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Table of Contents

[IV. MODEL PROCEDURE TO RESPOND TO SUSPECTED AND ACTUAL CASES OF ILLICIT PRACTICES 2](#_Toc67937107)

[STEP 1: **DISCLOSURE** AND **RECORDING** OF SUSPECTED CASES OF ILLICIT PRACTICES 4](#_Toc67937108)

[1. How may suspicions of illicit practices arise? 4](#_Toc67937109)

[2. Which authority should record suspected cases of illicit practices? 4](#_Toc67937110)

[3. What actions should States take to facilitate the disclosure of illicit practices? 5](#_Toc67937111)

[4. Confidentiality and rules on privacy 5](#_Toc67937112)

[IF APPROPRIATE: CONSIDERATIONS OF TEMPORARY **CHILD PROTECTION MEASURES** 6](#_Toc67937113)

[1. Temporary protection measures for the child for ongoing adoption processes and already finalised adoptions 6](#_Toc67937114)

[2. Additional considerations regarding ongoing adoption processes 6](#_Toc67937115)

[ONGOING STEP: **SERVICES** TO IMPACTED PERSONS 7](#_Toc67937116)

[1. Possible services 7](#_Toc67937117)

[2. General considerations 9](#_Toc67937118)

[STEP 2: **INVESTIGATION** 10](#_Toc67937119)

[1. Different aspects of investigation 10](#_Toc67937120)

[2. Identification of the potential illicit practice and assessment of its nature and gravity 11](#_Toc67937121)

[AT THE APPROPRIATE TIME: **INFORMING** concerned authorities, bodies and persons 13](#_Toc67937122)

[1. Information exchange between Central Authorities of different States 13](#_Toc67937123)

[2. Informing concerned persons 13](#_Toc67937124)

[STEP 3: POSSIBLE **ACTIONS** FOLLOWING THE INVESTIGATION 15](#_Toc67937125)

[1. Actions regarding the adoptee (or adoptable child) and the families in a specific adoption case 15](#_Toc67937126)

[2. Actions regarding OTHER ACTORS 18](#_Toc67937127)

[3. OTHER Actions 19](#_Toc67937128)

[4. Actions to strengthen the LEGAL FRAMEWORK and address enabling factors 20](#_Toc67937129)

[5. Actions regarding the OTHER STATE(S) concerned 21](#_Toc67937130)

# MODEL PROCEDURE TO RESPOND TO SUSPECTED AND ACTUAL CASES OF ILLICIT PRACTICES

1. This Model Procedure presents what actions State actors should consider taking to effectively address and respond to situations involving suspected or actual cases of illicit practices under the 1993 Adoption Convention.
2. The circumstances relating to each individual intercountry adoption will be unique, and the needs of each adoptee,[[1]](#footnote-2) the birth parents (/family) and adoptive parents (/family) [[2]](#footnote-3) may differ. In working to address the various issues, it is important to focus on the best interests of the child which should be the paramount consideration,[[3]](#footnote-4) while remaining sensitive to the concerns of birth families and adoptive families. It is also important to consider “not only the short, but also the long-term effects on the adoptee of any action taken to address the illicit practice”.[[4]](#footnote-5)
3. This Model Procedure presents a wide array of measures and is deliberately general, so as to encourage States to develop their own procedure, adapted from this Model Procedure, and to widely disseminate it to all State actors involved in intercountry adoption. It has to be noted that “not all services and measures may be available in all States and that each State may develop its own procedure based on its own legislative and institutional framework, as well as their available resources”.[[5]](#footnote-6)
4. The order of the steps and actions presented in this Model Procedure may need to be adapted according to the nature of the case, the national system, and the different authorities and bodies involved at the national or local level. For example, certain actions may be relevant throughout the procedure, some may need to occur simultaneously or in a different order.
5. The Model Procedure is designed to apply potentially to any situation, whether an individual case or a more generalised problem (*i.e.*, a pattern). Where appropriate, additional information mainly relevant to responding to cases affected by a pattern of illicit practices has been included in boxes.
6. Contracting States are also encouraged to apply this Model Procedure for intercountry adoptions made with States that are not party to the Convention.[[6]](#footnote-7) [Finally, Contracting States may also apply this Model Procedure for intercountry adoptions made before the entry into force of the 1993 Adoption Convention (historic cases). However, if a State decides to use the example of this Model Procedure in order to address and respond to historic cases, certain actions and procedures suggested may need to be adjusted or complemented. [[7]](#footnote-8)]

**Potential obstacles to responding to illicit practices**

Various factors can make it difficult to respond in an effective manner when illicit practices occur, for example:

* **lack** of **resources**, lack of established **frameworks** (such as protocols), **denial** of **responsibility** or **mandate,** and **lack** ofpolitical **will,** to identify, confront, investigate, address and respond to illicit practices;
* **lack** of **access** to **documents** and **records**, especially when concerned bodies cease their activities or when they refuse to cooperate;
* **lack** of accessible **complaints mechanisms**;
* **statute of limitations** (*i.e.,* the maximum time after an event within which legal proceedings may be initiated has elapsed);
* **fears** that investigation may lead to **children** being **returned** to the State of origin;
* **fears** that investigation may lead to **litigation**;
* **fears** that the adoption may be **revoked**, and the adoptees becomes **stateless**;
* **fears** that investigation may **jeopardise** intercountry adoption **relations** between States and / or lead to the **suspension** of an intercountry **adoption programme** between States (or an individual case will be blocked);
* **failure** to fully acknowledge and properly implement the **co-responsibility** of States to prevent and address illicit practices;
* **power imbalances** which may exist in intercountry adoption and, in particular, the difficulty for birth families to have their voices heard.

## STEP 1: **DISCLOSURE** AND **RECORDING** OF SUSPECTED CASES OF ILLICIT PRACTICES

### How may suspicions of illicit practices arise?

1. Suspicions of illicit practices may arise as a result, among others, of the following:[[8]](#footnote-9)

* observations of irregularities in intercountry adoption cases;
* comments made by an adoptee about their background;
* concerns about an ongoing or already finalised intercountry adoption raised by an adoptee, a birth family, PAPs, an adoptive family, an authority, a community member or anyone related to that adoption;
* reviews or investigations conducted by authorities or bodies in the State of origin or the receiving State, international organisations, or other;
* monitoring, supervision and audits of AABs;
* media reports;
* legal proceedings;
* law enforcement activity;
* DNA testing;
* searches for origins.

1. In addition, the presence of **multiple enabling factors** may be the precursor to suspicions of illicit practices.

**1993 Adoption Convention**

“A competent authority which finds that any provision of the **Convention** has not been respected or that there is a serious risk that it may not be respected, shall **immediately inform the Central Authority of its State**. This Central Authority shall be responsible for ensuring that appropriate measures are taken.” (Art. 33)

**In addition, in the context of disclosure of a pattern of illicit practices:**

The **disclosure** of a **single** illicit practice may further **reveal** a **pattern** of illicit practices: wherever an illicit practice is disclosed, it is therefore important to always verify whether this illicit practice is an isolated case or whether it might be part of a pattern (*i.e.,* question if, depending on the illicit practice and its circumstances, the concern which arose in a particular case has also arisen in other cases (and review these other cases)).

### Which authority should record suspected cases of illicit practices?

1. Central Authorities should record any suspicions of practices or activities that may potentially be illicit and that they discover or that are brought to their attention by any interested person, authority or body. Central Authorities should take any reasonable allegations or concerns seriously. Central Authorities may also consider using diplomatic channels to raise their concerns regarding suspicions involving their counterpart in the other State.
2. States should also designate an alternative competent authority (*e.g.*, an administrative tribunal, an investigative authority, an ombudsman) to report to in the case that there are suspicions that the Central Authority may be involved in the suspected illicit practice.

### What actions should States take to facilitate the disclosure of illicit practices?

1. To improve the likelihood that suspected cases of illicit practices are disclosed and recorded, States should:

* designate an individual (or individuals) within the Central Authority to serve as the **official point of contact** on matters relating to illicit practices, and provide such individuals with appropriate training to help them recognise indications of potential illicit practice (*e.g.,* training on illicit practices, adoptees and children’s rights, child-friendly procedures);
* establish easily **accessible means of reporting**, whether orally (*e.g.*, hotline) or in writing (*e.g.*, complaint registry), in the Central Authority (or other competent authority), and widely publicise its existence and the relevant contact information;
* remind **competent authorities** of their **duty** to **inform the Central Authority** of their State immediately upon learning about possible illicit practices or if anything of concern is suspected (see HC, Art. 33);
* encourage all **individuals** and **bodies** involved in the intercountry adoption process (*e.g.*, adoptees, birth parents (/family), PAPs, adoptive parents, AABs, child institutions) to **report promptly** to the Central Authorities or other relevant authority whenever a potential illicit practice is suspected or anything of concern[[9]](#footnote-10) is raised, and ensure such individuals and bodies have proper protection (*e.g.*, confidentiality of their names) so they are **free from harassment and retaliation**;
* provide **information** toadoptees, birth families, PAPs and adoptive families about illicit practices, the importance to disclose suspected illicit practices as early as possible, and on what to do when they suspect that an illicit practice has taken place;
* include **training** on illicit practices in information sessions for (prospective) adoptive **parents**;
* include **training** on illicit practices as part of the accreditation and authorisation process for **AABs** and licensing of child institutions; staff of AABs and institutions should also receive such training;
* establish **channels of communication** with counterparts in the Central Authorities of other States to discuss possible illicit practices, and exchange information on a regular basis about how to facilitate the disclosure of illicit practices and how to prevent and address them.

### Confidentiality and rules on privacy

1. States should ensure that the information collected during the disclosure of suspected cases of illicit practices is subject to the rules on privacy and sharing of information of the concerned State. In addition, unless the law of the State provides differently, confidentiality should not be used to prevent investigation.

## IF APPROPRIATE: CONSIDERATIONS OF TEMPORARY **CHILD PROTECTION MEASURES**

### Temporary protection measures for the child for ongoing adoption processes and already finalised adoptions

1. From the moment credible allegations or suspicions of illicit practices are disclosed and until final measures following the investigation can be taken, any potential child protection concerns should be promptly reported to the competent authorities of the concerned State.
2. The competent authorities of the State where the child is physically present should have primary responsibility for the protection of the child but should cooperate with the other concerned States. In accordance with their domestic law, they should assess the situation and determine what, if any, temporary measures may be needed to protect the child (*e.g.*, temporary arrangements for the child’s care) pending the results of the investigation.[[10]](#footnote-11)

### Additional considerations regarding ongoing adoption processes

1. If suspicions of illicit practices are disclosed during an ongoing adoption process (*i.e.*, the adoption is not yet completed – including issuance of the Art. 23 certificate):

* it may be desirable to immediately **halt** the adoption process from the moment suspicion of illicit practice is disclosed (with the assistance, where appropriate, of the Central Authority (or competent authority) of the other State);
* Central Authorities should **not issue the Article 17(c)** agreement to proceed, nor should the competent authorities make the adoption decision and issue the Article 23 certificate;
* if warranted, the Central Authority (or competent authority) of the State of origin where the child is physically present should consider taking steps to **prevent the removal** of the child from their State while the matter is being investigated.

1. A final decision on whether the adoption process can be resumed should only be made after the investigation has been completed (see further below Step 3.1.a) or when the investigation clearly shows that the illicit practice can be isolated and it does not have any incidence on the possible continuation of the particular adoption case (*e.g.,* if the suspected illicit practice involved the original PAPs, the child may be proposed for adoption to other PAPs if there are no other issues).

## ONGOING STEP: **SERVICES** TO IMPACTED PERSONS[[11]](#footnote-12)

1. Professional support is key when facing (suspicions of) illicit practices given the complexities of such situations. Services or sources of assistance and support should therefore be available to adoptees, birth parents, PAPs and adoptive parents who may be confronted with a situation where suspicions of an illicit practice are raised or an illicit practice is confirmed following an investigation.[[12]](#footnote-13) When providing such services, assistance and support, a child-friendly approach where the child can participate, in accordance with their age and maturity, should be adopted.
2. Central Authority personnel and the staff (and others acting on behalf) of AABs should receive training on how to assist impacted persons, including by directing them to available and appropriate services and support.

### Possible services

1. The following is a list of the services, support and assistance that may be available and to which Central Authorities and AABs should direct adoptees, birth parents (/families), PAPs and / or adoptive parents (/families), as appropriate, on a case-by-case basis:
2. **Counselling and casework support services**: the Central Authority should provide counselling and casework support by qualified professionals (or direct impacted persons to qualified professionals who can provide such counselling and casework support in case it cannot provide it itself) in line with the levels of counselling and support provided in their adoption and post-adoption support programmes. The nature and scope of available services may be adapted on a case-by-case basis and may vary from one State to another.[[13]](#footnote-14)
3. **Mediation**: when a suspected illicit practice is disclosed, adoptees, birth parents and adoptive parents may have conflicting needs and desires. Where appropriate, mediation with a trained impartial mediator may be available to help them reach a satisfactory outcome.[[14]](#footnote-15)
4. **Legal assistance**: impacted persons may need the assistance of a legal practitioner with experience in family law or children’s issues to deal with their case.[[15]](#footnote-16) The adoptee may need to have a separate representative to avoid conflicts of interest. Upon request, the Central Authority should direct them to the referral service of the private bar or other available resource for assistance in finding a legal practitioner.
5. **Financial assistance**: legal and other related costs may be incurred by adoptees and their families in accessing services. General information about possible financial assistance should be provided by the Central Authority (*e.g.*, some States may offer some services for free, others may provide for legal aid or for other low-cost services, or subsidise services provided by other authorities or bodies). Queries about whether any applicable financial assistance options apply under the circumstances of a case should be directed to the relevant Central Authority or competent authority.[[16]](#footnote-17)
6. **Other assistance**: other assistance such as translation of documents and interpretation may also be provided depending on the needs of the adoptee, the birth parents and / or the (prospective) adoptive parents.
7. **Maintaining contact between the authorities and the concerned persons**: the suspicion of illicit practice may be raised by 1) the adoptee and / or the birth parent(s) and / or the (prospective) adoptive parent(s) or 2) by someone else.

In the first case, the competent authority should ensure ongoing contact with the adoptee, the birth parents and the (prospective) adoptive parents throughout the procedure. The Central Authority (or the competent authority) may be the primary contact for providing updated information about the progress of the investigations (where such updates are available) or responding to further questions or concerns.[[17]](#footnote-18) It would be useful to designate a contact person within the relevant authority who could be in charge of having day-to-day contact with the affected families.

In the second case, once it is decided to reach out to the adoptee, birth parents and / or (prospective) adoptive parents, contact between the authorities and the concerned persons should be maintained.

In both cases, such contact may also require appropriate support (see above).

1. **Contact facilitation between the adoptee and their birth family**: contact facilitation, tracing, search for origins,[[18]](#footnote-19) DNA testing, and family reunification services may be provided following the disclosure of a (potential) illicit practice,[[19]](#footnote-20) as appropriate and in accordance with the wishes of the adoptee and their birth family and taking into consideration the best interests of the child. The availability, scope and nature of such services may vary from one State to another.
2. **Managing media attention**: concerns about illicit practices may be raised in the media. Intercountry adoption often attracts media attention, and this can present additional challenges when dealing with illicit practices. If this does occur and assistance is required in managing that interest, the Central Authority may be able to provide some assistance in the first instance, depending on the circumstances.[[20]](#footnote-21)
3. **Associations, support groups and NGOs**: associations, support groups and NGOs may provide important support and assistance to impacted persons. Where available, the Central Authority should therefore direct impacted persons to such associations, groups or organisations. They should also consider encouraging the organisation of such associations and groups, and facilitating their meetings where this is possible.

**In addition, in the context of a pattern of illicit practices:**

States may wish to provide for **additional services** and / or adapt their services for impacted persons where there is a (suspected) pattern. States may also direct impacted persons to other authorities, bodies, associations or NGOs which are accustomated to providing services to persons impacted by a pattern.

### General considerations

1. The needs of each adoptee, the birth parents (/family), PAPs and adoptive parents (/family) will differ and should be considered on a **case-by-case basis**, and if the adoptee is still a child, taking into account their best interests.
2. Some Central Authorities may themselves be able to provide (some of) the services mentioned above. If they cannot, or do not, provide those services, where appropriate, the Central Authority may help impacted persons **identify** appropriate support and advocacy. This may include appropriate counsellors, psychologists, social workers, mediators, investigators, lawyers or other professionals, as well as relevant NGOs, adoptee associations or groups formed by adoptive families or by birth families. A protocol or other form of formal advice regarding where to get assistance could also be established. Adoptees, birth families and adoptive families may also wish to access other services or resources.
3. Support to impacted persons should be **provided as long as it is deemed necessary**. For some, this may involve point-in-time support when a particular illicit practice is disclosed. For others, it may involve support over several years, even after actions have been taken to respond to the illicit practice.

## STEP 2: **INVESTIGATION**

1. The Central Authority (or other competent authority) of the State where an illicit practice may have occurred should initiate (or ask the relevant authority to initiate) an investigation as soon as possible, in coordination with the relevant authorities, to determine whether the illicit practice occurred and, if so, what action(s) may be required.[[21]](#footnote-22) It should be made clear who is responsible for leading the investigation. It is also important that the investigation is carried out in a timely manner. The Central Authorities of other concerned States should assist to the extent possible and cooperate in such investigation.
2. Depending on the type of illicit practice that is suspected, initial questions that might need to be considered include, for example:[[22]](#footnote-23)

* Is a valid birth certificate available?
* Was the child properly declared adoptable (HC, Art. 4)?
* Did the birth parents understand the effect of their consent (HC, Art. 4)?
* Was the child relinquished by the birth family under false pretences or due to inducement (HC, Art. 4)?
* Were suitable permanent family alternative care other than intercountry adoption given due consideration in the State of origin (HC, Art. 4)?
* Were the PAPs and the child habitually resident in different States (HC, Art. 2)?
* Was the legal adoption procedure in the concerned State followed?
* Have the authorities in the State of origin or receiving State approved the adoption (HC, Art. 17)?

### Different aspects of investigation

1. **Review of documentation**: the authority responsible for conducting the investigation should closely review all documents relating to the intercountry adoption for possible irregularities.[[23]](#footnote-24) In doing so, it should consider whether there are irregularities or information on file to suggest that further action is required. A review of the adoption documentation alone may not suggest any obvious irregularities that could amount to an illicit practice (*i.e.*, the available information on file may appear consistent with established practice and procedures for an adoption from a State at that particular time). Careful consideration should nevertheless be given if, despite the existence of appropriate adoption documentation, reasonable concerns continue to suggest possible illicit practice.[[24]](#footnote-25) The type of illicit practice and the circumstances may suggest the need to review the documentation in other files to see if possible patterns arise.
2. **Outreach**: the authority responsible for conducting the investigation should contact the relevant authorities, the adoptee, the birth family, the (prospective) adoptive parents, concerned AABs, child institutions and other relevant actors, as appropriate and in a timely manner. If there is an Embassy or a Consulate of the investigating State located in the other concerned State, it may be requested to provide all possible assistance. The adoptee, birth family, PAPs and adoptive family should be approached in a respectful and careful way, and contact with children should also be done in a child friendly manner.
3. **Preservation of records**: regardless of the outcome, the information and records of the investigation should be documented, recorded and preserved (if possible, indefinitely) by the investigating authority. This information could be valuable in possible future cases.[[25]](#footnote-26)
4. **Verification of identity**: where appropriate and necessary, DNA testing could be carried out to verify the identity of the child and the birth parents (/family).
5. **Confidentiality**: in conducting the investigation, the relevant privacy laws or regulations should be taken into account. Unless the law provides otherwise, the sharing of any identifying information should be subject to appropriate consents. This may be particularly important if the case is receiving media attention.[[26]](#footnote-27) In addition, unless the law of the State provides differently, confidentiality should not be used to prevent investigation.
6. **Referral to law enforcement**: any cases where potentially criminal activities are suspected should be referred to the appropriate law enforcement authorities.
7. **Request that another State make enquiries or investigation**: the Central Authority or competent authority conducting an investigation may request another concerned State to make appropriate enquires or investigations into the circumstances surrounding the illicit practice concerns or allegations.[[27]](#footnote-28) If relevant, investigations should take place in **both** the **State of origin** and the **receiving** **State**. In that case and if feasible, concerned States should consider **collaborating** in their respective investigations.
8. **Suspending intercountry adoption programme**: depending on the circumstances, the type and seriousness of illicit practice that is suspected, States should consider suspending their intercountry adoption programme with the concerned State during the investigation.
9. **Suspending accreditation and / or authorisation of AABs**: depending on the circumstances and the type of illicit practice that is suspected, States should consider suspending the authorisation and / or accreditation of AABs that are suspected to be involved in an illicit practice.

**In addition, in the context of a pattern of illicit practices:**

* The **investigation** may be done specifically for each **individual** case or **generally** for all cases falling in the same pattern.
* A few States have put in place government processes (*e.g.,* a **Commission)** to investigate patterns of illicit practices.

### Identification of the potential illicit practice and assessment of its nature and gravity

1. At the conclusion of the investigation, the investigating authority should usually be able to determine if an illicit practice occurred under the law of the investigating State,[[28]](#footnote-29) and the nature of such practice. This information will be critical to determine the **future actions** to be taken, including whether administrative or penal sanctions may be applicable.
2. If the investigation concludes that it is not an illicit practice, the authority may assess whether it might be an **enabling factor** that might lead to an illicit practice. To assist them in this respect, authorities and bodies may use the Fact Sheets in the Toolkit. The competent authorities should do their utmost to follow the actions suggested in the Fact Sheets to prevent such enabling factors (see further below Step 3).

## AT THE APPROPRIATE TIME: **INFORMING** concerned authorities, bodies and persons

1. Communication, cooperation, and coordination between different relevant counterparts (*e.g.*, Central Authorities, competent authorities, law enforcement authorities) within a specific State, as well as between the concerned States, should happen throughout the process of responding to the illicit practice.[[29]](#footnote-30) To facilitate communication, the Central Authority may identify a person who will act as the contact point for all matters relating to illicit practices.

### Information exchange between Central Authorities of different States

1. The Central Authorities of the State of origin and the receiving State should, as far as possible and unless inappropriate given the particular circumstances, inform each other as soon as the information is known and / or as soon as the particular circumstances of the case permit. Thereafter, the Central Authorities should keep each other informed of developments in the investigation and the response to the illicit practice. They may also consider meeting, for cooperation and exchange of information in the investigation of the cases (see Part V - Guidelines).

**1993 Adoption Convention**

“[Central Authorities] shall take directly all appropriate measures to […] **keep one another informed** about the **operation** of the Convention and, as far as possible, **eliminate any obstacles** to its application.” (Art. 7(2)(b))

“Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to […] **reply**, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for **information** about a **particular** adoption **situation.**” (Art. 9(e))

**In addition, in the context of a pattern of illicit practices:**

The Central Authorities involved may get in **contact** with **other concerned Central Authorities** at an appropriate time and manner. For example:

* The Central Authority of a State of origin that suspects that a child institution has been or is falsifying the consents of birth parents should contact the Central Authorities of the receiving States where children from this institution have been adopted or are in the process of being adopted to properly investigate the situation.
* A State of origin that suspects that an AAB working in its State has participated in illegal activities should reach out to the receiving State where the AAB is accredited to initiate a proper investigation. The Central Authority of the receiving State may need to contact other States of origin where the AAB is also working as part of its investigation.
* The Central Authority of a State that is aware that illicit practices have occurred in its partner State should, depending on the circumstances, consider informing the Central Authorities of other States working with that particular State.

### Informing concerned persons

1. Suspected illicit practices may come to the attention of the Central Authority (or other competent authorities) without the knowledge of the adoptee, the birth family and / or the (prospective) adoptive parents. In such cases, the concerned authorities should comply with relevant privacy obligations and take action as appropriate. This could involve liaising with other authorities and may include the relevant authorities contacting the adoptee, birth family and / or (prospective) adoptive parents. [[30]](#footnote-31)

## STEP 3: POSSIBLE **ACTIONS** FOLLOWING THE INVESTIGATION

1. Where an **investigation** does **not substantiate the concerns or allegations** of illicit practice or cannot be substantiated,[[31]](#footnote-32) depending on the circumstances, the Central Authority or other competent authority may nevertheless need to address one or more enabling factors to strengthen the intercountry adoption procedure. In addition, the adoptee, the birth parents and / or the (prospective) adoptive parents may want to seek post-adoption support services available to them (see section “Services to impacted persons”). The Central Authority should direct them accordingly.
2. Where an **investigation** **substantiates the concerns or allegations** of illicit practice, possible actions by the competent authorities may vary depending on the particular circumstances and factors, such as:

* the best interests and fundamental rights of the child;
* the type of illicit practice itself (see the Fact Sheets);
* who committed the illicit practice;
* whether the commission of that illicit practice was deliberate or intentional (the degree of culpability of the actors, *e.g.*, intentional, reckless, gross negligence);
* the stage of the adoption at which the suspicion of the illicit practice was raised;
* the consequences of the illicit practice on the validity of the adoption or the adoption process;
* the short but also the long-term effects of the illicit practice on the adoptee;
* where appropriate, the views of the concerned persons, *i.e.*, the adoptee, the birth parents or others with pre-adoption responsibility for the child, and the (prospective) adoptive parents; and
* the consideration of not creating other harms.

1. In addition to the actions that may be taken regarding a particular case and adoptee, the State may also consider taking **measures to prevent the recurrence** of the illicit practice (which will be directed at future similar cases). Following an investigation, possible actions to be taken in a particular case may also depend on whether the illicit practice is an isolated incident or part of a pattern.

### Actions regarding the adoptee (or adoptable child) and the families in a specific adoption case

#### If the adoption has not yet been completed (including issuance of the Art. 23 certificate)

1. **If it is in the best interests of the child** and it does not affect the integrity of the adoption process, consider assessing whether it is possible to **rectify the situation or “heal” the illicit practice** by doing what should have been done had the provisions of the 1993 Adoption Convention and applicable laws been respected (*e.g.*, give the consent *a posteriori*, apply the principle of subsidiarity retroactively, refund a specific amount).[[32]](#footnote-33)
2. Rectification should, however, not be seen as an expedient alternative to compliance with the Convention. Contracting States have an international legal obligation to adhere to the Convention and apply its safeguards.[[33]](#footnote-34) In addition, Contracting States have the obligation to apply their domestic laws and regulations. Consequently, depending on the nature of the illicit practice and the concerned States’ laws and regulations, rectification may not be possible.
3. Rectification measures should be seen as an exception made, where practicable, to protect the best interests of the child.[[34]](#footnote-35) Thus, if it is possible to rectify the situation or “heal” the illicit practice, and it is in the best interests of the child, the adoption process may then continue.
4. If it is **not possible** to **rectify** the situation or heal the illicit practice, and / or if it is not in the **best interests of the child** to do so, the following may be considered:

* terminating the process, by one or both Central Authorities, by not issuing the agreement to proceed under Article 17(c) of the 1993 Adoption Convention or by withdrawing such agreement;[[35]](#footnote-36)
* not issuing the adoption decision (usually made in the State of origin);
* not issuing the certificate of conformity under Article 23 of the 1993 Adoption Convention (usually made in the State of origin) if the adoption decision has been made;
* establishing a **new life plan for the child**:
  + ensure that the best interests and fundamental rights of the child are the paramount consideration (HC, Art. 1(a); CRC, Art. 21);
  + make a full assessment of the child’s particular circumstances;
  + take into consideration the child's wishes, opinion and consent, considering their age and degree of maturity;
  + depending on the nature of the illicit practice (*e.g.*, irregularities in the identity of the child or the consents to adoption) and the stage of the adoption process at which it was halted, the assessment may need to involve the child’s birth family;[[36]](#footnote-37)
  + possible options for care may include:
    - the return of the child with their birth parents, after appropriate counselling and support for all persons concerned;
    - a kinship placement with extended family;
    - a new placement of the child with a view to adoption;
    - suitable alternative long-term family care.

#### If the adoption has already been completed

1. Possible actions will vary depending upon the factors mentioned in the introduction to this step. Some actions should apply only if the adoptee is still a child. In that case, the best interests and fundamental rights of the child should be the paramount consideration (HC, Art. 1(a); CRC, Art. 21). The considerations presented below may be taken in conjunction or independently.
2. Considerations regarding possible child protection concerns if the adoptee is still a child
3. Depending on the nature and circumstance of the illicit practice, and the situation of the child, child protection concerns (*e.g.*, serious problems in the family, disruption or breakdown of the adoption, abuse or neglect in the family, an older child does not want to continue living with the family[[37]](#footnote-38)) may arise during, or as a result of, the investigation (see also above paras 13-16). Central Authorities or any other authorities that become aware of such concerns must promptly report them to the competent child protection authorities in the State of the child’s habitual residence. Such authorities should take the necessary measures to protect the child and handle the situation expeditiously in accordance with the child welfare legislation.
4. Where necessary to protect the child, and after very careful consideration, the child may be removed from their home and taken into temporary or long-term care (placement within the wider family or community should be preferred).[[38]](#footnote-39) Any such measures should be taken by the competent authorities in the State where the child is habitually resident (or physically present), after a full assessment of the following:

* the alleged child protection concerns and the nature of the illicit practice;
* the child’s circumstances, needs, best interests and adoption journey throughout their lifetime (*e.g,* if the child is settled in their adoptive family, if a long period has elapsed since the adoption, if the child (of proper age and level of maturity) expressed their preference (or if appropriate, consent) to stay with the adoptive family);
* the adoptive parents’ parenting skills;
* the extended family and social networks;
* whether the adoptive parents knew and / or were involved in the illicit practice; etc.

1. Central Authorities should also cooperate, to the extent possible and in accordance with applicable legislation and procedures, to this assessment, in order to find a solution that is in the best interests of the child. If needed, in the case where the child is in long-term care, a new life plan for the child may need to be established.
2. Child protection measures, including taking the child into long-term care, affect the exercise of the adoptive parents’ parental responsibilities but not the child’s legal parentage. In very serious situations, the legislation in the State of habitual residence may allow the taking of measures to extinguish the adoptive parents’ parental responsibilities.
3. Considerations regarding revocation or annulment
4. Depending on the nature of the illicit practice and the possible consequences on the validity of the adoption, the law of the State where the adoption was granted and / or the law of the State of the habitual residence of the adoptee may allow for the revocation or annulment of the adoption. Such law will notably determine the following issues:

* the competent authority (usually a court) of which State would have jurisdiction;
* who may seek the revocation or annulment (*e.g.*, adoptee, birth parents, adoptive parents, the State through a competent authority);
* the grounds upon which revocation or annulment may be granted and the procedure involved (including whether there is an age limit or time limit within which to seek the revocation or annulment);
* the legal consequences of a revocation or annulment (*e.g.*, extinction of the legal parentage of the adoptive parents and termination of their parental responsibilities), including regarding the nationality or nationalities of the adoptee.

1. Where the applicable law would allow the State (through a competent authority) to seek the revocation or annulment of an adoption and the adoptee is still a child, any such decision should only be given consideration after:

* a full assessment by the competent child protection authority of the child’s particular circumstances, needs and their best interests (including their views, or if appropriate, consent);
* a determination by such authority that maintaining legal parentage with the adoptive parents is not in the best interests of the child; and
* the establishment of a new life plan, in consultation with, where appropriate and possible, all the impacted persons.

1. The new life plan for the child after revocation or annulment may involve:

* securing the **return of the child to their birth family**, if the interests of the child so require, depending on the current circumstances and other factors, and after appropriate counselling and support for all parties. In such case, the State of origin has to ensure that the birth family is capable of taking care of the child; this option would necessarily involve an important degree of cooperation between the receiving State and the State of origin; or
* organising a **new placement** of the child with respect to **adoption**; or
* finding other alternative **long-term family care**.

1. Central Authorities should strongly encourage any adult adoptee, birth parent or adoptive parent who may be considering a revocation or annulment to seek support and legal advice, including concerning the possible consequences on the nationality or nationalities of the adoptee, before initiating legal proceedings. States should do their utmost to ensure that adoptees do not lose any benefits gained (*e.g.,* nationality) by the adoption in case of revocation or annulment.
2. Considerations regarding the recognition of the adoption
3. The 1993 Adoption Convention establishes that “the recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child” (Art. 24). Some States may consider that recognising an intercountry adoption where illicit practices occurred is contrary to their public policy, and therefore may refuse to recognise that adoption.
4. Before refusing to recognise an intercountry adoption, States should be mindful that such refusal would result in limping parentage (*i.e.,* different legal parentage in different States), which may adversely affect the adoptee throughout their lifetime. Therefore, non-recognition should be a very extraordinary measure and balanced against the best interests of the child and the other different interests at stake to avoid, to the extent possible, the consequences of limping parentage.[[39]](#footnote-40)

### Actions regarding OTHER ACTORS[[40]](#footnote-41)

#### Authorities

1. If the investigation reveals that staff or other persons working for an authority were involved in illicit practices, the authority in charge of the investigation or another relevant competent authority should consider what would be the most appropriate action given the particular circumstances. For example, it could involve corrective actions, disciplinary sanctions such as demotion, suspension of functions, removal from position.

#### AABs

1. Where AABs or approved (non-accredited) persons, including their staff, representatives or volunteers, are involved in illicit practices, authorities should consider what would be the most appropriate action given the particular circumstances:

* Preliminary sanctions may include requests for **corrective action**, or **fines**.
* Additional sanctions may include suspension of the accreditation, authorisation, approval or license. In some cases, **suspension** may be imposed with the understanding that it will be withdrawn if the body or institution concerned does not take certain steps to address the illicit practice that took place.[[41]](#footnote-42)
* The competent authority may also decide to **withdraw (or refuse to renew) the accreditation** and / or **authorisation** of an AAB (or approval of an approved (non-accredited) person). In that case, a strict procedure should be followed, such as notification in writing to the body of intention to withdraw the accreditation, with the possibility for the body to state its case against the withdrawal before it occurs. Provisions should be in place for another body or authority to deal with the cases being managed by the AAB. In addition, provisions should be in place for the opportunity to appeal against any decision connected with withdrawal or suspension of an accreditation.[[42]](#footnote-43) If finally the accreditation and / or authorisation is withdrawn, the Permanent Bureau should be informed in order to update the HCCH website as necessary.

#### Child institutions

1. When child institutions are involved in illicit practices, authorities should consider what the most appropriate action would be, given the particular circumstances:

* Preliminary sanctions may include requests for corrective actions or fines.
* Additional sanctions may include the possibility that the child institution is no longer permitted to take care of children in need of adoption, or that the child institution be closed (in some cases their licence or authorisation may be suspended, in others completely withdrawn). In any case, decisions should be made as to the children living in that institution.

### OTHER Actions

#### Criminal prosecutions

1. Where the situation raises concerns about potential criminal activity, Central Authorities or other competent authorities should alert the law enforcement authorities in a timely manner, which will then conduct a proper criminal investigation. The decision to prosecute will be taken by the competent authority (usually the Attorney General) based on the available evidence in light of applicable criminal law provisions. Central Authorities should cooperate to the extent possible with any such investigation or prosecution.
2. States may refer to the Fact Sheets for further information about the importance of legislating in this area, including criminalising illicit practices and establishing penalties which are significant enough to deter all persons and actors involved in intercountry adoption from engaging in them.[[43]](#footnote-44) Statutes of limitations should be of sufficient length to be able to ensure prosecution of those involved in illicit practices. In any case, although criminal prosecutions are an essential remedy, they should never be seen as the sole remedy for illicit practices.

#### Civil suits

1. Civil suits may be available in a State in order to sue those liable for the illicit practice and the damages caused. Central Authorities, or other competent authorities, may provide information about such a possibility to interested persons, including information about available legal and financial assistance to make a proper claim in the right jurisdiction.
2. Possible remedies available through civil suits include restoration of the adoptee’s identity, restoration of nationality of the State of origin (if applicable), the suspension of the wrongful activity, the revocation or annulment of the intercountry adoption, as well as monetary relief (*e.g.,* damage compensation, refund of fees).

#### International courts and other international mechanisms

1. When cases of illicit practices are not addressed, international courts and other international mechanisms, to which the State is party, may be relied on. Treaties providing complaint procedures for individuals at the international level include the CRC (through its Optional Protocol on a Communications Procedure (OPIC)), the *International Covenant on Civil and Political Rights* and the *International Convention for the Protection of All Persons from Enforced Disappearances*. The *African Charter on the Rights and Welfare of Children*, the *European Convention on Human Rights* and the *Inter-American Convention of Human Rights* provide regional complaints mechanisms.
2. These mechanisms can only be relied upon when the practice that occurred in intercountry adoption constitutes a violation as described in the international instrument on which the mechanisms are based and after all available domestic remedies are exhausted (as well as other admissibility criteria). States Parties to these instruments may provide information about such available mechanisms to interested persons.

**In addition, in the context of a pattern of illicit practices:**

* Central Authorities and other competent authorities should be aware that if their State is party to the OPIC (as well as the CRC and / or the OPSC), the Committee on the Rights of the Child may initiate an inquiry procedure if it receives reliable information indicating grave or systematic violations by the State of rights set forth in the CRC or the OPSC. This may include a pattern of illicit practices in intercountry adoption. This information may be provided by any actor and domestic remedies need not be exhausted for this procedure to commence. The Committee will seek the cooperation of the State party at all stages of the inquiry.

#### Other measures

**In addition, in the context of a pattern of illicit practices:**

* Some authorities have liaised with their respective Minister, in order to discuss the possibility that the government makes a national apology.
* States may also wish to consider if restorative justice may work for adoption cases.

### Actions to strengthen the LEGAL FRAMEWORK and address enabling factors

1. States should commit to addressing the factors and systemic weaknesses that enable and / or facilitate illicit practices. To assist them in that aspect, States may request technical assistance (see Part V – Guidelines).
2. States should consider **modifications** to their laws, regulations, practices, procedures or protocols to make them more “robust” and effective in preventing and addressing any possible future illicit practices.

### Actions regarding the OTHER STATE(S) concerned

1. States may consider recommending that the other concerned State (either the State of origin or the receiving State) undertakes an investigation as to the **legality of the adoption process** in its State.
2. Depending on the circumstances and the type of illicit practice, States may need to consider **suspending their intercountry adoption programme** with the concerned State, permanently or temporarily, until effective actions have been taken to address the situation. If this step is to be taken, States should also have a protocol for transition cases.

**In addition, in the context of a pattern of illicit practices:**

* A decision to suspend the intercountry adoption programme may be even more relevant in the context of patterns of illicit practices.
* States where a pattern of illicit practices have been disclosed may also wish to share what happened and how the situation was handled with other States in a spirit of cooperation, so that lessons learned can be shared and the other States can take measures to prevent those patterns from occurring in their own States. For example, if a particular AAB is involved in illicit practices in one State, other States of origin in which that AAB operates should take appropriate steps, and if necessary, limit its activities or suspend its operations. See further Part V – Guidelines.

1. The Model Procedure is also applicable to suspected illicit practices during the adoption procedure and where the child has not yet been adopted (*i.e.,* is not yet an “adoptee”); however, for ease of reference the word adoptee is used also to refer to these children. [↑](#footnote-ref-2)
2. The Model Procedure sometimes refers to “parents (/family)” to indicate that the action specifically refers to parents, but in some cases, it may also involve other members in the (nuclear) family (see definition of family in the Glossary of the Toolkit). [↑](#footnote-ref-3)
3. See CRC, Art. 21; and UNHCR, “[Guidelines on Assessing and Determining the Best Interests of the Child](https://bettercarenetwork.org/sites/default/files/Best%20Interests%20Procedures.pdf)”, 2018, [↑](#footnote-ref-4)
4. 2020 WG Report, para 22. [↑](#footnote-ref-5)
5. *Ibid.*, para. 21. [↑](#footnote-ref-6)
6. See C&R No 11 of the 2000 SC, C&R No 19 of the 2005 SC and C&R No 36 of the 2010 SC. 1. [↑](#footnote-ref-7)
7. See 2020 WG Report, para. 8: “the Toolkit should address how to respond to all cases of illicit practices, including those in non-Convention countries and those preceding the entry into force of the 1993 [Adoption] Convention. However, some participants raised possible concerns as to applying the Toolkit to cases preceding the entry into force of the 1993 Adoption Convention.” [↑](#footnote-ref-8)
8. See Australian Attorney-General’s Department’s, *Protocol for Responding to Allegations of Child Trafficking in Intercountry Adoption*, April 2015 (“[2015 Australian Protocol](https://www.dss.gov.au/families-and-children-programs-services-intercountry-adoption-key-policy-documents/protocol-for-responding-to-allegations-of-child-trafficking-in-intercountry-adoption)”). [↑](#footnote-ref-9)
9. For example, what seems to be a simple incoherence for (prospective) adoptive parents might actually be an illicit practice. [↑](#footnote-ref-10)
10. See [2012 Australian Discussion Paper](https://assets.hcch.net/upload/2012discpaper33en.pdf), p. 8. [↑](#footnote-ref-11)
11. Multiple terms can be used (*e.g.*, victims, persons with lived experience). [↑](#footnote-ref-12)
12. Impacted persons may include the adoptee, a child in need of adoption, the birth parents and the (prospective) adoptive parents. In some cases, it may also include other members of the birth family or adoptive family (*e.g.,* siblings). Some of the services presented in this Model Procedure may also be available to other impacted persons who are members of the family but who are not the parents nor the adoptee. Each State should specify to whom the services will be addressed in that particular State. [↑](#footnote-ref-13)
13. See 2015 Australian Protocol, p. 5. *E.g.*, the Australian Government-funded Intercountry Adoption Family Support Service. [↑](#footnote-ref-14)
14. See C. Baglietto, N. Cantwell, M. Dambach (Eds.), [*Responding to illegal adoptions: A professional handbook*](https://www.iss-ssi.org/images/Publications_ISS/ENG/Illegal_Adoption_ISS_Professional_Handbook.pdf), ISS, Geneva, Switzerland, 2016 (hereinafter, “ISS Handbook”), Chapter 3. See also a [list by country of international mediators](http://www.ifm-mfi.org/country_info_main_page). [↑](#footnote-ref-15)
15. See 2015 Australian Protocol, p. 5. [↑](#footnote-ref-16)
16. *Ibid.,* p. 5. [↑](#footnote-ref-17)
17. *Ibid.,* p. 4. [↑](#footnote-ref-18)
18. See ISS, “[Intercountry adoption and search for origins: A guide for adoptees](https://www.iss-ssi.org/images/Publications_ISS/ENG/ISS_GuideOrigins_ENG.pdf)”, 2018. [↑](#footnote-ref-19)
19. See 2015 Australian Protocol, p. 5. [↑](#footnote-ref-20)
20. *Ibid.,* p. 6. [↑](#footnote-ref-21)
21. See ISS Handbook, Chapter 7. In a State with a federal system, this should include coordination with the relevant jurisdictions within the State. Adoptees, birth families and (prospective) adoptive families may undertake private enquiries about illicit practice concerns, through the law enforcement authorities, private investigators, NGOs, or other channels. This may occur in addition to, or instead of, formal investigation made through the Central Authority. Where private enquires are pursued, the Central Authority should be notified of any illicit practice concerns, as there may be broader implications to be considered. [↑](#footnote-ref-22)
22. Dutch Child Protection Board; see ISS Handbook, Chapter 5. [↑](#footnote-ref-23)
23. See 2015 Australian Protocol. [↑](#footnote-ref-24)
24. See 2015 Australian Protocol, p. 3. For example, similar concerns in multiple files. [↑](#footnote-ref-25)
25. In that respect, concerned States should have legislation in place to determine which information may be collected by the Central Authority and other competent authorities and for what purposes. The legislation should also include rules regarding the retention and subsequent use of this information. [↑](#footnote-ref-26)
26. See 2015 Australian Protocol, p. 4. [↑](#footnote-ref-27)
27. *Ibid*. [↑](#footnote-ref-28)
28. The law of the investigating State would include its domestic legislation and regulation, but also any regional or international treaty to which it may be a Party, *i.e.*, including the 1993 Adoption Convention and the CRC. The ‘investigating authority’ may involve the combined actions of the Central Authority and relevant law enforcement authorities. [↑](#footnote-ref-29)
29. See GGP No 1, Chapter 2.3.3 [↑](#footnote-ref-30)
30. See 2015 Australian Protocol, p. 2. [↑](#footnote-ref-31)
31. For example, due to statute of limitations for criminal investigations or other obstacles faced (*e.g.*, missing records). [↑](#footnote-ref-32)
32. See GGP No 1, para 533. [↑](#footnote-ref-33)
33. See [Note on Habitual Residence](https://assets.hcch.net/docs/12255707-4d23-4f90-a819-5e759d0d7245.pdf), para. 80. All States have also obligations under CRC and / or the OPSC. [↑](#footnote-ref-34)
34. *Ibid.* [↑](#footnote-ref-35)
35. See GGP No 1, para. 527. [↑](#footnote-ref-36)
36. This may be the case if, for example, the consent of the child’s birth parents was not obtained. However, it may not be relevant to involve the child’s birth parents for an illicit practice that occurred during the socialisation period where the birth parents are not involved. [↑](#footnote-ref-37)
37. See GGP No 1, para. 605. [↑](#footnote-ref-38)
38. If a child is taken into care, this should be done following the law of the State of habitual residence of the child, as well as the criteria and procedures set out in the UN Guidelines for the Alternative Care of Children. [↑](#footnote-ref-39)
39. See GGP No 1, para. 529. [↑](#footnote-ref-40)
40. See also section 3 “OTHER Actions” below. [↑](#footnote-ref-41)
41. See GGP No 2, para. 325. [↑](#footnote-ref-42)
42. *Ibid*., para. 324. [↑](#footnote-ref-43)
43. See ISS Handbook, Chapter 5. [↑](#footnote-ref-44)