recherches (IBESR)
	<b>Togo</b>	Pascal	Tchilteme Toatre	Président du CNAET	Comité National d'Adoption d'Enfants au Togo
<b>Observers IGO</b>	<b>UNICEF</b>	Cantwell	Nigel	Senior Consultant for UNICEF	

<b>Observers NGO</b>	<b>Intercountry Adoptee Voices (ICAV )</b>	Long	Lynelle	Founder & Executive Director	Intercountry Adoptee Voices (ICAV )
	<b>International Social Service (ISS)</b>	Binder	Judith	Director International Reference	International Social Service (ISS)
		Wöllenstein-Tripathi	Jeannette	Deputy Director International Reference Children's rights specialist and IRC Coordinator	International Social Service (ISS)
	<b>Nordic Adoption Council (NAC)</b>	Ingvarsson	Kristinn	Executive Director of IAS / NAC representative	Icelandic Adoption Society
<b>HCCH</b>	<b>Permanent Bureau</b>	Martinez-Mora	Laura	Secretary	HCCH
		Page	Capucine	Legal Officer	HCCH
		Borisova	Betina	Intern HCCH	HCCH
		Prénas	Mathilde	Senior Administrative Assistant	HCCH
		Hauwkins	Stuart	Website / IT Officer	HCCH
		Stucken	Sabrina	Administrative Assistant	HCCH