

# Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption

# Glossary



GLOSSARY 23

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

### 1. Definitions

Abandonment: an act which may include

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

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

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

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

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

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

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

Other terms used by some States are "adopted person / person who was adopted".

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

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

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

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

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

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

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

Broadly, the term 'illegal' refers to actions that would be forbidden by law while 'illicit' could be either forbidden by law or unethical or immoral. Neither term refers solely to actions which are contrary to best practice.

<sup>3</sup> Ibid

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

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

GLOSSARY 25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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