

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



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.¹ 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).

¹ 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.²
- **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).

² 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.