

# Toolkit for Preventing and Addressing Illicit Practices in Intercountry Adoption

## Part I

### Fact Sheets on Illicit Practices



## Fact sheets on illicit practices

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- 1 The Fact Sheets are designed to assist in the identification of illicit practices and provide a comprehensive presentation of measures that various actors may take to help prevent them. Fact Sheets 1 to 5 present overarching issues. The remaining Fact Sheets (Nos 6-11) address specific aspects and have been organised and, where possible, presented following the order of steps included within a "typical" intercountry adoption procedure.
- 2 Each Fact Sheet has been designed as a stand-alone document. Therefore, there is some repetition of content among the different Fact Sheets.
- 3 The Fact Sheets describe **illicit practices related to a specific issue** that may occur in relation to an adoption. The Fact Sheets are divided into two sections:
  - The first section on **illicit practices**: this section presents the different forms that the illicit practices can take.
  - The second section on **enabling factors**: this section describes the factors that may contribute to and / or facilitate the development of illicit practices. Enabling factors include systemic weaknesses and professional practices that are inconsistent with established good practices.
- 4 The sections are divided into **levels** (N.B. not all levels will be relevant for every Fact Sheet):
  - **Adoption** level: measures and practices that relate to the adoption specifically.
  - **Child protection** level: measures and practices connected with a child protection matter.
  - **General** level: general measures and practices that extend beyond child protection (e.g., documents that are not particular to child protection only).
  - **Sanction** level: elements related to possible criminal investigations, including accountability, prosecution and sanctions.
- 5 Each section is divided as follows:
  - The red or orange boxes describe the **illicit practices** or **enabling factors**.
  - The green boxes describe **possible actions to help in preventing** the illicit practice and / or addressing the enabling factor. Please note that while each illicit practice or enabling factor has its "own" corresponding preventive action, in many cases, in order to help in preventing the illicit practice and / or the enabling factor, other actions presented in the Fact Sheet may also need to be implemented.
  - For each possible preventive actions, the State in which the practice or factor may occur, and which may be primarily responsible for the preventive action, is specified: it can be either the receiving State (**RS**) or the State of origin (**SO**), or both.
- 6 The different measures and practices suggested in the green boxes may provide guidance on how to prevent the occurrence of related illicit practices or address the enabling factors. However, merely following the guidance presented in the Fact Sheets might not be sufficient to prevent illicit practices, and additional or different measures may be needed. Therefore, to prevent illicit practices to the extent possible, all actors should actively apply the measures and practices contained in the Fact Sheets, and indeed in all the tools of the Toolkit, and remain vigilant to any potential concern at every step of the process.

- 7 For some of the information provided in the Fact Sheets, additional explanations are available in the notes at the end of the Fact Sheet (endnotes), which provide more in-depth guidance to identify, understand and / or prevent a specific illicit practice or address an enabling factor. The numbers of the endnotes are colour coded depending on whether they refer to an illicit practice (1), an enabling factor (1), or a possible preventive action (1).

## FACT SHEET 1

### Abduction, Sale of, and Traffic in Children

This FS is to be read together with all FS, in particular FS 3 "Financial Gain"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Abduction of children for the purpose of intercountry adoption.
2. Sale of children for the purpose of intercountry adoption.<sup>1</sup>
3. Traffic in children for the purpose of intercountry adoption.

Establish and properly implement a comprehensive **legal framework** that prohibits, prevents, addresses and prosecutes the abduction, sale of, and traffic in children for the purpose of intercountry adoption and illegal adoptions.



RS  
SO

Carefully regulate the **financial aspects** of intercountry adoption to prevent the abduction, sale of, and traffic in children and illegal adoptions which are, in many cases, driven by financial benefits.<sup>2</sup>

Close or suspend **intercountry adoption programmes** where suspected cases of abduction, sale of, and / or traffic in children have been disclosed, at least until sufficient safeguards have been put in place to address such risk.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

4. Lack of or inadequate comprehensive legal framework and procedures on:
- adoption, including all guarantees (e.g., consent, adoptability, matching, adoption decision); and
  - preventing and addressing abduction, sale of, and traffic in children in intercountry adoption.

5. Lack of, or weak implementation of, the legal framework.



RS  
SO

Establish and properly implement a comprehensive **legal framework**, including the 1993 Adoption Convention, the OPSC and relevant domestic legislation, and procedures.

See also green box corresponding to red boxes 1 to 3 of this FS, as well as section "At the sanction level" below.

6. Inadequate training and / or lack of resources of actors involved in alternative care and adoption.



RS  
SO

Ensure adequate **resources and training** on how to identify, prevent and address illicit practices for actors involved in alternative care and adoption.<sup>3</sup>

7. Lack of or inadequate supervision, monitoring and accountability of authorities and bodies involved in adoption.



RS  
SO

Ensure the **supervision, monitoring and accountability** of authorities and bodies involved in adoption.<sup>4</sup>

8. Lack of or inadequate government processes and / or political will to identify, prevent and respond to illicit practices.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to illicit practices.

9. Lack of or limited general public awareness about illicit practices in adoption.



RS  
SO

**Increase awareness-raising**, including campaigns, media and pamphlets, about how to identify, prevent and respond to illegal adoption, including among communities and children in vulnerable situations, caregivers, government officials, AABs, other relevant authorities and bodies, prospective adoptive parents and the general public.

10. Lack of or inadequate policies or procedures to ensure free and informed consent to adoption, including counselling.



SO

Ensure that the **consents to adoption** have been obtained in accordance with the Convention, including after proper counselling and without inducement or solicitation.<sup>5</sup>

## II. At the **CHILD PROTECTION** level

11. Lack of an effective and adequate child protection system.



SO

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support and family reintegration, and includes social protection policies and family strengthening programmes.<sup>6</sup>

12. Alternative care systems relying on privately run childcare institutions.



SO

Ensure that the child protection system has adequate **public funding** and that any tasks delegated to the **private sector** are authorised and monitored.

13. Lack of a central database or registry for missing children.



SO

Establish, and properly implement and maintain a centralised and up-to-date **database** or registry for missing children.

14. Lack of or inadequate system for the return of lost, missing or displaced children.



RS  
SO

Establish and properly implement a **mechanism for the return** and / or reconnection of **lost, missing or displaced children**, in accordance with their best interests, to and / or with their families once they are found.<sup>7</sup>

### III. At the **GENERAL** level

15. Lack of or inadequate system of, or barriers to, birth registration (*e.g.*, fees, distance, discrimination<sup>8</sup>).



SO

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system**.<sup>9</sup>

16. Poverty.<sup>10</sup>

17. Forms of discrimination that render parents vulnerable and without protection, which may make them more vulnerable to exploitation, or to abandoning or relinquishing their child.<sup>11</sup>

18. Conflicts, and political and humanitarian crises.



SO

Address, through a plan and adequate allocation of resources, the root causes of **poverty, discrimination, conflicts and crises**.

19. Poorly paid civil servants and under resourced civil service.

20. Culture of corruption within a State.



RS  
SO

Ensure that **civil servants** dealing with adoption matters are sufficiently paid, adequately trained and are not over-worked.

Take action to prevent, expose and address **corrupt activity**.



21. Lack of or inadequate controls to prevent children from traveling internationally without free and informed consent of the parent(s) or the person(s) legally responsible for them.



SO

Establish and properly implement mechanisms to verify the existence of free and informed consent(s) of parent(s) or any other persons legally responsible for the child(ren) before allowing **children to travel internationally**.<sup>12</sup>

22. Lack of or inadequate reporting mechanisms which may lead to underreporting of abuses.



RS

SO

Develop **accessible and effective justice** systems to enable adoptees to report abuses, seek justice and reparation.

**Coordinate** with, and support the efforts of, authorities and bodies that work to detect, receive and refer cases of illegal adoptions.

23. Lack of or inadequate assistance to adoptees, birth parents and adoptive parents affected by illicit practices in intercountry adoption.



RS

SO

**Assist adoptees, birth parents and adoptive parents** affected by illicit practices in intercountry adoption.

This may include providing information on the file, directing adoptees, birth parents and adoptive parents to available services and supports, and undertaking research on situations of illicit practices.<sup>13</sup>

24. Lack of research, statistics and understanding of the reasons for illicit practices in adoption.



SO

Conduct research and collect statistics to consider **root causes** and underlying factors of illicit practices in adoption, including the demand for children.

IV. At the **SANCTION** level

25. Failure to treat abduction, sale of, and traffic in children for the purpose of adoption, and illegal adoptions, as separate criminal offences.



RS  
SO

Ensure that the abduction, sale of, and traffic in children and illegal adoptions are treated as separate **criminal offences** and are criminally prosecuted.

26. Lack of or inadequate accountability of all actors.

27. Lack of or inadequate investigation, prosecution and sanctions deterring illicit practices.



RS  
SO

Establish and properly implement a comprehensive legal framework, including police **investigation, prosecution, and strong sanctions** for abduction, sale of, and traffic in children and illegal adoption.<sup>14</sup>

Improve the technical capacity of **law enforcement authorities**, child protection professionals and the justice system to effectively detect, investigate, prosecute and sanction illegal adoptions.

## FS 1 “Abduction” – additional information (endnotes)

- 1 Sale of children**

The overlap between the sale of children and certain other illicit practices is discussed in the [2017 UN Rapporteur Report](#) (paras 24, 25 & 28). Art. 3(1)(a)(ii) of the OPSC “can be taken also to mean deliberately avoiding or preventing necessary consents being given. But the ramifications of the concept clearly go far beyond issues of consent: they concern all subsequent phases of a normal adoption procedure where the child in question is unduly inducted into and “transferred” through the system with the aim of securing a legalised adoption despite the illicit practices involved” (N. Cantwell, *The Sale of Children and Illegal Adoption* (2017)).

This FS follows the recommendations given by the UN Special Rapporteur on the Sale of Children in her [2020 Final Report](#).
- 2 Financial aspects**

See FS 3 “Financial Gain”; GGP No 1, Chapter 5; Note on Financial Aspects, in particular para. 19; 2010 SC, C&R No 1.
- 3 Training of relevant actors**

With regard to AABs, see GGP No 2, Section 6.5.3.
- 4 Supervision, monitoring and accountability of authorities**

With regard to AABs, see GGP No 2, Section 2.3.5.
- 5 Consents to adoption**

See OPSC, Art. 3(1)(a)(ii). See FS 7 “Consent” and GGP No 1, Section 2.2.3.
- 6 Establishment of a national child protection system**

See FS 6 “Subsidiarity”, endnote 6. See also UN Guidelines, Chapter IV; GGP No 1, Chapter 6.
- 7 Return or reconnection of lost, missing or displaced children**

The use of the word “return” in this FS is limited to the adoption context and not intended to extend to migration matters. See the use of this term in Art. 21(1)(c) of the HC.
- 8 Discrimination in birth registration**

For example, in some cases, women or some parents are not allowed to register the birth of their child: see UNHCR and UNICEF, [Background Note on Sex Discrimination in Birth Registration](#) (2021), pp. 8-10. There are other reasons for parents not being able to register the birth of their child, for example, because of their belonging to certain ethnic groups: see UNICEF, [Every child’s birth right, Inequities and trends in birth registration](#) (2013), p. 22.
- 9 Establishment of a birth registration system**

The child shall be registered immediately after birth (CRC, Art. 7). See FS 4 “Identity”, endnote 15.
- 10 Poverty**

Poverty, usually combined with other factors (e.g., lack of or inadequate family support or alternatives to abandonment and relinquishment) can lead to abuses. See GGP No 1, Section 6.2.3.
- 11 Discrimination**

In some States, parents, and most often single mothers, may face discrimination, whether by society at large or by their community or family, and this may lead them to abandon or relinquish their children for adoption.
- 12 Children travelling internationally**

If authorities have doubts about the free and informed consent and / or the reasons for the travel, they should not allow the child to travel internationally.

**13 Assistance to adoptees, birth parents and adoptive parents affected by illicit practices**

See Part III "Model Procedure".

**14 Sanctions**

See GGP No 1, Section 2.2.2. States should ensure that their laws impose sufficiently severe penalties for these offences to provide a strong deterrent.

## FACT SHEET 2

### Circumventing the Application of the Convention

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On this topic, see also:  
FS 6 "Subsidiarity" and FS 10 "Matching"

#### Illicit practices and possible preventive actions ✔

##### I. At the **ADOPTION** level

1. Authorising or tolerating direct contact by PAPs with State of origin authorities and / or bodies without the PAPs having first applied for an intercountry adoption to the Central Authority in the State of their habitual residence (HC, Art. 14).<sup>1</sup>



Establish and properly implement clear mechanisms for persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, to apply to the Central Authority in the State of their **habitual residence** (HC, Art. 14) before having any contact with the State of origin's authorities and bodies.



Ensure that where persons habitually resident in a Contracting State have made direct contact with the Central Authority in the State of the child's habitual residence, this Central Authority does not engage in the request and instead, directs these persons to the **Central Authority in the State of their habitual residence**.

2. Allowing a domestic adoption by nationals of the State of origin who are identified as habitually residing in another Contracting State (HC, Art. 2).



Ensure that the habitual residence of the PAPs and the **scope of application of the Convention** to each case is clearly established.



Ensure proper **internal coordination** among a State's Central Authority and competent authorities responsible for domestic adoptions to ensure that intercountry adoptions are identified as such and handled under the Convention.

3. Private and independent adoptions.<sup>2</sup>RS  
SO**Prohibit private and independent adoptions.**<sup>3</sup>4. AABs operating without having been accredited and / or authorised to operate (HC, Arts 10-12).<sup>4</sup>RS  
SOEnsure that **AABs** are:


- **accredited** in the State where they were constituted; and
- **authorised to operate** in the State of origin by both the receiving State and the State of origin.

## 5. Private arrangements regarding adoptions between AABs, childcare institutions, and / or persons without the involvement of the Central Authority.


## 6. Placement of an adopted child by adoptive parents with other parents for the purposes of circumventing the Convention (re-homing), with or without the assistance of AABs.

RS  
SO**Prohibit private arrangements** regarding adoptions between AABs, childcare institutions and / or persons.**Inform** AABs, childcare institutions and persons that a privately arranged adoption application will be refused by the State of origin and the receiving State.Provide appropriate **support and counselling** to adoptees, (prospective) adoptive parents and families, including after adoption.7. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>5</sup>RS  
SOEstablish and properly implement clear policies and procedures for **emergency situations**.<sup>6</sup>


- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;


- 
RS  
SO
 publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.

8. Removing a child from the State of origin through misuse of domestic adoption, guardianship arrangements, custody orders, or other judicial or administrative processing to circumvent the application of the Convention.<sup>7</sup>


- 
RS  
SO
 Ensure **coordination** among Central Authorities and the establishment of a mechanism to:
  - prevent intercountry adoptions outside of the Convention framework;<sup>8</sup> and
  - identify and respond to practices that bypass the intercountry adoption process.

Work closely with the **Consulate or Embassy** of the receiving State in the State of origin, in particular for visa requests, in order to identify attempts to circumvent the Convention (see also green box 11 of this FS).

- 
SO
 Ensure that all competent authorities (including child or family courts) and other actors involved in the child protection system in the State of origin are **aware of the Convention** and understand its scope of application.<sup>9</sup>

- 
RS
 Ensure that all actors (child or family courts in particular) in the receiving State are **aware of the Convention** and understand its scope of application, particularly as to children whose adoptions are finalised in that State.

9. Not proceeding to verification that the adoption procedure and safeguards were properly followed and respected before giving the agreement that the adoption may proceed (HC, Art. 17 (c)).

- 
RS  
SO
 Verifying that all the stages of the **adoption procedure** and that the safeguards provided for under the Convention and domestic law on adoption were properly followed and respected before giving the agreement that the adoption may proceed under Art. 17(c) of the Convention.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

10. Intercountry adoption legislation and procedures are not included within the national child protection system.



SO

Ensure that any legislation, regulations and procedures on intercountry adoption are included within the legislation and procedures on the **national child protection system**.

11. Failure to properly determine the habitual residence of the child and / or the PAPs.



RS

SO

Establish and properly implement a mechanism for the determination of the **habitual residence** of the child and the PAPs, including for intra-family adoptions.<sup>10</sup>

12. Failure to scrutinise applications for a domestic adoption (including for intrafamily adoptions), guardianship and custody orders by:
- PAPs who are nationals of the State of origin and / or relatives of the child but who habitually reside outside the State of origin;
  - PAPs temporarily living in the State of origin whose habitual residence is unclear.<sup>11</sup>



RS

SO

Establish and properly implement procedural and practical resources to promote sufficient **scrutiny of applications** for domestic adoption, guardianship, or custody orders by:

- PAPs who are nationals of the State of origin and / or relatives of the child but who habitually reside outside the State of origin; and
- PAPs temporarily residing in the State of origin (including expats and / or diplomats), to determine whether:
  - o the adoption is actually an intercountry adoption;
  - o the PAPs moved to the State of origin for the purpose of circumventing the safeguards of the Convention or with an immediate plan to return to their usual State of habitual residence.<sup>12</sup>



13. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>13</sup>



RS  
SO

Prevent practices leading to **pre-identification of children** for adoption by PAPs:

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).
- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>14</sup>
- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

See also green box 19 of this FS.

14. Lack of or limited public awareness about the Convention.



RS  
SO

Ensure **public awareness** of the principles, safeguards and procedures of the Convention.<sup>15</sup>

15. Lack of or inadequate supervision, monitoring and accountability of AABs.



RS  
SO

Ensure that **AABs** are properly supervised and monitored by the Central Authorities of both the receiving State and the State of origin.<sup>16</sup>

Ensure that AABs are held accountable by the Central Authority of the State which accredited them.

16. Lack of or inadequate limitation of the number of AABs authorised to work in one State.



RS  
SO

Ensure that the **number of AABs** is proportionate to the number of children in need of intercountry adoption in the State of origin where the AAB is authorised to operate.<sup>17</sup>

17. Lack of or inadequate regulation, supervision and monitoring of childcare institutions.<sup>18</sup>



SO

Enact and properly implement legislation and / or regulations on the functioning of **childcare institutions** and their monitoring.  
Ensure childcare institutions are run predominantly by locals.

18. Lack of or inadequate government processes and / or political will to identify, prevent and respond to circumvention of the application of the Convention.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to circumvention of the application of the Convention.

## II. At the **CHILD PROTECTION** level

19. Voluntourism (see orange box 13 of this FS).



RS

SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>19</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.

## FS 2 “Circumventing the Convention” – additional information (endnotes)

### 1 **Direct contact of the PAPs with the State of origin**

A few Contracting States are of the view that, in some instances, the Central Authority should be able to determine when limited contact between PAPs and a Central Authority is permissible, such as for habitual residence determinations and general adoption inquiries (2022 SC, C&R No 16).

### 2 **Private and independent adoptions**

See Glossary of this Toolkit; GGP No 1, Sections 8.6.6 and 10.1.1.6. In such adoptions, many principles of the Convention may not be respected (*e.g.*, assessment of the eligibility and suitability of the PAPs, matching procedure, birth parents' consent, subsidiarity principle, application to adopt to the Central Authority in the State of habitual residence of the PAPs).

### 3 **Private and independent adoptions**

States should prohibit private and independent adoptions in their legislation. Some receiving States do this through migration and visa eligibility requirements which prohibit the entry of a child adopted under a private or independent arrangement.

### 4 **AABs not accredited and / or authorised**

For ease of reference, the term “AAB” has been used. However, it should be noted that if an adoption body has not been accredited, it should not qualify as an “AAB”.

Please note that in the case of approved (non-accredited) persons or bodies (HC, Art. 22(2)), they do not need to be accredited, but they would need to be approved. Thus, if a person or body under Art. 22(2) of the Convention operates without having been approved to operate, this would also constitute an illicit practice.

### 5 **Emergency situations**

If an adoption takes place in an emergency situation, it can be very difficult or impossible to ensure that the guarantees and procedures of the Convention are respected.

In this Toolkit, “unregulated” adoptions refer to adoptions done without respecting the Convention; and “premature” adoptions refer to adoptions done prior to the authorities taking reasonable and sufficient efforts to trace the family of the child for family reunification.

In emergency situations (whether natural (*e.g.*, the 2010 earthquake in Haiti, the 2004 Tsunami in Sri Lanka, a pandemic, climate change) or manmade (*e.g.*, (armed) conflict, war, disturbances), more children are abandoned, lost or become orphans due to these emergency situations; there are fewer resources to locate the family of separated children and to properly implement the principle of subsidiarity; and, if an adoption takes place, it can be very difficult or impossible to ensure that all steps and guarantees are respected. Therefore, there is a greater risk of abduction, sale of, or traffic in children, or illegal adoptions.

### 6 **Emergency situations**

See GGP No 1, para. 502 and Annex 9, as well as the UN Guidelines, Chapter IX. In emergency situations, the safety of children should be the first priority. As authorities are likely to be overwhelmed with emergency priorities, it will be very difficult to ensure all guarantees and procedures of the Convention are respected. Therefore, adoptions should be halted in emergency situations. However, a distinction should then be made between:

- children who have been separated from their family as a result of the emergency situation: “efforts to reunify a displaced child with [their] parents or family members must take priority and [...] **premature and unregulated attempts** to organise the adoption of such a child abroad should be **avoided and resisted**” (see GGP No 1, p. 112); and
- children who have been declared adoptable before the emergency: the continuation of the adoption process should be discouraged as the children may have experienced a new trauma

and going through an adoption process shortly after could aggravate that trauma. The State of origin may, however, assess if it has the capacity to handle these adoptions. If it does, such adoptions should only be considered if they are in the best interests of the child and if the adoption can be carried out in accordance with the procedures and safeguards of the Convention. The receiving States should also pay particular attention to respecting the Convention. If adoptions cannot be carried out properly, they should be halted.

Within the broader framework of child protection, and in order to prevent more children being abandoned as a result of the deteriorating living conditions due to the emergency situation, States should ensure that families receive adequate support.

In some cases, the HCCH 1996 Child Protection Convention may prove to be helpful, for example to protect and assist displaced children.

#### **7 Misuse of domestic adoption, guardianship, kafala, custody orders, or other judicial or administrative processes**

For example, a guardianship order is made in the State of origin with the purpose of seeking an adoption once the child is in the receiving State. Other examples include: adoptions arranged under customary or religious practice; adoptions by diplomats where their habitual residence is not clearly determined; PAPs claiming to be residents in the State of origin by, for example, using a secondary residence in the State of origin when habitual residence is in the receiving State; or birth mothers who move from the State of habitual residence to another State for the purpose of giving birth in that other State and relinquishing the child to be adopted domestically in the State of birth of the child.

For cases where a competent authority in the State of habitual residence of a child intends to place that child under *kafala* with persons who habitually reside in another State, please refer to the HCCH 1996 Child Protection Convention (assuming that Convention is in force in both States), including Art. 33 of that Convention.

#### **8 Cooperation and effective control mechanisms**

See GGP No 1, Section 2.3.3. Authorities should seek to prevent any attempts to circumvent the Convention's requirements. Art. 8 of the Convention provides that "Central Authorities shall take, directly or through public authorities, all appropriate measures [...] to deter all practices contrary to the objects of the Convention."

#### **9 Actors in the State of origin**

If adoption is part of a comprehensive child protection system, competent authorities will be better informed and trained about all possible measures of care and will thus be able to distinguish between domestic and intercountry adoptions. See also HCCH Note on Habitual Residence.

#### **10 Determination of the habitual residence**

See HCCH Note on Habitual Residence.

#### **11 Failure to scrutinise applications for domestic adoptions**

This is especially the case when competent authorities are not duly informed and trained about the Convention.

For example, expatriate PAPs may take advantage of a "potentially unclear" habitual residence to complete a domestic adoption instead of an intercountry adoption, avoiding respecting the principles of the Convention.

#### **12 Scrutiny of applications for domestic adoptions**

PAPs temporarily residing in the State of origin should be appropriately assessed and scrutinised by the State of origin. Consideration should be given by the State of origin as to whether there is an intent to move the child out of the State of origin after the completion of the adoption, including to the PAPs' usual State of habitual residence (or, for example, if one of the spouses moved to the State of origin for the purpose of circumventing the safeguards of the Convention or with an immediate plan to return to the usual State of habitual residence with the adoptee and later on, the other spouse completes a

domestic step-child adoption). If their intention is indeed to move the child out of the State of origin after the completion of the adoption, consideration should be given by the State of origin to whether it is appropriate to enable the domestic adoption to proceed.

**13 Summer camps, hosting programmes and voluntourism**

See FS 10 “Matching”, endnote 12.

**14 Summer camps and hosting programmes**

Most States do not organise summer camps or hosting programmes where PAPs can identify a child as this can lead to circumventing the Convention and to illicit practices. However, those States which do organise them report that such programmes, when carried out with sufficient safeguards, have proven helpful for the adoption of older children and / or children with special needs for whom no family (domestically or intercountry) could be found. See further FS 10 “Matching”, endnote 13.

**15 Public awareness of the Convention's principles and safeguards**

Raising public awareness on the Convention, and the importance of its principles and safeguards, can assist in preventing circumvention of its application. For example, some PAPs may believe that they are doing the right thing for the child while they are actually causing the child more harm. To help prevent this, it is important that the Central Authority's website provides thorough, up-to-date information, including contact information. If a Central Authority receives requests from PAPs, it should provide clear information in response.

**16 Supervision of AABs by Central Authorities**

See GGP No 2, Section 2.3.

**17 Proportion of the number of AABs**

For examples of good practices, see GGP No 2, footnote 105, as well as Sections 2.3.4.2 and 4.4.

**18 Childcare institutions**

Foreigners involved in the work, management and / or finances of childcare institutions may have the potential of additional risks of circumventing the Convention's safeguards, including regarding financial aspects, as they may have easier access to funds (e.g., it may be easier to find funds in a receiving State where the foreigner comes from, and thus they may be more easily established and functioning), and contacts with persons in a receiving State that work on intercountry adoptions.

In addition, it is important to recall that “[t]here is wide recognition of the adverse impacts of institutionalization on developmental outcomes and children's well-being”. The focus should be on “reducing] the numbers of children living in institutional care and, whenever possible, to prevent institutionalization in the first place, or to reunite children with their families in line with their obligations under the [CRC] and the UN Guidelines [...]” (see UNICEF, *Children in alternative care*, 2020). See also FS 6 “Subsidiarity”, endnote 21.

**19 Voluntourism**

See FS 10 “Matching”, endnote 24.



## FACT SHEET 3

### Improper Financial and other Gain<sup>1</sup>

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On this topic, see also:  
FS 1 "Abduction", FS 2 "Circumventing the Convention", FS 8 "Unknown Parents", FS 9 "PAPs" and FS 10 "Matching"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

#### All financial aspects

1. Deriving improper financial or other gain from an activity related to intercountry adoption (HC, Art. 32(1)).



RS  
SO

Take all appropriate **measures** to prevent, address and ensure that no one derives improper financial or other gain in connection with an intercountry adoption.<sup>2</sup>

2. Charging, suggesting, proposing, requesting, paying and / or receiving costs, fees, contributions, donations and / or doing cooperation projects which are prohibited by law or not permitted by either the State of origin or the receiving State.<sup>3</sup>



RS  
SO

Establish and implement an adequate **legal framework** and clear guidance for the financial aspects of adoption<sup>4</sup> (see also green box 14 of this FS).

Authorities and bodies should only charge, suggest, propose, request and / or receive costs, fees, contributions, donations and / or doing cooperation projects which are **permitted by law** in both the State of origin and the receiving State.

### 3. Circumventing financial controls.



RS  
SO

Develop and ensure **strict control mechanisms**, including through monitoring and supervising the activities of different actors (see further below section "Accountability and control mechanisms").<sup>5</sup>

## Costs and fees

### 4. Charging costs and fees:

- that are unreasonably high (HC, Art. 32(2) & (3)),<sup>6</sup>
- that exceed actual costs incurred,<sup>7</sup>
- for services where it is inappropriate to do so and / or that were not provided (delivered).<sup>8</sup>



RS  
SO

Ensure that **costs and fees** for adoption services, including the staff remuneration of AABs, are reasonable (HC, Art. 32(2) and (3)) taking into consideration the standard of living of the relevant States and other child welfare services<sup>9</sup> (see further below section "Reasonability").

Ensure that the amount charged does not exceed the required amount by the relevant authority or body (see further below section "Transparency").<sup>10</sup>

Limit payments to costs and fees that have been disclosed by each State in the [HCCH Table on Costs associated with Intercountry Adoptions](#).

Prohibit actors from charging for services where it is inappropriate to do so, or which are / were not provided (delivered).<sup>11</sup>

Specify the final use of the costs and fees (the money should be used to pay for a particular adoption service) (see further below section "Transparency").<sup>12</sup>

### 5. Suggesting, proposing, requesting or making the payment of an additional sum to expedite the adoption process before the adoption decision is made.<sup>13</sup>



RS  
SO

Prohibit suggesting, proposing, requesting, making or receiving payment of **additional fees** to expedite the adoption process (*i.e.*, "expediting fees").<sup>14</sup>



## Contributions, donations & cooperation projects<sup>15</sup>

### DIFFERENT VIEWS

#### VIEW No 1:<sup>16</sup> SEPARATION OF ACTIVITIES

There should be **NO contributions, donations and / or cooperation projects** in the context of adoption.

6. Charging or paying sums in relation to the adoption that are neither costs or expenses, including reasonable professional fees (HC, Art. 32).<sup>17</sup>



RS

SO

“Only costs and expenses [...] may be charged or paid” (HC, Art. 32(2)).

**Prohibit** contributions, donations and / or cooperation projects in the context of intercountry adoption.<sup>18</sup>

#### IEWS Nos 2<sup>19</sup> and 3<sup>20,21</sup> MEETING THE NEEDS OF STATES OF ORIGIN / ACKNOWLEDGEMENT AND SUPPORT OF SUCCESSFUL PROJECTS

**Contributions, donations and / or cooperation projects may be permitted** by a State, if **certain safeguards** are respected.<sup>22</sup>

This section of the FS presents some possible illicit practices in this area, when safeguards are not respected.

7. Lack of separation of contributions, donations or cooperation projects from the actual costs and fees of an adoption, as well as from the intercountry adoption process as a whole.



RS

SO

Establish, in all cases, a **clear separation** of intercountry adoption (the actual costs of an adoption) from contributions, donations and development aid (cooperation projects).<sup>23</sup>

Among others, the actual costs of an adoption (costs and fees) should be clearly specified and detailed in advance to PAPs, and distinguished from any possible contribution, donation or cooperation project.

Establish clear consequences if the separation is not maintained.

8. Contributions, donations or cooperation projects aimed at funding or directly influencing intercountry adoption either generally or for a specific adoption, including:<sup>24</sup>



RS  
SO

See green box 7 of this FS.

Establish appropriate controls to ensure **undue influence** cannot occur.

9. - cooperation with specific States (e.g., matching of children with PAPs of those States) influenced by levels of contributions, donations and support for cooperation projects;



RS  
SO

Establish measures to avoid giving priority to **cooperation** or basing decisions regarding the placement of children (matching) on the level of contributions, donations or support for cooperation projects provided by AABs or PAPs, or their respective governments.<sup>25</sup>

10. - contributions, donations or cooperation projects aimed at supporting childcare institutions taking care of adoptable children who may be adopted intercountry.<sup>26</sup>



RS  
SO

Ensure that contributions, donations or cooperation projects are only used to improve the **national child protection system**, in particular to strengthen programmes on family preservation and reunification, and prevention of abandonment.

They should not be used for the intercountry adoption system, or for childcare institutions involved with intercountry adoption<sup>27</sup> (see further below green boxes 18 and 19 of this FS, and section "Transparency").

11. Unreasonably high amount of contributions or donations in relation to the cost of living in that State.<sup>28</sup>



RS  
SO

Ensure the **amount of the contributions**:

- is established by the State of origin (and not by the childcare institution (often a partner of the AAB) or the AAB itself) and
- is reasonable, fixed, publicly known and identical for all receiving States<sup>29</sup> (see further below section "Transparency").

Set reasonable limits on the number and the amount of possible donations.<sup>30</sup>

12. Seeking, offering, making, accepting, or receiving donations before the adoption procedure is completed / finalised<sup>31</sup> to State authorities (e.g., government officials, Central Authorities) or bodies concerned with the adoption process.



RS  
SO

Prohibit **donations to authorities** (e.g., government officials, Central Authorities) and other bodies concerned with the adoption process before the adoption procedure is finalised.<sup>32</sup>

**Donations by PAPs to adoption bodies** concerned in the adoption process must not be sought, offered or made.<sup>33</sup>

13. Seeking, offering, making, accepting, or receiving donations (before or after the adoption has been finalised) to birth families.<sup>34</sup>



RS  
SO

Prohibit **donations to birth families** of (possible) adoptable children.<sup>35</sup>

## Enabling factors and possible preventive actions

- I. At the **ADOPTION** level

### All financial aspects

14. Lack of or inadequate legislation, regulations and / or guidelines on financial aspects, and resources for implementing them.<sup>36</sup>



RS  
SO

Establish an adequate **legal framework** for the financial aspects of adoption and ensure that necessary funds, and human and material resources are allocated for a proper implementation.<sup>37</sup>

15. Failure of authorities and AABs to train their staff and / or representatives about financial aspects.<sup>38</sup>



RS  
SO

Properly **inform and train** the different actors involved in the adoption procedure.<sup>39</sup>

16. Staff and other persons working for competent authorities and bodies do not have adequate qualification, experience, resources and / or remuneration.



RS  
SO

Ensure that **competent authorities and bodies working on adoption** are appropriately qualified, experienced, and trained; have adequate powers and resources (including adequate remuneration for the services rendered).

17. Lack of proper rules on conflict of interest and resources to properly implement them.<sup>40</sup>



RS  
SO

Ensure that **competent authorities and bodies working on adoption** have high ethical standards and no conflict of interest.

18. Assessments (medical or other) to determine the child's needs paid by the PAPs.<sup>41</sup>

19. Sums to provide for the child ("maintenance") from the time of acceptance of the matching decision until the child leaves the institution covered by PAPs.<sup>42</sup>



RS  
SO

Ensure that the relevant authorities in the State of origin are responsible and pay for all the assessments to determine the **child's needs** before matching is done, as well as responsible for care until the child is entrusted to the PAPs.

States of origin that need to transition to this practice must ensure that **maintenance cost** for the child are determined in advance and include such fixed cost in the adoption's fees. No other payments should be requested or given.

## Transparency

20. Lack of or limited transparency. For example:



RS  
SO

Ensure **transparency** of all financial aspects.<sup>43</sup>

Ensure that Central Authorities, in cooperation with relevant competent authorities and bodies, complete and update regularly the **HCCH Tables of Costs** associated with intercountry adoptions.

21. - information regarding the financial aspects is not fully disclosed, or, even if disclosed, is not easy to access and / or up to date;<sup>44</sup>



RS

SO

Ensure that all **information on financial aspects** is comprehensive, precise, accurate and up to date.<sup>45</sup>

Ensure that the amounts for costs, fees and contributions are **publicly known and widely publicised**.<sup>46</sup>

22. - PAPs are not informed in advance of the costs and fees to be paid or made for the different steps of intercountry adoption, and of any (requested) contributions;
- (Prospective) adoptive parents are exposed to pressure to make payments that were not initially planned.<sup>47</sup>



RS

SO

Notify PAPs in advance (before the start of the adoption process) with an **itemised list of all costs, fees and contributions**, including information on whether any payments can be waived, reduced or refunded.<sup>48</sup>

For each adoption, propose a **written timetable for the payment** of costs, fees and contributions for PAPs (e.g., in the contract signed with the AAB).<sup>49</sup>

Encourage PAPs to request **additional information or clarification** throughout the adoption process.

### Reasonability (see also orange and green boxes 4 and 5 of this FS)

23. Wide variations in the costs and fees charged:
- in States themselves;
  - by AABs;<sup>50</sup>
  - between States of origin;
  - between receiving States.<sup>51</sup>



RS

SO

Determine an **acceptable range of permissible costs and fees**,<sup>52</sup> at least within a same State and its AABs if applicable, which should be reasonable in relation to the standard of living of the relevant State and other child protection services.

Reconsider the extent of cooperation (and, if needed, cease cooperation) with a State (RS or SO) where there is no clear and reasonable explanation for a wide variation in the costs and fees charged in comparison to other States in its region.

24. Lack of or inadequate limits on costs, fees and contributions that can be charged or paid, and on donations that can be made.<sup>53</sup>



RS  
SO

**Limit the amounts** of costs and fees, contributions and donations.<sup>54</sup>

25. Remuneration of professionals is dependent on the number of adoptions finalised.



RS  
SO

Ensure that the **remuneration of professionals** is not dependent on the number of adoptions, or the characteristics of the child placed for adoption and, if possible and where the number of adoption cases allows for this, is made on a monthly basis.<sup>55</sup>

### Securing the transaction

26. Costs and fees, contributions and donations made in cash and / or not recorded (and / or not tracked).<sup>56</sup>



RS  
SO

Prohibit payments made in **cash**.<sup>57</sup>

Ensure that all payments are recorded and made by **bank transfer** to a specified formal Central Authority or AAB bank account.<sup>58</sup>

27. Costs and fees, contributions and donations made without invoices (excluding for donations) or receipts.<sup>59</sup>



RS  
SO

Issue or request **detailed invoices** (excluding for donations) and **official receipts** for payments of costs and fees, contributions and donations.<sup>60</sup>

28. PAPs make payments directly to persons, bodies or institutions in the State of origin.<sup>61</sup>



RS  
SO

Ensure that PAPs make all payments in the State of origin **through the AAB** that they are using, or if possible, **through the Central Authority**.<sup>62</sup>

## Accountability and control mechanisms

29. Lack of, limited or inadequate accountability and / or control mechanisms regarding financial aspects.<sup>63</sup>



Ensure **accountability and strict control mechanisms** by the supervising authority:<sup>64</sup>

- seek full accountability by verifying the information provided by the recipient (e.g., AAB, institutions) of payments and, where necessary, request an explanation for any costs, fees, contributions or donations;<sup>65</sup>
- ensure that regular external audits are carried out;<sup>66</sup>
- provide easily accessible means of reporting any improper payment or abuses.<sup>67</sup>

Before giving the agreement that the adoption may proceed (HC, Art. 17(c)), **verify all costs and fees** charged, paid or made up to that moment.<sup>68</sup>

30. Lack of or limited or inadequate financial recording and reporting by the authorities and bodies receiving payments for costs, fees, contributions or donations to the Central Authority or competent authority, including how the money was used.



Ensure that **recipients of payments**:

- record all financial transactions and produce a detailed financial report;<sup>69</sup>
- maintain detailed accounts of the costs, fees, contributions and donations; how they have been spent; and ensure that they are used for the purpose for which they were requested, sought or accepted.<sup>70</sup>

Central Authorities should be **notified of any donations** made by AABs or PAPs and / or cooperation projects of AABs.<sup>71</sup>

31. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving improper financial or other gain.



Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving improper financial or other gain (Part III “Model Procedure”).

## Cooperation

32. Lack of or inadequate cooperation between States.<sup>72</sup>



RS  
SO

Promote **cooperation** between States by:

- gathering, exchanging and comparing information (e.g., using the [HCCH Tables on Costs](#) for reference) between States on financial aspects, and experiences and tools to achieve transparency and reasonability;<sup>73</sup>
- considering the extent of the cooperation (and if necessary, cease cooperation) with a State when the practices regarding the financial aspects in that State are inadequate and are not addressed in a satisfactory manner;<sup>74</sup>
- considering cooperation and providing support through official channels such as bodies, agencies and organisations that specialise in development aid.<sup>75</sup>

## Contributions, donations & cooperation projects

33. Reliance and dependency on intercountry adoption for (additional) sources of funding through donations, contributions or cooperation projects.<sup>76</sup>



RS  
SO

Ensure that States strive to eliminate their **reliance on intercountry adoption** for additional sources of funding through donations, contributions or cooperation projects.

Ensure that States try to find **other means of support** through official developmental aid, not linked to adoption.

34. The purpose of the contribution, donation or cooperation project is unclear.<sup>77</sup>



SO

Ensure that the competent authorities and bodies explain clearly and in advance the purpose and final **use or destination of the contribution, donation or cooperation project**.<sup>78</sup>



35. Contributions,<sup>79</sup> donations and cooperation projects for childcare institutions.



SO

Through States' authorities, actively consider prohibiting contributions, donations and cooperation projects to support **childcare institutions**.<sup>80</sup>

Ensure that contributions, donations and cooperation projects are instead intended to **strengthen programmes** on family preservation, prevention of abandonment, or similar child protection projects.<sup>81</sup>

If, nevertheless, a donation to a childcare institution is done, it should preferably be to a childcare institution not caring for adoptable children.

### Contributions (see also orange and green boxes 14 to 35 of this FS)

36. The amount for contributions demanded by a State of origin is not fixed, and / or varies among receiving States working in that State of origin.<sup>82</sup>



RS

SO

Ensure that the amount for contributions required is a **fixed amount and is identical** for all receiving States working in that particular State of origin.<sup>83</sup>

Establish a **specific fund** to which all contributions will be paid, with all necessary safeguards.<sup>84</sup>

37. The amount for contributions demanded by an AAB is not fixed and clear.<sup>85</sup>



RS

SO

Ensure that the amount for contributions is **fixed by the State of origin** and not by the childcare institution (often a partner of the AAB) or the AAB itself.<sup>86</sup>

### Donations (see also orange and green boxes 14 to 35 above of this FS)

38. Monetary donations.



RS

SO

**Donations in kind** should be preferred.<sup>87</sup>

39. Expectation that donations should be made or received after an adoption is finalised.<sup>88</sup>
40. Pressure on PAPs to provide gifts and / or donations for childcare institutions or its staff.

Ensure that authorities, bodies, persons, **do not ask** PAPs to make donations.



RS  
SO

**Inform PAPs** about the problems and dangers regarding donations (e.g., influencing the process, creating dependency and expectations, encouraging competition between AABs and PAPs).<sup>89</sup>

Ensure that **donations are always voluntary**: inform PAPs that they are not obliged to make donations, and if they receive pressures to do so, they should inform the Central Authorities of the receiving State and the State of origin.<sup>90</sup>

### Cooperation projects (see also orange and green boxes 14 to 35 of this FS)

41. Cooperation projects, without appropriate safeguards.



RS  
SO

Set out **strict conditions and limited purposes** under which cooperation projects may be permitted.<sup>91</sup>

Cooperation projects should match the **real needs** of the State of origin.<sup>92</sup>

Require by law the **separation** of intercountry adoption from cooperation projects and other forms of aid.<sup>93</sup>

42. Lack of a written cooperation agreement between the bodies and / or authorities involved in the receiving State and the State of origin.



RS  
SO

Ensure that a **written cooperation agreement** (including terms setting out how the cooperation will be put into practice) is signed between the bodies and / or authorities involved in both States.<sup>94</sup>

43. Cooperation projects of AABs, without appropriate reporting, nor supervision and monitoring by the competent authority.




RS  
SO

Ensure that AABs **report** to the relevant competent authority in both the State of origin and the receiving State on the cooperation projects in which they are involved.


- 
RS  
SO
Ensure **supervision and monitoring** of the projects of AABs by the competent authority of the receiving State in close cooperation with the competent authority of the State of origin.<sup>95</sup>

44. Lack of separation between the staff and finances of the authorities or AABs dealing with intercountry adoption and the staff and finances dealing with cooperation projects.

- 
RS  
SO
Ensure that the AABs have a **separate department** for cooperation projects: *i.e.*, in their structure, with separate accounts and separate personnel to manage them and which are distinct and fully independent from the department handling the adoption operations.<sup>96</sup>

Contributions and donations for cooperation projects of AABs should be made to a **specific department** devoted to cooperation.

45. Expectation or obligation for, or pressure on, AABs and / or receiving States, to undertake cooperation projects in States of origin.


- 
RS  
SO
**Inform AABs** about financial aspects in adoption.  
States of origin should not require AABs and / or receiving States to undertake or contribute to cooperation projects in their State.

46. Obligation to contribute to the AABs' cooperation projects.

- 
RS  
SO
**Prohibit obliging PAPs to contribute** to the AABs' cooperation projects.

## II. At the **SANCTION** level

47. Lack of or inadequate criminal law provisions targeting activities related to improper financial or other gain, and/or resources to effectively enforce them.<sup>97</sup>

- 
RS  
SO
Enact **strong laws** targeting all violations related to improper financial or other gain, including meaningful sanctions such as deterrence, and effectively enforce such laws.<sup>98</sup>

48. Culture of corruption which enables a system of uncontrolled profiteering.



RS  
SO

Take action to prevent, expose and address **corrupt activity**.<sup>99</sup>

## FS 3 “Financial Gain” - additional information (endnotes)

<sup>1</sup> N.B.:

“Due to the importance of preventing illicit practices related to the financial aspects of intercountry adoption, the SC recommended that CGAP establish a new Experts' Group to take stock of current practices, identify possible coordinated, targeted approaches, and to prioritise them with the understanding that the objective would be to raise standards using the HCCH Guides to Good Practice and the Note on the Financial Aspects of Intercountry Adoption as the starting point” (2022 SC, C&R No 11).

This FS is based on current thinking and practices. It follows the HCCH [GGP No 1](#) and [No 2](#), the [Note on Financial Aspects](#) and the [Summary list of good practices on the financial aspects of intercountry adoption](#) (List). These documents took a pragmatic approach and described the risks associated with contributions, donations and cooperation projects and the different views on whether they should be permitted by States in the context of intercountry adoption. They also set out the recommendations which should, as a minimum, be implemented if they are to be permitted by a State.

However, the Working Group on Preventing and Addressing Illicit Practices “acknowledged that problems [...] still continue and, therefore, recommended that further discussion is needed, in particular, to properly implement the Convention which establishes that “[o]nly costs 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”” (see 2019 WG Report, para. 9).

### **2 Prevent improper financial gain**

See List, Section 6.

### **3 Charging costs when prohibited or not permitted**

See Note on Financial Aspects, para. 154: “In many cases, the law could regulate the more general and important prohibitions, while regulations may establish more detailed issues and offer tables with maximum costs (which may be updated regularly)”.

### **4 Adequate legal framework**

See List, Section 6(a).

### **5 Develop strict control mechanisms**

See Note on Financial Aspects, para. 161 which includes some examples on how to do this: “enact and enforce regulations concerning control or supervision that are precise and transparent, including, among others, the need for regular reporting; clearly state the authorities which are in charge of the control and supervision; effectively communicate those regulations to the adoption community, to other States and to the public at large to encourage transparency and accountability; retain State control of supervision functions; provide adequate and appropriate resources to perform these functions; retain control or supervision of the parts of the adoption process that are most prone to abuse or exploitation; and control authorities responsible for the adoption process (*i.e.*, through a system of inspection and by subjecting decisions to a process of review or appeal).” See also List, Section 6(b).

### **6 Unreasonably high costs and fees**

See Note on Financial Aspects, definitions of “improper financial or other gain” and “reasonable” and Section 5.3. For example, administrative, legal, or translation costs which are particularly expensive in comparison with the relevant State’s cost of living on the assumption that PAPs have the means to pay higher costs. Nevertheless, it is also important to ensure availability of persons who can do the work and quality work.

- 7** **Costs and fees that exceed actual costs**  
See Note on Financial Aspects, para. 99.
- 8** **Costs and fees charged for services where it is inappropriate to do so, or for services not provided (delivered)**  
Inappropriate: *e.g.*, charging for services which a State ordinarily provides free of charge; a body charging higher fees to PAPs for an official government service other than the one established by that authority.  
  
Services not provided (delivered): *e.g.*, costs and fees have been charged by an AAB which then ceases to operate but neither the service is rendered nor the costs and / or fees refunded (GGP No 2, para. 344); when an adoption procedure is stopped but amounts paid in advance for services which were not rendered are not refunded.
- 9** **Only reasonable costs and fees**  
See Note on Financial Aspects, Section 5.3., para. 108. Costs and fees are generally reasonable when they are: permitted (allowed) under the law of the State(s) in which the service is provided and the payment is made; commensurate with the necessary qualifications and experience of the actor, as well as with the number of hours that the actor has worked; and when they are similar to the costs and fees charged by comparable bodies or professionals within the State for similar services. The relevant authority or body should also specify if the relevant costs are fixed or variable.
- 10** **Charging costs and fees that do not exceed actual costs**  
See Note on Financial Aspects, para. 85.
- 11** **Prohibit charging for services where it is inappropriate to do so, or for services not provided (delivered)**  
See Note on Financial Aspects, para. 104 and List, Section 3(a).
- 12** **Final use of costs and fees**  
See Note on Financial Aspects, para. 90; List, Section 2(e).
- 13** **"Expediting" fees**  
See GGP No 1, paras 236-237 and Annex 3.2: "In some States "unofficial" adoption fees are charged – those that are demanded to move the required paperwork through the adoption process. For example, significant unexplained paperwork delays may occur without the payment of "expediting" fees. Some accredited bodies or approved (non-accredited) persons may find that their clients do not receive child assignments without paying incentives to officials or orphanage directors who make placement decisions" (GGP No 1, para 236). "Such practices undermine attempts to protect the interests of children to be adopted. Once a system of using such "expediting" fees develops, it is difficult to stop the abuses" (GGP No 1, para 237). The use of expediting fees "in relation to adoption can result in the failure of the State to meet its Convention obligations regarding subsidiarity and the best interests of the child" (GGP No 1, Annex 3.2.3.2). See also Note on Financial Aspects, para. 102.  
  
It has to be noted that the payment of expediting fees once the adoption decision has been finalised (for example for expediting the issuance of the child's passport or exit visa) when permitted by the legislation of a State, when transparent and when paid to the office itself and not to persons, does not constitute an illicit practice.
- 14** **Prohibit "expediting" fees**  
See Note on Financial Aspects, para. 104. However, this does not include the expediting fees for issuance of the child's passport or exit visa which are permitted by the legislation and are transparent (see further *supra* endnote 13).
- 15** **Contributions, donations and cooperation projects**  
The Note on Financial Aspects (Section 6) describes the risks associated with contributions, donations and cooperation projects, and the different views regarding the legitimacy of contributions and

cooperation projects to support child protection systems in States of origin. This FS presents the different views presented in GGP No 2 (Section 9.7) and in the Note on Financial Aspects.

**16 Contributions, donations and cooperation projects – View No 1**

2022 SC, C&R No 9 : “Most delegations expressed strong support for ensuring that only costs and expenses are charged or paid in line with Article 32(2) of the Convention (view 1). In their view, contributions, donations and cooperation projects should not take place in the context of intercountry adoption in order to ensure a full separation from costs and fees. They emphasised that States should make efforts to build a pathway towards this view to avoid the inherent risks of undue influence related to contributions, donations and cooperation projects, but recognised this may take some time to be achieved”.

See also GGP No 2, Section 9.7.1; Note on Financial Aspects, paras 128-129.

**17 Problems of contributions, donations and cooperation projects.**

See GGP No 2, Section 9.7.1; Note on Financial Aspects, paras 117-123: Contributions, donations and cooperation projects are not required by the Convention as they influence the process, create dependency and expectations, encourage competition; and are not a legitimate way to support child protection systems in States of origin. For example, contributions to AABs may lead to an open competition between foreign AABs, where bodies supporting larger projects may be favoured in the allocation of children.

See also GGP No 2, paras 429 and 444: “[t]he view that donations will not influence outcomes if paid after the adoption cannot be justified in the majority of cases” and “[i]t is difficult to imagine that a donation will not influence the process when an adoption is undertaken on the understanding that a donation will be forthcoming” (View No 1).

**18 No contributions, donations and cooperation projects from actors involved in intercountry adoption**

See GGP No 2, para. 443; Note on Financial Aspects, para. 129: It should also be kept in mind that the role of adoption authorities and bodies is to facilitate intercountry adoptions when they are in the best interests of the child, and “therefore, they may not have the capacity, experience and professionals needed to properly implement the cooperation projects”.

See also 2019 WG Report, para. 9: “Some questioned on what children’s rights basis the child protection system, including the adoption system, in a [State] should be partially funded by [PAPs] or [AABs] through contributions, donations and / or cooperation projects”.

**19 Contributions, donations and cooperation projects – View No 2**

Some are of the view that “some projects may meet the needs of States of origin and may be legitimate if they are properly monitored”, Note on Financial Aspects, para. 137. See also GGP No 2, Section 9.7.2.

**20 Contributions, donations and cooperation projects – View No 3**

Some are of the view that “successful projects of AABs must be acknowledged and supported, and therefore they may be legitimate” Note on Financial Aspects, paras 138-139. See also GGP No 2, Section 9.7.3.

**21 Contributions, donations and cooperation projects – Views No 2 and No 3**

2022 SC, C&R No 10: “Some delegations expressed the view that setting and respecting strong safeguards regarding contributions, donations and cooperation projects is another way to ensure that there is no undue influence in the adoption process (views 2 and 3). Nevertheless, the SC noted that even under this view, 1) lack of separation of contributions, donations or cooperation projects from the actual costs of an adoption, as well as from the intercountry process as a whole, and 2) cooperation with specific States influenced by levels of contributions, donations and support for contribution projects, still constitute illicit practices.”

- 22 Contributions, donations and development aid may be permitted if safeguards are respected**  
See GGP No 2, Section 9.7 and Note on Financial Aspects, paras 137-139 and paras 142 and 145 for recommendations regarding contributions and donations, if allowed.
- For the safeguards to prevent illicit practices from occurring see, for example, green boxes 1 to 3, and 7 to 13 of this FS.
- For the safeguards to prevent enabling factor from occurring see, for example, green boxes 14 to 48 of this FS.
- 23 Clear separation**  
2022 SC, C&R No 8: "Recalling that contributions, donations and cooperation projects present a high risk of influencing the adoption process by creating dependency and encouraging competition amongst States, organisations and prospective adoptive parents (PAPs), the SC reiterated that there should be a clear separation of possible costs and fees of the adoption process, from contributions, donations and cooperation projects." See also 2010 SC, C&R Nos 1(h) and 14; Note on Financial Aspects, paras 21, 124-126; List, Section 5(a); GGP No 2, Section 9.7.1.
- 24 Influencing intercountry adoption**  
In the context of views 2 and 3, some States have expressed concerns about how the issues are presented and treated in red boxes 8 to 10 of this FS.
- See Note on Financial Aspects, paras 118-121.
- Contributions, donations and cooperation projects affect the fairness of the cooperation between States. In such cases, the illicit practice would be the contribution, donation or cooperation project itself, but it does not mean that the adoption itself would become illicit.
- 25 Avoiding influencing intercountry adoption**  
For example, a State may want to establish strict rules to ensure that the persons or committee making decisions regarding the placement of children are not given access to any information regarding the levels of contributions, donations and support for cooperation projects from various PAPs, AABs and/or RS.
- 26 Contributions, donations or cooperation projects aimed at supporting childcare institutions taking care of adoptable children who may be adopted intercountry**  
Some States are of the opinion that, under views 2 and 3, the content of red box 10 would be considered more appropriately as an enabling factor.
- 27 Improve the child protection system**  
See Note on Financial Aspects, paras 91-92 and List, Section 5(b).
- 28 Unreasonably high contributions or donations**  
See Note on Financial Aspects for the definitions of "improper financial or other gain" and "reasonable" for costs and fees, which may also be applicable to contributions and donations.
- 29 Fixed and reasonable amounts of possible contributions**  
See Note on Financial Aspects, para. 142. Also, GGP No 2, para. 426.
- 30 Limit the amounts of possible donations**  
See Note on Financial Aspects, para. 145-146.
- 31 Donations made before the finalisation of the adoption**  
See GGP No 1, para. 244: "Concerns were raised in the 2000 Special Commission about the practice of making donations to adoption bodies or institutions, in particular before the adoption process is completed. Specific concerns were the lack of knowledge about, and the lack of monitoring or reporting systems for, the use of donations, and the varying amounts sought or given" (see also



2000 SC, C&R No 9, and 2005 SC, C&R No 5; Note on Financial Aspects, para. 145; List, Section 5(c). See also GGP No 2, para. 429.

It has to be noted that “before the finalisation of the adoption” also during the adoption process.

**32 Prohibition of donations before the finalisation of the adoption**

See 2000 SC, C&R No 9; 2005 SC, C&R No 5; GGP No 1, para. 244; Note on Financial Aspects, paras 145 and 146; List, section 5(c).

PAPs are or should be made aware of all financial aspects (including donations) as part of the information provided to them at the beginning of their project. In addition, during the adoption process, neither the AAB nor the PAPs should be solicited for donations in order to avoid the possibility that the donations will have an influence on the allocation of children. However, even if the PAPs and AABs are not solicited during the adoption process, they know they may be after the process. Thus, the efficacy of not soliciting them during the process may be quite limited, especially since PAPs very often feel obligated to donate or insecure about potentially losing their child if they do not donate.

**33 Prohibition of donations before the finalisation of the adoption**

See 2000 SC, C&R No 9; 2005 SC, C&R No 5; GGP No 1, para. 244; Note on Financial Aspects, paras 145 and 146; List, Section 5(c).

**34 Donations to birth families**

See Note on Financial Aspects, para. 144.

**35 Prohibition of donations to birth families**

See Note on Financial Aspects, para. 145: “donations should never be given to [birth] families of adoptable children”.

**36 Lack of or inadequate regulation and implementation**

See Note on Financial Aspects, Sections 7.2 and 7.3.

**37 Adequate legal framework and its implementation**

See Note on Financial Aspects, paras 157-158; see also Sections 7.1, 7.2 and 7.3, and List, Section 6(a). The “Convention only set[s] minimum standards with regard to financial issues” (Note, para. 152). Domestic legislation should build on and raise those standards (see Note, paras 153-154). Implementation may be carried out through laws at the more general level addressing the important prohibitions and regulations dealing with more detailed matters (see Note, para. 154).

**38 Failure to train staff and representatives**

See Note on Financial Aspects, paras 43 and 156. Such lack of training or monitoring could result in the personnel not being aware of the risks of financial aspects and could result in unreasonably high amounts being charged and / or improper payments being requested.

**39 Proper information and training**

See Note on Financial Aspects, paras 57, 150-151 and 159. For example, the State of origin should have meetings with the representatives of the AABs in order to explain the adoption procedure to them.

**40 Conflict of interest**

See Note on Financial Aspects, para. 103: “It is legitimate to expect that quality services will be remunerated accordingly. Failing to do so may also lead professionals to resort to illicit means to supplement their income (e.g., accepting a bribe), or to take on too many jobs which could divert them from their initial mission and create potential conflicts of interest”. See also GGP No 1, Annex 3.1.3.2 and GGP No 2, para. 228.

**41 Assessment of the child paid by PAPs**

For example, in some cases PAPs are asked to fund further assessments (medical or other) to determine the child’s needs after the matching is done, while these assessments should have been

done before the matching in order to ensure that authorities are able to make an appropriate / informed match and PAPs make a fully informed decision.

**42 Maintenance of a child before entrustment being paid by PAPs**

In some instances, PAPs are asked to pay for the maintenance of a child. Some childcare institutions see these sums as a steady additional income and may therefore expedite the matching process to identify PAPs prematurely and / or delay the entrustment of the child to the PAPs.

**43 Transparency**

See Note on Financial Aspects, Section 5.2; List, Section 2.

**44 Information not fully disclosed**

See Note on Financial Aspects, para. 68.

**45 Comprehensive, precise, accurate and up-to-date information**

See Note on Financial Aspects, paras 75-78; List, Sections 2(a), 5(b). The information should be updated at least once a year.

**46 Wide publicity**

See Note on Financial Aspects, paras 79-80; GGP No 2, paras 353 and 355. *E.g.*, through brochures, websites, and, where appropriate, in multiple languages.

**47 Payments not initially planned**

See Note on Financial Aspects, para. 37: "for example under the cover of donating to a childcare institution. Sometimes they are coerced in the final stages to pay more money or risk having the adoption blocked or stopped".

**48 Notify PAPs in advance**

See 2000 SC, C&R No 9, and 2005 SC, C&R No 5; Note on Financial Aspects, paras 17 and 82; List, Section 2(c).

**49 Timetable of payments**

See Note on Financial Aspects, paras 83-84; List, Section 2(c); ISS, *Intercountry Adoption and Its Risks: A Guide for Prospective Adopters*, 2015.

**50 Wide variation of costs and fees between AABs**

It has to be noted that in the case of AABs from different States, part of this variation may be due to how AABs are funded, especially where they are publicly funded. In such case, the variation would not be an enabling factor.

**51 Wide variation of costs and fees**

See Note on Financial Aspects, para. 99.

**52 Determine a range of costs and fees**

See Note on Financial Aspects, para. 106.

**53 No limits**

See Note on Financial Aspects, paras 100-102. *E.g.*, "different actors may benefit from the absence of laws and regulations limiting costs and may increase the amounts that they charge".

**54 Limit amounts**

See Note on Financial Aspects, paras 105-106; List, Section 3(a).

**55 Remuneration not dependent on number of cases**

See Note on Financial Aspects, para. 111; List, Section 3(a).

**56 Payments in cash and / or not recorded**

See Note on Financial Aspects, para. 71.

- 57 Prohibition of payments in cash**  
See GGP No 1, para. 246; Note on Financial Aspects, para. 85; List, Section 2(d).
- 58 Payments by bank transfer**  
See GGP No 1, para. 246; Note on Financial Aspects, para. 85; List, Section 2(d).
- 59 Payments without invoices / receipts**  
See Note on Financial Aspects, para. 71.
- 60 Official receipts and invoices**  
See GGP No 1, para. 238; GGP No 2, para. 393; Note on Financial Aspects, paras 88-89; List, Section 2(d).
- 61 Payments directly by PAPs**  
See Note on Financial Aspects, para. 86; List, Section 2(d).
- 62 Payments through AABs**  
See Note on Financial Aspects, para. 86; List, Section 2(d).
- 63 Lack of accountability and / or control**  
See Note on Financial Aspects, paras 144 (donations) and 160.
- 64 Ensure accountability and / or control**  
See Note on Financial Aspects, para. 161; List, Section 6(b).
- 65 Accountability**  
See Note on Financial Aspects, paras 93 and 161; List, Section 2(e).
- 66 Audits**  
See Note on Financial Aspects, paras 17, 93 and 161.
- 67 Reporting improper payments and abuses**  
See Note on Financial Aspects, para. 115. *E.g.*, complaints line, phone (*e.g.*, hotline), specific email-address.
- 68 Verification of costs and fees**  
Please note, that it is not possible to verify donations and contributions at this stage, as donations and contributions should not be paid or made before the adoption is finalised.
- 69 Financial reports**  
See Note on Financial Aspects, paras 76, 90-95; List, Section 2(e).
- 70 Proper use of payments**  
See Note on Financial Aspects, para. 90; List, Section 2(e). Competent authorities should supervise and monitor how funds are used, so as to identify any illicit practice that could occur.
- 71 Notifying donations and cooperation projects**  
See Note on Financial Aspects, para. 145; List, Section 5(c).
- 72 Lack of cooperation**  
See Note on Financial Aspects, para. 73.
- 73 Gathering of information by Central Authorities and / or AABs**  
See Note on Financial Aspects, para. 74; List, Sections 2(a) and 2(f). When collecting information, it should include an estimation of the State's cost of living to compare it with the costs and fees charged for adoption in the different States.
- 74 Consider extent of cooperation**  
See List, Section 2(f).

- 75 Cooperation through specialised bodies, agencies and organisations**  
See Note on Financial Aspects, para. 135; List, Section 5(a).
- 76 Creating dependency and expectations on contributions, donations or cooperation projects**  
See Note on Financial Aspects, paras 58-59 and 120: “[S]ome States of origin finance (part of) their adoption system through the costs and fees paid, and parts of their child protection system through contributions and donations”. “States wanting to ensure a steady flow of external funds [for this purpose] may feel obliged to ensure that children are “supplied” for intercountry adoption” “regardless of the real need of children”.
- 77 Unclear or questionable purpose**  
See Note on Financial Aspects, para. 72.
- 78 Clear purpose and final destination of contributions, donations, and cooperation projects**  
See Note on Financial Aspects, paras 91-92 and List, Section 2(e), 5(b) and 5(c). *E.g.*, which aspects of the child protection system the contribution, donation or cooperation project will be used for.
- 79 Contributions, donations and cooperation projects for childcare institutions**  
Contributions, donations and cooperation projects for individual childcare institutions (including through AABs) create dependency as they connect the operation of childcare institutions with intercountry adoption. This practice may also encourage direct contact between the PAPs and the childcare institutions. See GGP No 1, para. 243.
- 80 Prohibit contributions, donations and cooperation projects to childcare institutions**  
See, UN Committee on the Rights of the Child, *2021 Day of General Discussion Children’s Rights and Alternative Care - Outcome Report*, Recommendations, Section E: “Transform the alternative care system towards family-based and community-based care”: “[States] should emphasize redirecting resources from institutional care towards family-based and community-based care [...]”; “States should ensure that national and international funding mechanisms, cooperation assistance and private funding are not used to support the institutionalization [...] of children [...]”.
- Some receiving States may not be able to prohibit donations to childcare institutions in the State of origin by their citizens (PAPs of the receiving State). In such cases, the receiving States should strongly and actively discourage donations to childcare institutions in States of origin.
- 81 Contributions, donations and cooperation projects for family preservation and preventing abandonment should be preferred**  
See *supra* endnote 27. See the recommendations made for donations: Note on Financial Aspects, para. 145; List, Section 5(c).
- 82 Amount for contributions demanded by a State of origin is not fixed**  
Contributions with amounts left to the discretion of the PAPs may encourage PAPs to pay more in order to influence an adoption.
- 83 Fixed amounts for contributions demanded by a State of origin**  
See Note on Financial Aspects, para. 142; List, Section 5(b).
- 84 Contribution to a fund**  
See Note on Financial Aspects, paras 130-131 (see paras 132-134 for the risks involved in this).
- 85 Amount for contributions demanded by an AAB is not fixed**  
See Note on Financial Aspects, para. 141.
- 86 Fixed amounts for contributions demanded by an AAB**  
See Note on Financial Aspects, para. 142; List, Section 5(b).

**87 Donations in kind should be preferred**

See Note on Financial Aspects, para. 145; List, Section 5(c). *E.g.*, material support such as food or educational supplies. One advantage of donations in kind is that the end use of the donation is generally transparent, unlike with cash. However, the value of a donation in kind can also be extremely important. Childcare institutions should report on the estimated value of donations in kind that they receive.

**88 Expectation of donations**

See GGP No 2, paras 429 and 444; Note on Financial Aspects, para. 51.

**89 Informing PAPs about risks of donations**

See Note on Financial Aspects, Sections 6.1 and 6.4.

**90 Informing PAPs about risks of donations**

See Note on Financial Aspects, Sections 6.1 and 6.4; as well as *supra* endnote 32 of this FS.

**91 Purposes of cooperation projects**

Cooperation projects should aim primarily at reinforcing the child protection system overall by providing support to birth families, preventing abandonment, gatekeeping and institutionalisation.

**92 Cooperation projects matching the needs of the State of origin**

See Note on Financial Aspects, para. 139. The cooperation project to be undertaken should be discussed and decided on after discussions between the AAB and the State of origin based on the latter's needs.

**93 Separation required by law**

See GGP No 2, para. 455.

**94 Written agreement**

See Note on Financial Aspects, para. 126: “[This] is another method to emphasise the requirement that any project must be kept separate from intercountry adoption”.

**95 Supervision of projects**

See Note on Financial Aspects, para. 137.

In some States, the competent authorities will be the Central Authority. However, some States are of the view that if the Central Authority is responsible for monitoring and supervising the cooperation projects of AABs, then, there is a link between the cooperation project and intercountry adoption. As explained under green boxes 6 and 7 of this FS, there should be a clear separation of cooperation projects from intercountry adoptions.

**96 Separation of departments**

See GGP No 2, para. 455: “the [AAB] must have a separate unit for cooperation projects in its structure”. See Note on Financial Aspects, para. 125; GGP No 2, Section 9.6.1, para. 442. *E.g.*, AABs may undertake cooperation projects in the regions of a State where they do not adopt children. The personnel and finances for intercountry adoption should be distinct from those for cooperation projects. Cooperation partners in States of origin must have a corresponding separation if they operate in both areas. Even if funds are raised by AABs, the cooperation projects should be developed by another expert body in that area.

However, some States question the feasibility and efficacy of this suggested preventive action due to the following:

- 1) It appears to depend on a scenario where an AAB receives funds from the receiving State's development aid program to then use for a cooperation project in the State of origin. However, in many States AABs are very small and are not publicly funded.
- 2) In any event, the authorities in the State of origin (including the authorities responsible for adoption) will / may be aware that development aid is provided by a particular receiving State.

For example, there are situations where an AAB may have set up a distinct entity (e.g., a foundation) for the purposes of receiving contributions and using them for cooperation projects in the State of origin. While legally distinct, the State of origin (and adoption authorities) will also inevitably make the connection between the AAB and the foundation (and therefore the connection with the cooperation project).

97

**Criminal law**

See Note on Financial Aspects, paras 53 and 162. There are failures in law enforcement due to, among other factors, a lack of resources being allocated to this task.

98

**Strong sanctions as deterrence**

See Note on Financial Aspects, para. 167: Sanctions should "target all violations related to improper financial or other gain [...], [apply to] all persons, authorities and bodies participating in the violation [...], and [be] commensurate with the violation yet sufficiently strict to [serve as a deterrent]".

99

**Prevent, expose and address corruption**

See Note on Financial Aspects, paras 57 and 169, which provides a list of examples of potential actions States can take to address corruption and specifies possible sanctions. See also GGP No 1, paras 247-248.

## FACT SHEET 4

### Misrepresentation of Identity

On this topic, see also:  
FS 5 "Documents", FS 7 "Consent" and FS 11 "Origins"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Misrepresenting the identity of (1) the child, (2) the parent(s), or (3) any other person who has the legal responsibility of the child, to make the child available for adoption, *such as*:<sup>1</sup>



RS  
SO

Enact and properly implement **legislation, regulations and procedures** to identify, prevent and address the misrepresentation of the child or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

2. - falsely claiming that the child is an orphan or has unknown parents, and is in need of adoption;
3. - falsely claiming to be the parent of a child and giving consent to the adoption of that child;
4. - falsely claiming that a child has only one parent, to circumvent the requirement that both parents need to consent;
5. - swapping the identities of children;
6. - creating a new identity for a child;
7. - simulating births through tampering with civil registry records.<sup>2</sup>



SO

Ensure that only **competent authorities** register the identity of children. Always **verify the identity** of the child and those registering the child's birth, relinquishing or consenting to the adoption of the child.



SO

Where possible, provide **DNA tests** for the child and the birth parents.<sup>3</sup>

Provide details in the **report on the child** of the steps that were taken to verify the identity of the child and the documentation of these steps.

8. Declaring a child adoptable when there is insufficient information and documentation regarding the child's identity, or, if the parents are unknown, no thorough investigation has been done, and the child's identity has not been (re-)established.



SO

Ensure that competent authorities that may **declare a child adoptable** must only do so based on reliable documents relating to the child's identity or, if the parents are unknown, after a thorough investigation (e.g., having exhausted all available information and options – see further green box 15 of this FS) has been done, and after the child's identity has been accurately (re-)established.<sup>4</sup>

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

9. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards.

10. Lack of or inadequate verification of the identity of the child, the birth parents, the PAPs and any other relevant persons at different stages of the adoption procedure.<sup>5</sup>



SO

**Train actors** to undertake the search of identity of the child and provide resources for the police or social workers to undertake the search for the family of origin if needed.



RS

SO


Always **verify the identity** of the child, the parents, the PAPs (HC, Arts 15 & 16) and any other relevant persons at different stages of the adoption procedure.<sup>6</sup>




SO

Prepare a **report** including comprehensive information about the identity of the **child**, including among others information about the birth parent/s (where known) (HC, Art. 16(1)(a)).




-  RS Prepare a **report** including comprehensive information about the identity of the **PAPs** (HC, Art. 15).

11. Lack of or inadequate record and / or preservation of information about the child's identity.


-  RS  
SO Ensure that **preservation of information** held by competent authorities and bodies concerning the child's identity, including information about the identity of the parents for a sufficient period of time, and ideally in perpetuity.

12. AABs having direct contact with the birth family (*e.g.*, in birth clinics, in childcare institutions) and lack of or inadequate application of measures to prevent such contact.<sup>7</sup>

-  RS  
SO **Prohibit AABs from having direct contact with the birth family.**  
Prohibit the adoption through an AAB that has had direct contact with the birth family.

## II. At the **CHILD PROTECTION** level

13. Measures which allow for the anonymous abandonment of children (*e.g.*, baby boxes, anonymous or secret births).<sup>8</sup>

-  SO
  - Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>9</sup>
  - Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).
  - Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>10</sup>
  - Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected and preserved.<sup>11</sup>

14. Allowing birth clinics to operate childcare institutions.<sup>12</sup>

-  SO **Prohibit birth clinics from operating childcare institutions.**

15. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child to verify the identity of the child, while ensuring the safety of the birth parents, as well as mechanisms to preserve the evidence obtained during investigations.<sup>13</sup>

16. Lack or limited capacity of the competent authorities and bodies to establish, verify and preserve the child's identity due to lack of resources and / or inadequate training.



SO

Ensure adequate **resources and training** for the competent authorities and bodies on how to establish, verify and preserve the child's identity.

17. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving misrepresentation of identity.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving misrepresentation of identity.

### III. At the **GENERAL** level

18. Lack of or inadequate system of, or barriers to, birth registration (*e.g.*, fees, distance, discrimination<sup>14</sup>).



SO

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system** managed by a competent authority that registers all births in the State, including recording the identity of the parents.<sup>15</sup>

19. Parents have no identity documents.



SO

Ensure that all persons have an **identity document** and can obtain a replacement when necessary (*e.g.*, if lost or stolen) or can be supported to establish identity if needed.

20. Possibility of changing birth records without reason and without proof of the original registration of the child.



so

Enact legislation or regulations that limit the permitted legal bases for **changes to birth registration** and that require that such changes are done through proper legal procedures. Ensure that the original information is preserved.

Verify that any changes to birth registration have a legal basis and are done in the best interests of the child.

21. Lack of or inadequate regulation and monitoring of birth clinics and midwives to ensure that they register or encourage parents to register the child expeditiously.



so

Regulate, train and monitor **midwives and personnel of birth clinics** to ensure that they register the child, or that they report their attendance at a birth and support / encourage parents to register the child expeditiously.

22. Cultural and familial norms and expectations that result in mothers feeling they need to hide their pregnancy and / or the birth of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>16</sup>



so

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

23. Illiteracy and poor education.<sup>17</sup>



so

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>18</sup>

## FS 4 “Identity” – additional information (endnotes)

Identity includes name, nationality and family relations (see CRC, Art. 8(1)). Legal identity is defined by the United Nations as “the basic characteristics of an individual’s identity, for example, name, sex, and place and date of birth, conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth” (see UN Economic and Social Council, *Introduction of the United Nations Legal Identity Agenda: a holistic approach to civil registration, vital statistics and identity management*, 2019).

### 1 **Misrepresentation of identity**

Misrepresentation of identity includes “false representation”.

Misrepresentation of identity is an illicit practice in itself but may also be the consequence of forging or falsifying a document. The identity of children in need of adoption can be misrepresented through the use of authentic documents that contain false information (*i.e.*, child “laundering”) (see FS 5 “Documents”). For example, a document may indicate that a child has been abandoned or orphaned when, in reality, the child’s parents exist and have no intention of abandoning or relinquishing their child. Identity is also misrepresented where children are falsely presented as siblings or twins.

### 2 **Simulation of births**

The identity of children can be misrepresented by the creation of new birth records to reflect a false birth or to reflect the birth of a child who has already been registered (see FS 5 “Documents”).

### 3 **DNA test**

DNA tests may be useful to ensure that persons claiming to be the parents of a child are indeed the parents, to assist with an investigation to find the child’s family, and to verify the identity of persons consenting to the adoption. DNA testing may also be useful to ensure that the child who entered the child protection system is the same child who is declared adoptable or with whom PAPs have been matched.

States have different views as to whether DNA testing should be used in the context of adoption as it may interfere with privacy rights and raise issues about data protection. If DNA tests are permitted, careful attention should be given as to how this information will be preserved. States should ensure that DNA samples are used only for the purposes for which they were gathered (see HC, Art. 31), and States should find alternatives to birth parents (or those claiming to be) having to pay for such tests, with the understanding that costs for such testing should never be borne by PAPs or AABs.

### 4 **Re-establishment of identity**

The source of information in the identity document may refer to the place, authority, body or person from which the authority obtained the information used to prepare the document.

It is the responsibility of the State to re-establish identity, under Article 8(2) CRC, in order to rectify elements that may be missing (*e.g.*, giving the child a name if it does not have one, to ensure that the child has a legal identity) and / or falsified (*e.g.*, establishing what the real origins of the child are if the birth certificate has been falsified).

### 5 **Lack of verification of identity**

Lack of, or inadequate, verification of the child’s identity at different stages (*e.g.*, when the child enters the child protection system, when a decision is made on the child’s adoptability, when PAPs have been matched with the child, when the adoption decision is to be issued) may allow misrepresentation of the child’s identity. The same applies to the lack of, or inadequate, verification of the parents’ identity at different stages (*e.g.*, when the child enters the child protection system, when the birth parents give their consent to their child’s adoption).

### 6 **Verification of the child’s identity**

Important stages for verifying a child’s identity include when the child enters the child protection system, when persons whose consent is required give their consent, when the child’s adoptability is

determined, when the receiving State receives the report on the child (HC, Art. 16(1)(a)), when the child is matched with PAPs, before agreements under Art. 17(c) of the Convention are given, and before the final adoption order is made.

#### 7 **AABs in direct contact with birth family**

AABs may put pressure on the birth parents themselves and / or on the birth parents' family to influence the birth parents' decision.

#### 8 **Anonymous abandonment of children**

The anonymous abandonment of children may make it impossible to correctly identify the child.

For example, in “accouchement sous X” (anonymous birth), the details of the mother remain unknown and cannot be divulged unless she gives her consent. See UN Committee on the Rights of the Child [Concluding Observations](#) “[t]he Committee also recommends that the State party consider removing the requirement of the biological mother’s consent to reveal her identity and to increase its efforts to address the root causes that lead parents to choose to use confidential [anonymous] birth” (2016 CRC/C/FRA/CO/5, para. 33).

#### 9 **Policies on abandonment of children**

With regard to baby boxes, the Committee on the Rights of the Child has recommended that States review their policies on baby boxes with a view to prohibit them.

See the Committee on the Rights of the Child [Concluding Observations](#) “the Committee urges the State party to completely abolish the practice of anonymous abandonment of infants” (2020 CRC/C/AUT/CO/5-6, para. 20).

See the Committee on the Rights of the Child [List of Issues](#) “specify measures taken (...) to end the “baby box” programme, address its causes and promote alternatives” (2021 CRC/C/CZE/Q/5-6, para. 5(d)).

#### 10 **Confidential hospital births**

Confidential hospital births occur where the (medical or other) details of the mother are kept and can be revealed to the child later on. See the Committee on the Rights of the Child [Concluding Observations](#) “prohibit the “baby box” initiative (...)” and “(...) consider introducing, as a last resort, the possibility of confidential hospital births” (2019 CRC/C/KOR/CO/5-6, para. 23).

#### 11 **Information regarding cases of anonymous birth**

See the Committee on the Rights of the Child [Concluding Observations](#) “ensure that the draft legislation provide for children to have access to information regarding their identity if they were adopted or were born via anonymous birth” (2021 CRC/C/LUX/CO/5-6, para. 16).

#### 12 **Birth clinics operating childcare institutions**

Birth clinics operating childcare institutions may have a potential conflict of interest as they may have financial or other incentives to separate children from their birth parent(s) and steer the child to the institution where they could be adopted. In order to do so, clinics may misrepresent identities in the birth notification that they issue for the birth registry.

#### 13 **Mechanism facilitating searches for the child's family**

In cases where a child is presented as having unknown parents, it is essential that the competent authorities conduct a thorough investigation over a reasonable period of time to identify family members and verify the child's identity. Good practices may include the use of television, radio, the press, and Internet in searching for family members of that child (in consultation with the child, especially if the child is older). Some authorities also rely on word of mouth and oral interactions to find the child's family within the community or city; others bring the child to the place where they believe the child comes from to see whether the child can be recognised. If doubt exists about a child's identity, DNA testing may also be an option. Consideration should be given to ensuring the safety of the parents if they were to be found. The procedure should not be stopped before significant efforts over a reasonable period of time have been undertaken and all efforts should be documented. In any

case, authorities must double check the veracity of the information received in response to public campaigns. All relevant information that is collected should be preserved. See also FS 8 "Unknown Parents", endnote 11.

**14 Discrimination in birth registration**

See FS 1 "Abduction", endnote 8.

**15 Establishment of a birth registration system**

The child shall be registered immediately after birth (CRC, Art. 7). Birth registration should be mandatory, free and should result in the issuance of a public document recording the identity of the child and any other relevant information. This document (usually a birth certificate or a birth extract) is key to ensuring that the adoption procedure is legal. States should ensure that everyone has access to the birth registration system, especially in remote areas (e.g., by mobile registration units, online registration systems, integration of birth registration in other services such as health and education). Birth registration records should be carefully controlled, and revisions should be permitted only through proper legal procedures. When immediate registration of the child at birth has not occurred, States should still permit free registration at a later stage. See UNICEF Article, [What is birth registration and why does it matter?](#); and UNCHR Good Practices Paper (Action7), [Ensuring birth registration for the prevention of statelessness](#).

**16 Discrimination**

Discrimination may result from giving birth out of wedlock or due to race, sex, disability, caste, social class, etc.

**17 Illiteracy and poor education**

Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter or translation or poor education. In such cases, they would be reliant on the information provided to them by the person asking them to sign the documents, which could result in misrepresentation of identity, content or purpose of the documents (e.g., the documents could state names and identities different from those of the birth parents and / or the child).

**18 Free education to all**

For example, see Art. 13 (2) (a) of the International Covenant on Economic, Social and Cultural Rights provides that "Primary education shall be compulsory and available free to all".

## FACT SHEET 5

### Forgery and Falsification of Documents

On this topic, see also:  
FS 4 "Identity", FS 7 "Consent" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Use of false documents in the adoption procedure including:
2. - as a means to establish false identities for children and parent(s);
3. - to cover up the fact that children were obtained through illicit or illegal means (e.g., fraud, abduction).



RS  
SO

Authorities issuing documents should verify and confirm the **source of the information** in the documents.<sup>1</sup>

See also green boxes 6 to 9 of this FS.

4. Declaring a child adoptable when there is insufficient information and documentation, in particular regarding the child's identity and / or about the efforts made to find the family.



SO

Only **declare a child adoptable** if that child is in need of adoption and all necessary documentation<sup>2</sup> is available, including:

- proper birth certification of the child and the birth parents if known; or
- in case of unknown or uncertain origins or identity of the child, documentation recording all efforts made, the investigation carried out to find the family, and the documents re-establishing<sup>3</sup> the identity of the child.

## II. At the **GENERAL** level

### 5. Forgery and falsification of documents.<sup>4</sup>



RS  
SO

Enact and properly implement **legislation, regulation, policies and procedures** against forgery and falsification of documents, including meaningful sanctions as a deterrence.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

#### 6. Lack of or inadequate standardised documentation for adoption.<sup>5</sup>



RS  
SO

Establish and properly implement **standardised documentation** for the adoption procedure.<sup>6</sup> Provide a sample package of required documents (indicating who must sign and what stamps and seals must be affixed) to the partner State.<sup>7</sup>

#### 7. Lack of or inadequate mechanisms, tools, and procedures allowing authorities to quickly and effectively review and verify the validity, accuracy and completeness of documents.



RS  
SO

Create, and properly implement, **mechanisms, tools, and procedures** allowing authorities to quickly and effectively review and verify the validity, accuracy and completeness of documents presented during the adoption process.<sup>8</sup>

#### 8. Failure to review and scrutinise all documentation regarding the identity and adoptability of the child, the identity of the parents and the identity and profile of the PAPs to determine if they are / appear questionable, inconsistent, or incomplete.

Reliance on documents that have not been reviewed or scrutinised, or that are / appear questionable, inconsistent, or incomplete.



RS  
SO

Ensure that **certified copies** of the child's birth certificate, the consent(s) to adoption or any decision on the adoptability of the child are sent to the receiving State at the time of the provision of the report on the child.





RS

SO

**Review and scrutinise all documentation**, about the child, the parents and the PAPs, including verifying the origin of the documents, the information provided therein and that there are no inconsistencies.

Ensure that for any document transmitted to another relevant authority or person, the **original document or a certified copy** is sent, in particular if there are specific concerns.

Verify all documents before agreeing that the adoption may proceed (HC, **Art. 17(c)**).

9. Use of documents, either in electronic or paper form, without the required signatures, stamps, legalisation, Apostille, or other information about the relevant competent authority.



RS

SO

Ensure that **(electronic and paper) documents** are:

- issued by a competent authority;
- duly signed and include, if required, official stamps;
- authenticated through an Apostille or other means.<sup>9</sup>

## II. At the **GENERAL** level

10. Lack of or inadequate standardised birth registration documentation.



SO

Create **standardised birth registration documents** (e.g., birth certificates).<sup>10</sup>

11. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving forged or falsified documents.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving forged or falsified documents.

12. Illiteracy and poor education.<sup>11</sup>



SO

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>12</sup>

## FS 5 “Documents” – additional information (endnotes)

### 1 **Verifying the source of information in the document**

The source of information in the document may refer to the place, authority, body or person from which the authority obtained the information used to prepare the document.

### 2 **Verification of necessary documents prior to the declaration of adoptability**

Necessary documents may include, among others, a birth certificate, police reports, comprehensive reports on the child prepared by an authority or body, and a consent form from the legal parents.

### 3 **Re-establishment of identity**

See FS 4 “Identity”, endnote 4.

### 4 **Forgery and falsification of documents**

Examples of forgery or the falsification of documents are issuing invalid documents, recording false or inaccurate information, deleting or changing information on documents related to the child, birth family and / or PAPs, or simulating the signature of another person's name (see also FS 4 “Identity”).

Documents that may be falsified for an adoption include:

- the child's birth certificate (*e.g.*, the names of the child's parents are erased from the certificate in order that the child can be considered parentless, which may simplify the procedure to declare the child adoptable);
- the birth parents' birth certificate (*e.g.*, a person modifies the birth parents' certificate to misrepresent they are the child's birth parent);
- the PAPs' birth certificate (*e.g.*, the PAPs' birth certificate is modified to misrepresent they are relatives of the child, and thus that it is an intrafamilial adoption);
- the form recording the consent of the parent(s) or other person(s) or authorities whose consent is necessary for adoption (*e.g.*, the form is signed by different persons);
- the child's file and the PAP's file (*e.g.*, the file falsely states that the socialisation period lasted the required length of time so that the adoption order may be issued and the PAPs may return to the receiving State with the child);
- the certification of the PAP's eligibility and suitability to adopt;
- the adoption order; and
- the results of DNA tests.

### 5 **Lack of or inadequate standardised documentation**

Using a number of different forms of documentation makes it harder to detect fraud.

### 6 **Standardised documentation for the adoption procedure**

Such documentation may include, for example, standardised police reports, reports on the child, forms regarding the decision on the child's adoptability and forms on consent.

States are encouraged to develop and use standardised forms (see HCCH Model Forms at [www.hcch.net](http://www.hcch.net) under “Adoption”). The benefit of standardised forms is that they present all the relevant information in a comprehensive, systematic and understandable way (provided that they are filled out completely and properly). This helps authorities and other bodies to more easily identify documents, and check that all information is included, while also improving accuracy and saving time. They also help to prevent fraud, as authorities and bodies will be able to recognise fraudulent documents more easily.

**7 Sample package of required documents**

In order to facilitate the provision of sample packages, the possibility of including a section on the Secure Portal of the HCCH website, where Central Authorities of Contracting States and States that become Parties can upload and update such a sample package, may be explored.

**8 Creation of mechanisms, tools, and procedures for the verification of documents**

The competent authority presented with a document should review and scrutinise its validity, accuracy, and completeness: *e.g.*, verify that the document is signed and stamped, and that the information provided in the document is complete. If that is not the case, they should request clarification from the issuing authority. It is important to raise any concerns with the competent authority of the other State.

Some States of origin require extensive authentication of documents (*e.g.*, notarisation, confirmation from the Embassy and / or Ministry of Foreign Affairs of the receiving State) with stamps and other requirements on each page. States may consider accepting a single verification (one stamp) on the document, both on the original and the translated version. Where States do not have the resources to verify the validity of document(s), for immigration or citizenship purposes, these States may consider using private, duly authorised, reputable investigative companies to verify their validity.

**9 Assurance of authentication of documents**

It is recommended that States which are not yet Parties to the HCCH 1961 Apostille Convention consider acceding to this Convention.

**10 Standardised birth registration documents**

For example, the multilingual and coded extracts from civil-status records and certificates of the [Conventions from the International Commission on Civil Status \(ICCS\) on the issue of multilingual extracts from civil-status records](#) (Nos 16 and 34) could be useful.

**11 Illiteracy and poor education**

Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter or translation, or poor education. They would have to rely on the information provided to them by the person asking them to sign the documents, which could result in forgery or falsification of documents; *e.g.*, the parents sign a document which is then used to falsify other documents.

**12 Free education to all**

See FS 4 “Identity”, endnote 18.



## FACT SHEET 6

### Failure to give due Consideration to Subsidiarity

On this topic, see also:  
FS 10 "Matching" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Failure to give due consideration to one or both aspects of the principle of subsidiarity (HC, Art. 4(b));<sup>1</sup>
2. - by directing children to adoption without due consideration for reintegration in the family;
3. - when reintegration in the family is not possible, by directing children to intercountry adoption without due consideration for other suitable (permanent) family-based placements within the State of origin;
4. - by falsely declaring children as having "special needs" in order to include them in a fast-track procedure and accelerate the process (see also orange box 17 of this FS).<sup>2</sup>

Enact and properly implement **legislation, regulation, policies and procedures** to ensure that both aspects of the principle of subsidiarity are given due consideration.



RS  
SO

Ensure that the Central Authority in the receiving State **verifies** that the State of origin has given due consideration to the principle of subsidiarity before agreeing that the adoption may proceed under Article 17(c) of the HC. To this end, the Central Authority in the State of origin should ensure that sufficient details are provided to allow for such verification.

See also green box 17 of this FS.

5. Prioritising intercountry adoptions because the adoption is intrafamily without due consideration of whether the child is actually in need of a family; of the adoptability of the child; and / or of suitable domestic family permanent options.<sup>3</sup>



RS

Establish clear policies on subsidiarity for **intrafamily adoptions**.

Carefully consider each intrafamily adoption case.

SO

Consider whether **migration pathways** may be a better solution for a child for whom only a better education and / or a better life in the receiving State is sought.

6. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>4</sup>



RS

Establish and properly implement clear policies and procedures for **emergency situations**:<sup>5</sup>

SO

- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;
- publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.

## Enabling factors and possible preventive actions

### I. At the **CHILD PROTECTION** level<sup>A</sup>

7. Lack of or inadequate regulations, policies and / or procedures on subsidiarity.



so

Establish and properly implement **regulations, policies and procedures** on the principle of subsidiarity.

8. Lack of an effective and adequate child protection system.

9. Lack of, limited or inadequate resources and procedures to allow the competent authorities and bodies to properly give due consideration to the subsidiarity principle.



so

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support, family reintegration and permanent domestic family options for children who cannot be reunited with their family.<sup>6</sup>

Ensure that the competent authorities and bodies have adequate **human and material resources** to properly give due consideration to the subsidiarity principle.

10. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



so

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child, and a mechanism to ascertain whether they (parents or family, if identified) are able and wish to care for the child.<sup>7</sup>

<sup>A</sup> In order to present both aspects of the principle of subsidiarity in the correct order, the child protection level appears first in this FS.

11. Lack of, limited or inadequate resources and procedures for family support and prevention of separation programmes, and family reunification and reintegration.<sup>8</sup>



SO

Establish and properly implement effective **family support programmes**, including family preservation services, arrangements for temporary care and counselling, including appropriate publicity and accessibility<sup>9</sup> to these services, supports and programmes.

12. Timing issues:

- Insufficient time to carry out a proper assessment of family reunification.
- Once it is clear that the child cannot be reunited with their family, there is insufficient time to find suitable domestic alternative care before having to decide whether intercountry adoption is the best option.<sup>10</sup>
- Overall, failure to make all efforts to find a suitable permanent solution for the child in a timely manner.<sup>11</sup>



SO

Closely monitor the **length of time that children remain in temporary care**, ensure a regular and thorough review of the appropriateness of the care, and the number of placements over a defined period.<sup>12</sup>

Ensure that when it is determined that children cannot be reunited with their families, **permanency planning** should be undertaken as quickly as possible, and updated regularly.<sup>13</sup>

13. Lack of a protocol or timeframe for the best interests of the child assessment.



SO

Establish a protocol for a timely **best interests of the child assessment**.<sup>14</sup>

14. Reliance on institutionalisation of children by default and / or as the primary alternative care option available for children, with (or without) the view of facilitating the adoption of children.<sup>15</sup>



SO

Ensure **gatekeeping and de-institutionalisation** of children by giving due consideration to the principle of subsidiarity as established in Article 4 of the HC, including by promoting parental care, family support and family reintegration.



## II. At the **ADOPTION** level

15. Lack of, limited or inadequate resources and procedures to assess and decide on the appropriateness of domestic care options (preferably family type and permanent), including looking for PAPs in other parts of the State, before intercountry adoption is considered (including for children with special needs).<sup>16</sup>



SO

Ensure that the competent authority deciding that a child can be proposed for intercountry adoption should only do so after verifying that all steps were taken to duly consider **domestic alternatives** and that these steps and alternatives were not successful.<sup>17</sup>

16. Lack of a centralised database and / or system that allows for efficient matching to find suitable domestic options before turning to intercountry adoption, and / or lack of knowledge on how to use them.



SO

Establish and properly implement a **centralised database or record system** for children brought into care that includes information on how, why and by whom they were brought into care, and ensure that personnel using it, and doing the matching, are duly trained (for example, in professions such as social work, psychology or community work).<sup>18</sup>

17. Allowing a fast-track procedure or expeditious programme for children with special needs, without due consideration of the principle of subsidiarity and without appropriate safeguards (see also red box 4 of this FS).



SO

Clearly define what **special needs** are / entail in national legislation, policies or regulations.

Ensure that a child is only assessed as having special needs after a **thorough evaluation**.<sup>19</sup>

Ensure that even where there is an **expeditious programme** for children with special needs, due consideration is given to the principle of subsidiarity, and all necessary safeguards are respected, before a child enters such programme.

18. Failure to control financial benefits that may create incentives for AABs, childcare institutions or officials to prioritise intercountry adoption.



RS  
SO

Remove **financial incentives** that may influence AABs, childcare institutions or State of origin officials in giving preference to intercountry adoption.<sup>20</sup>

19. Specific childcare institutions exclusively for adoptable children and / or childcare institutions which are financially supported or operated only by AABs.<sup>21</sup>



SO

Prohibit **childcare institutions** exclusively for adoptable children, and childcare institutions financially supported or operated only by AABs.

20. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving failure to give due consideration to subsidiarity.



SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving failure to give due consideration to subsidiarity.

### III. At the **GENERAL** level

21. Biased view that life in a receiving State is necessarily better than in the State of origin.



RS  
SO

**Promote** that children grow up with their birth parents, family and community, as this is the best environment to support their development and health, when this environment is protective, loving and nurturing.

**Raise awareness** of the benefits of family support and reintegration programmes and the impact of family separation and alternative care on children.

**Raise awareness** of the importance of the principle of subsidiarity, and in particular the importance of culture and identity for adoptees.<sup>22</sup>

## FS 6 “Subsidiarity” – additional information (endnotes)

- 1 Failure to give due consideration to subsidiarity**  
 See HC, Preamble & Art. 4(b); CRC, Art. 21(b); GGP No 1, Section 2.1.1; UN Guidelines. The first level of subsidiarity requires that a child should be raised by their birth family or extended family whenever possible. An active investigation to locate the child’s (extended) family, and reintegrate the child in their family, should be done in a timely manner and before considering any other solution.

The second level requires authorities to actively search, for a reasonable period of time, for a suitable (permanent) family-based domestic solution and fail to find any, before considering intercountry adoption.

Directing children to intercountry adoption without considering these two levels threatens the integrity of the intercountry adoption process and is not in the best interests of the child.
- 2 Fast-track procedure**  
 When different procedures are put in place for children with special needs, there might be a risk that children who do not have special needs are assessed as having special needs in order to fast track the procedure.
- 3 Intrafamily adoption procedures**  
 This is the case, for example, where the child who is to be adopted by a family member in another State is declared adoptable too quickly, *i.e.*, without a full investigation as to whether the child could have remained with their birth parent(s) or whether there was a suitable domestic permanent family option which would have been in the best interests of the child.
- 4 Emergency situations**  
 If an adoption takes place in an emergency situation, it can be very difficult or impossible to give due consideration to the principle of subsidiarity. See further FS 2 “Circumventing the Convention”, endnote 5.
- 5 Emergency situations**  
 See FS 2 “Circumventing the Convention”, endnote 6.
- 6 Establishment of a national child protection system**  
 See GGP No 1, Chapter 6, and UN Guidelines, Chapter IV and para. 2, which underline the importance of “support[ing] efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and *kafala* of Islamic law”, as well as “ensur[ing] that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child’s full and harmonious development”. States should promote kinship care and domestic adoption as preferred permanent alternative care, if family preservation or reunification are not possible, and if it is in the best interests of the child.
- 7 Mechanism facilitating searches for the child’s family**  
 In some States, deadlines are established for searching for the family in order to avoid that the child remains unnecessarily too long in care. It is key that during this time, all efforts are made to find the family, and that the period is not used as a “waiting period” prior to moving to the next stage. The period should be used to find the family and, if relevant, assess their suitability to care for the child; efforts to both find and assess the family should be documented. See also FS 4 “Identity”, endnote 13, and FS 8 “Unknown Parents”, endnote 11.
- 8 Lack of resources for family support and prevention of separation**  
 See GGP No 1, Section 6.2.

9

**Accessibility**

Ensure that geographical location, disability, language, safety and financial issues are not barriers to access services.

10

**Insufficient time to find suitable domestic alternative care solutions**

This is a particular risk for very young children, and for children with special needs, where due to local beliefs, customs or cultural norms, domestic solutions are thought to be impossible, or very difficult, to find.

11

**Timely solution for children**

The longer it takes to find an alternative permanent care solution for the child, the more difficult it becomes to place the child with a suitable family (through, for example, kinship care, adoption, foster care) which may result in the child staying in an institution.

12

**Monitoring the length of temporary care**

See GGP No 1, para. 53; UN Guidelines, Chapter VI. Long-term institutionalisation is generally not in the best interests of a child, thus States should try to arrange for permanent family care as soon as possible after it is clear that the child will not be able to reintegrate within their family. Children are usually placed in temporary care when there is a chance that they will be able to reintegrate within their family. While in temporary care, the State should review the child's situation on a regular basis (preferably at least every three months). If family preservation or reunification is not possible, planning should commence as soon as possible to find a permanent home for the child.

See also UN Guidelines, para. 67 "States should ensure the right of any child who has been placed in temporary care to regular and thorough review – preferably at least every three months – of the appropriateness of his/her care and treatment, taking into account, notably, his/her personal development and any changing needs, developments in his/her family environment, and the adequacy and necessity of the current placement in these circumstances. The review should be carried out by duly qualified and authorized persons, and should fully involve the child and all relevant persons in the child's life".

13

**Permanency planning**

See GGP No 1, para. 286, Sections 6.4.1 and 6.4.2; UN Guidelines, Chapter VI.

14

**Assessment of the best interests of the child**

See GGP No 1, Section 2.1.1, para. 51; UN Guidelines, paras 21-23. Any placement should be in the best interests of the child and respect their fundamental rights. As a general rule, family placements are preferred, if they are assessed to be in the best interests of the child. Temporary or permanent placement outside the family will depend on whether the child can be reintegrated within their family.

15

**Default reliance on institutionalisation**

The consequences of reliance on institutionalisation of children without making efforts to locate and / or support the child's family can be that a child is declared to be in need of adoption, while such adoption may not have been necessary if proper efforts had been made to locate and / or support the family.

In some cases, institutions may look for children with the view of proposing them to intercountry adoption, instead of taking care of them for a short period while the birth parents are supported and empowered to reunite with their children and raise them.

16

**Lack of accurate assessment of the special needs of a child**

In order to facilitate and expedite intercountry adoptions, there have been situations where children have been determined to have special needs when in reality they did not, or to have more important special needs than they actually did. In addition, the (perceived) difficulty of finding a family in the State of origin is often expected and therefore insufficient efforts are made to look for a domestic option for the child.

17

**Verification of all steps**

See HC, Art. 4(a) & (b). The competent authorities should investigate whether possibilities for placement of the child within the State of origin have been given due consideration (e.g., whether the child has been proposed to several domestic adoptive families, or whether no domestic families were found within a reasonable period of time, before the child can be proposed for intercountry adoption), and whether a determination has been made by the appropriate authorities that intercountry adoption was in the best interests of the child. If a competent authority has doubts, it should communicate with the relevant authorities before taking any further steps.

18

**Databases**

A database of adoptable children and PAPs habitually resident in the State of origin will facilitate the matching process and therefore also promote domestic adoption and the principle of subsidiarity.

19

**Children with special needs**

See GGP No 1, Section 7.3. The assessment of whether a child has special needs should not be made by an AAB or a childcare institution. A child with special needs should only be proposed for intercountry adoption if it was not possible to find a suitable permanent family for them domestically.

20

**Removal of financial incentives**

See GGP No 1, Chapter 5; Note on Financial Aspects, and FS 3 "Financial Gain". This involves limiting and strictly monitoring fees, costs, donations, contributions and cooperation projects related to the adoption process.

21

**Specific childcare institutions only for adoptable children and AABs financing childcare institutions**

Specific childcare institutions exclusively for adoptable children tend to receive more funds (from various actors) than other childcare institutions, authorities, bodies, etc, and may thus be more interested in declaring more children adoptable and placing them in these institutions, rather than supporting the reintegration of these children with their family.

If AABs finance childcare institutions, the institution may feel encouraged to find adoptable children for the AAB, without properly supporting family reintegration efforts or giving due consideration to domestic family placements. See also FS 2 "Circumventing the Convention", endnote 18.

22

**Awareness-raising on the principle of subsidiarity**

For example, States may want to raise awareness on the importance of this principle with the child protection authorities, or when providing training to PAPs, to ensure they understand why intercountry adoption is not the first solution to be in the best interests of children.



## FACT SHEET 7

### Adoptability: Lack of, or Deficient, Consent

On this topic, see also:  
FS 4 "Identity" and FS 5 "Documents"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

**General** (i.e., for all persons (including the child, the birth parents), institutions and authorities whose consent is required)<sup>1</sup>

#### 1. Lack of consent (HC, Art. 4(c) & (d); CRC, Art. 21(a)).



For each individual case, **identify who needs to give consent**, and verify that all those whose consent is needed have given their consent.

Ensure that all those whose consent is needed:

- specify in the consent form (or declaration of consent) the **reasons for giving the consent**, to which type of adoption they are consenting, and the effects of such an adoption;<sup>2</sup>
- are provided with **special assistance** if they are unable to independently complete consent forms (e.g., due to illiteracy, language inadequacy).

Make sure that the **Central Authority of the State of origin**:

- ensures that the **consents have been obtained** in accordance with the Convention; and
- transmits **proof of the consents** to the receiving State with the report on the child.<sup>3</sup>

#### 2. Consent received without:

- proper counselling being provided; or
- parties being duly informed of the effects of adoption (HC, Art. 4(c) & (d); CRC, Art. 21(a)).<sup>4</sup>

3. Providing false advice to the birth parents in order to obtain their consent (e.g., making a false promise that the child will return at some point after receiving an education and medical treatment; giving the biased view that life in a receiving State is better than in the State of origin) (HC, Art. 4(c) & (d); CRC, Art. 21(a)).



SO

Ensure that all those whose consent is needed are **fully informed and properly counselled** (in a language that they understand, and in the case of the child, also taking into account their age and maturity), including about the existence of support programmes, alternatives to adoption and the effects of their consent, in particular whether or not the adoption will result in the termination of the legal relationship between the child and their family of origin.<sup>5</sup>

Ensure that all those whose consent is needed **understand the effects** and consequences of their decision.<sup>6</sup>

4. Consent is not given freely (e.g., due to inducements, pressure from society, the community at large or the family, misrepresentations) (HC, Art. 4(c) & (d); CRC, Art. 21(a) & (d)).



SO

Ensure that all those whose consent is needed give their **consent voluntarily, freely** and not due to pressure or in exchange for financial or other gain and not based on misrepresentation.<sup>7</sup>

5. Consent is not given in the required legal form, nor expressed or evidenced (including for illiterate persons) in writing (HC, Art. 4(c) & (d); CRC, Art. 21(a)).



SO

Ensure that the consent of all those whose consent is needed has been given in the **required legal form**, and is expressed or evidenced in writing, using a standardised form.<sup>8</sup>

6. Failure to control or verify the identity of the child and the person(s) consenting, including when they use thumbprints to consent.



SO

Ensure that all those whose consent is needed, including the child, have their **identity confirmed** by a competent authority.



7. Failure to control or verify the relationship between the child and the person who consents to the adoption.



so

Always **verify the relationship** between the child and those consenting to the adoption of the child.

Where possible, provide **DNA tests** for the child and the birth parents.<sup>9</sup>

#### Child (having regard to their age and degree of maturity)

8. The wishes and opinions of the child have not been given due consideration (HC, Art. 4(d)(2)).



so

Ensure that consideration is given to the **wishes and opinions of the child**, according to their age and maturity.

#### Mother

9. Consent of the mother, where required, is given before the birth of the child (HC, Art. 4(c)(4)).



so

Ensure that the consent of the parent(s) is obtained only after a **reasonable period** has elapsed following the birth of the child.<sup>10</sup>

#### Withdrawal of consent

10. Lack of or insufficient information provided to the parents or the child on the possibility to withdraw their consent.

11. Reliance on consent which has been withdrawn (HC, Art. 4(c)(3)).



so

Ensure that all those whose consent is needed:

- have been informed of the **withdrawal period**;<sup>11</sup> and
- have not withdrawn their consent during the withdrawal period.

12. Reliance on consent when the period for withdrawal has not elapsed or is not final.

✔ SO Ensure that the period of withdrawal has elapsed, and the **consent is final**, before declaring the child adoptable.

13. Withdrawal of consent involves a fee for the birth parents.

✔ SO Establish in law or regulation that withdrawal of consent is **free of charge**.

## Enabling factors and possible preventive actions ✔

### I. At the **ADOPTION** level

14. Lack of or inadequate legislation and / or regulations concerning consent.

15. Withdrawal of consent is not possible and / or the period for withdrawal is insufficient.

✔ SO Enact and properly implement **legislation and / or regulations** on:

- who must consent (*e.g.*, birth parents, child), and to whom (*i.e.*, a competent authority);
- how consent should be given;
- who should provide counselling and information;
- the appropriate period to be able to withdraw consent; and
- when consent becomes final.<sup>12</sup>

16. Lack of or inadequate policies or procedures to ensure free and informed consent to adoption, including counselling (see also orange boxes 31 and 32 of this FS).

✔ SO Establish and properly implement adequate **policies or procedures** to ensure free and informed consent is given after proper counselling.

17. Lack of or inadequate standardised documentation to collect the consent.

✔ SO Establish and properly implement **standardised documentation** to collect consent.<sup>13</sup>

18. Lack of or inadequate qualifications, training or experience of the person or authority receiving the consent.
19. Lack of or inadequate rules on conflict of interest and effective policies to ensure their implementation.
20. Consent given to a person who, or an authority which, has a conflict of interest (e.g., to the director of a childcare institution, to an AAB, etc).



SO

Ensure that **competent authorities and bodies that provide counselling and receive the consent** are appropriately qualified, experienced, and trained; have adequate powers and resources; and high ethical standards and no conflict of interest.<sup>14</sup>

21. Consent taken before a proper assessment is made of the child's need to be adopted and before a life plan is developed (i.e., premature consent).



SO

Ensure that all those whose consent is needed give their consent only after a **proper assessment of the child's need** to be adopted and a life plan has been developed.

22. Failure to verify that both parents have consented, where needed (e.g., relying on the consent of one parent without locating the other).



SO

Ensure that, where their whereabouts are unknown, reasonable efforts are made to **locate all those whose consent is needed**, with all efforts documented.<sup>15</sup>

23. Consent motivated solely by financial and / or material poverty.<sup>16</sup>



SO

Ensure that all those whose consent is needed have received **appropriate support**, through family support programmes with alternatives to relinquishment, before their consent can be received.

24. Failure to control or verify if there has been payment or compensation of any kind.



SO

Verify that all those whose consent is needed give their **consent voluntarily, freely** and not in exchange for financial or other gain.<sup>17</sup>

25. Consent given without the support, when needed, of an interpreter in the parents' native language (with no conflict of interest).

26. Lack of properly trained interpreters in the parents' native language to assist them giving consent, where necessary.



SO

Ensure that all those whose consent is needed have access to the services of a trained, qualified and **independent interpreter** if needed, with no conflict of interest.

27. Failure to add all the consent forms to the child's file.



SO

Ensure that all consent forms (or declarations of consent) have been added to the **child's file**.

28. AABs having direct contact with the birth family (e.g., in birth clinics, in childcare institutions) and lack of or inadequate application of measures to prevent such contact.<sup>18</sup>



RS

SO

Prohibit AABs from having direct **contact with the birth family**.

Prohibit the adoption through an AAB that has had direct contact with the birth family.

29. Not facilitating the participation of the child, according to their age and degree of maturity, in their adoption.



SO

Establish and properly implement **child-friendly procedures** to ensure that the child, according to their age and degree of maturity, is given information, understands and can effectively participate throughout their adoption if they so wish.

30. Lack of or inadequate government processes and / or political will to identify, prevent and respond to irregularities regarding consent.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to irregularities regarding consent.

## II. At the **CHILD PROTECTION** level

31. Lack of, limited or inadequate family support programmes, which may lead to consents being motivated solely by poverty.



so

Establish and properly implement effective **family support programmes** with alternatives to relinquishment.<sup>19</sup>

32. Lack of or limited awareness of the support available to families.



so

Establish and properly implement a system to **publicise services** for families in need (e.g., preservation services, temporary care, counselling).

## III. At the **GENERAL** level

33. Cultural and familial norms and expectations that result in the birth parents consenting (or being forced to consent) to the adoption of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>20</sup>



so

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

34. Poverty.<sup>21</sup>



so

Address, through a plan and adequate allocation of resources, the root causes of **poverty**.<sup>22</sup>

35. Illiteracy and poor education of persons who have to consent.<sup>23</sup>



so

Provide birth parents with **access to resources** that can help them understand the child welfare and adoption processes.

Ensure access to **free education to all**.<sup>24</sup>

## FS 7 “Consent” – additional information (endnotes)

- 1 Lack of consent**

When references are made to the consent of the child and / or the parents, it is to be understood that such references only apply in cases where the consent of the child and / or the parents is required. If the consent of both parents is required, relying on the consent of only one parent is an illicit practice.

It should also be noted that the responsibility lies with the competent authority – not the parents or the child– to prevent the illicit practices mentioned in this FS. The parents and child should not be penalised for the illicit practice, but should be assisted by the competent authorities to find alternatives to relinquishment, and if they decide to consent to an adoption, they should be assisted to do so in accordance with the Convention and the domestic legislation.
- 2 Reason for giving consent**

The competent authority should document the alternatives which were offered and discussed with the parent(s) and the circumstances of the parent(s)' or other persons' decision to relinquish the child. The consent form (or declaration of consent) should also specify whether the consent is given to a domestic and / or an intercountry adoption and to a simple and / or full adoption.
- 3 Consent obtained in accordance with the Convention**

See HC, Art. 16(1)(c) & (2). The Central Authority of the State of origin must ensure that the consents have been obtained in compliance with Art. 4 of the Convention before transmitting the report on the child to the receiving State. It is important that competent, reliable and ethical personnel oversee the consent procedure. If there are any doubts about the consent(s), the Central Authority should not transmit the report on the child to the receiving State and should not give its approval under Art. 17 of the Convention. Transmitting proof of the consents to the receiving State Central Authority will also be very useful afterwards for the life story and possible search for origins and identity of the child.
- 4 Counselling and information**

In some cases, the person(s) giving the consent is / are not made aware whether they are giving consent (1) for alternative care or for adoption, (2) for domestic adoption only, or for domestic and intercountry adoption, and (3) for simple or for full adoption.
- 5 Counselling and information by specialists**

See HC, Art. 4(c)(1); CRC, Art. 21(a); GGP No 1, para. 78. Proper counselling of parents is particularly important, especially where they may be illiterate and may not be able to read and understand the documents they are signing. The meaning and effects of adoption should be explained clearly to the parents (*e.g.*, that the child will have “new” parents; if it is a full adoption, that they will no longer be the legal parents; if it is a “closed adoption”, that they will no longer see the child).
- 6 Understanding the effects of the adoption**

See HC, Art. 4(c)(1) and GGP No 1, para. 77.
- 7 Free and voluntary consent**

See HC, Art. 4(c)(2) & (3); CRC, Art. 21(d); OPSC, Art. 3(1)(a)(ii); GGP No 1, paras 85-87. The OPSC creates an international and joint responsibility for States to fight against the sale of children as a result of induced consent for adoption.
- 8 Standardised documentation**

See HCCH Model Form “Statement of Consent to the Adoption” available at [www.hcch.net](http://www.hcch.net) under “Adoption”.
- 9 DNA test**

See FS 4 “Identity”, endnote 3.

**10 Consent given after a reasonable period of time following the birth**

See HC, Art. 4(c)(4); GGP No 1, para. 77. Practice has shown that parents need to be given a reasonable period of time after the birth in order to prevent decisions concerning consent being made too hastily due to strain, anxiety or pressure. States are encouraged to raise the minimum standard period of time “after the birth” established in the Convention, and provide more time before the consent is given (e.g., the *2008 European Convention on the Adoption of Children* establishes that this period should not be less than six weeks after the birth).

**11 Adequate period of withdrawal**

See HC, Art. 4(c)(3). States are encouraged to establish in legislation a reasonable period of time for withdrawal of consent and how consent can be withdrawn. Parents should be informed about this period during counselling and when giving their consent to the child's adoption.

**12 Legislation on the consent of the child**

See HC, Art. 4(d); GGP No 1, paras 77 and 80. Legislation may include a minimum age for requiring the consent of the child (e.g., many States require the consent of the child who is at least 10-12 years old). Some States also require the consent of children who are below the minimum age if they are sufficiently mature. Particular attention should be given to properly informing and counselling the child, in a way that they can understand to what they are giving consent.

**13 Standardised documentation**

See HCCH Model Form “Statement of Consent to the Adoption” available at [www.hcch.net](http://www.hcch.net) under “Adoption”.

**14 Consent given to competent authorities**

See GGP No 1, Section 2.2.3. States can decide which authority is competent to receive the consent (e.g., a court). There should be no fee charged to the parent(s) for the use of this service.

**15 Search for those whose consent is necessary**

Determining which persons' or authorities' consent is necessary in a given case (e.g., those with parental responsibility, legal custodians or guardians) is a matter for the domestic law of the State concerned.

If the whereabouts of the persons whose consent is required are unknown, reasonable efforts should be made to locate them (e.g., if the consent of both parents is required, but only one parent has consented, reasonable efforts should be made to locate the other parent). If the persons are found, they should be properly informed and counselled about the possible options for the child and, if required, they should provide their consent.

There should be a defined period to locate persons whose consent is required, at the end of which it can be concluded that it was not possible to locate them. States' laws may differ as to what it means for the child (i.e., in terms of their adoptability) in the event that these persons cannot be found.

**16 Consent motivated by poverty**

In most of the cases where people decide to relinquish their child they do so because they “are confronted with an accumulation of disruptive life events leading to a point of desperation (e.g., loss of income, health problems, disability, an unexpected pregnancy, gendered constructions of daughters, etc.)”, and not solely because of poverty (see ISS, “Qualitative research into the root causes of child abandonment and child relinquishment in Viet Nam”, 2015). See also UN Guidelines on Alternative Care, para. 15: “Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing [their] reintegration, but should be seen as a signal for the need to provide appropriate support to the family”; the *2019 UNGA Resolution on the Rights of the Child*, para. 30, and GGP No 1, Chapter 6.2.3.

- 17 Free and voluntary consent**  
See HC, Art. 4(c)(2) & (3); CRC, Art. 21(d); OPSC, Art. 3; GGP No 1, paras 85-87. The OPSC creates an international and joint responsibility of States to fight against the sale of children as a result of induced consent for adoption.
- 18 AABs in direct contact with birth family**  
AABs may put pressure on the birth parents and / or on the birth family to influence the birth parents' consent.
- 19 Family support programme**  
See further FS 6 "Subsidiarity", green box 11 and GGP No 1, Section 6.2.
- 20 Discrimination**  
See FS 4 "Identity", endnote 16.
- 21 Poverty**  
Poverty, usually combined with other factors (*e.g.*, lack of or inadequate family support or alternatives to abandonment and relinquishment) can lead to abuses and / or to consent being motivated solely by material and / or financial poverty, and may create situations where children are more susceptible or vulnerable to exploitation. See GGP No 1, Section 6.2.3.
- 22 Addressing poverty**  
Financial and material poverty should be addressed to ensure that it is not the sole motivation for the consent.
- 23 Illiteracy and poor education**  
Parents might be presented with documents which they cannot read and / or understand due to illiteracy, lack of an interpreter, poor education or because the document is written in a language which they do not understand. In such cases they would be forced to rely on the information provided by the person asking them to sign the documents, which could result in a lack of or deficient consent; *e.g.*, the parents are told that their child will be sent to a foreign State to receive a better education and / or will be able to return and help them financially (without informing them that the child will be adopted).
- 24 Free education to all**  
See FS 4 "Identity", endnote 18.



## FACT SHEET 8

### Misrepresentation of Adoptability of Children of Unknown Parents

On this topic, see also:  
FS 1 "Abduction", FS 4 "Identity" and FS 6 "Subsidiarity"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Falsely characterising children as having unknown parents to make them available for adoption.<sup>1</sup>



so

Enact and properly implement **legislation, regulations and procedures** to identify, prevent and address the misrepresentation of the child or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

Where possible, provide **DNA tests**<sup>2</sup> for the child to include the relevant data in a register for missing children.

2. Failure to investigate cases of children of allegedly unknown parents by not trying to locate the parents or other family members.<sup>3</sup>



so

Competent authorities should require sufficient documentation and **investigate** sufficiently before declaring the child to be of unknown parents.

3. Failure to (re-)establish the identity and provide valid identity documents to children of unknown parents.



so

Establish and properly implement a free, compulsory, efficient, non-discriminatory and accessible **birth registration system** and a procedure to (re-)establish speedily the identity of children of unknown parents.<sup>4</sup>

4. Declaring a child of unknown parents adoptable, without having made a thorough investigation, and without having (re-)established the child's identity.



SO

Ensure that competent authorities that may **declare a child of unknown parents adoptable**<sup>5</sup> must only do so after a thorough investigation (e.g., having exhausted all available information and options) has been done, and after the child's identity has been accurately (re-)established.

5. Unregulated and premature attempts to organise the intercountry adoption of children during and after emergency situations (e.g., natural disasters, calamities, war).<sup>6</sup>



RS

SO

Establish and properly implement clear policies and procedures for **emergency situations**:<sup>7</sup>

- prioritise efforts to reunify a displaced child with their parents or family members and community;
- prohibit adoption procedures from taking place, unless the circumstances in the State and / or the situation of the child concerned allow for the proper application of the Convention;
- avoid premature and unregulated attempts to organise intercountry adoptions;
- publicise these policies clearly so that public pressure for immediate premature actions and private adoption attempts do not take place.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

6. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.
7. Lack of, limited or inadequate procedures for the voluntary relinquishment of children.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards.<sup>8</sup>

8. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving a misrepresentation of the adoptability of a child of unknown parents.



RS

SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving a misrepresentation of the adoptability of a child of unknown parents.

## II. At the **CHILD PROTECTION** level

9. Lack of an effective and adequate child protection system.



SO

Establish and properly implement a robust and adequately financed **national child protection system** that promotes parental care, family support and family reintegration and addresses the reasons for abandonment.<sup>9</sup>

10. Lack of, limited or inadequate resources and procedures for family support and prevention of separation programmes, and family reunification and reintegration.



SO

Establish and properly implement effective **family support programmes** with alternatives to relinquishment and abandonment of children.<sup>10</sup>

11. Lack of or limited awareness of the support available to families.



SO

Establish and properly implement a system to **publicise services** for families in need (e.g., preservation services, temporary care, counselling).

12. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child of unknown parents.<sup>11</sup>

13. Measures which allow for the anonymous abandonment of children (e.g., baby boxes, anonymous or secret births).<sup>12</sup>



SO

Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>13</sup>

Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).

Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>14</sup>

Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected and preserved.<sup>15</sup>

14. Lack of a central database or registry for missing children.



SO

Establish, and properly implement and maintain a centralised and up-to-date **database** or registry for missing children.

### III. At the **GENERAL** level

15. Cultural and familial norms and expectations that result in mothers feeling they need to hide their pregnancy and / or the birth of their child to avoid negative treatment such as discrimination, reprisals, and penalties by authorities or being cast out by their family or community.<sup>16</sup>



SO

Enact and properly implement legislation prohibiting **discrimination against pregnant women** (especially those who are single and / or lack financial means) and take necessary measures to support and empower them (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

16. Misconception that many children living in childcare institutions are orphans and are therefore adoptable.<sup>17</sup>



RS

SO

**Raise awareness** on (1) the fact that many children living in childcare institutions have at least one living parent,<sup>18</sup> (2) the process by which children are declared adoptable and (3) how childcare institutions function.

17. Poverty.<sup>19</sup>



SO

Address, through a plan and adequate allocation of resources, the root causes of **poverty**.

## FS 8 “Unknown Parents” – additional information (endnotes)

- 1 False characterisation of children as children of unknown parents**  
 In this FS, children of unknown parents include children who have gone missing from their families, who have been separated from their parents, or who have been abandoned anonymously and whose parents are not known. See also the Glossary of this Toolkit for definitions of abandonment and relinquishment.
- 2 DNA tests**  
 See FS 4 “Identity”, endnote 3.
- 3 Failure to investigate**  
 There are differing degrees of negligence which vary from lack of reasonable care in actions, wilful blindness to gross acts of negligence leading to criminal acts. While failure to investigate such cases of children of allegedly unknown parents is an illicit practice, the lack of a proper investigation (lack of reasonable care), if unintentional, may in some cases be considered an enabling factor (and not an illicit practice).
- 4 Establishment of a birth registration system and (re-)establishment of identity**  
 The child shall be registered immediately after birth (CRC, Art. 7). See also CRC, Art. 8; FS 4 “Identity”, endnote 15.
- 5 Declaration of adoptability**  
 Sufficient documentation may include, *e.g.*, the child’s birth certificate, police reports, comprehensive reports on the child prepared by qualified personnel, a declaration of abandonment. If the competent authorities are not satisfied with the documentation received, they should communicate with other competent authorities to get additional information (see FS 5 “Documents”).

If documents are not available, the competent authorities should, subject to the circumstances of the case, take steps to verify whether the parents of the child are unknown as it is claimed. Where it is necessary to search for family members, an inability to find them should only be declared following a sufficient investigation to track them down in a timely manner.
- 6 Emergency situations**  
 If an adoption takes place in an emergency situation, it can be very difficult or impossible to give due consideration to the principle of subsidiarity. See further FS 2 “Circumventing the Convention”, endnote 5.
- 7 Emergency situations**  
 See FS 2 “Circumventing the Convention”, endnote 6.
- 8 Legislation and procedures concerning child relinquishment**  
 See also FS 7 “Consent”. The impact of such legislation should also be analysed to ensure that they actually prevent abandonment of children without identifying information.
- 9 Establishment of a national child protection system**  
 See FS 6 “Subsidiarity”, endnote 6. See also UN Guidelines, Chapter IV; GGP No 1, Chapter 6.
- 10 Family support programme**  
 See further FS 6 “Subsidiarity”, green box 11.
- 11 Mechanism for facilitating searches for a child’s family**  
 States should establish a standard mechanism such that each time a child is found, there is a procedure to search for their family. Such mechanism should include training the actors who will be involved in this search. It is important to ensure that the procedure does not jeopardise the safety of the parents or the extended family, in particular as a result of discrimination.

When a member of the family is found but refuses to disclose the identity of one or both parents, efforts should be made to understand the reason for such refusal so as to find solutions leading to the disclosure of the parent(s) identity. See also FS 4 “Identity”, endnote 13.

**12 Anonymous abandonment of children**

See FS 4 “Identity”, endnote 8.

**13 Policies on abandonment of children**

See FS 4 “Identity”, endnote 9.

**14 Confidential hospital births**

See FS 4 “Identity”, endnote 10.

**15 Information regarding cases of anonymous birth**

See FS 4 “Identity”, endnote 11.

**16 Discrimination**

See FS 4 “Identity”, endnote 16.

**17 Misconception about abandoned children**

Most children in institutions have living parents (*i.e.*, they are not orphans) who may have placed their child in the institution due to poverty and / or to gain an education, but not with the intention of forsaking their parental rights (*i.e.*, relinquishment). In such situations, the childcare institution may be tempted to declare the child abandoned or orphaned so that the child can be put up for adoption.

**18 Children in institutions**

According to Lumos, it is “assum[ed] [that] these institutions, or ‘orphanages’, are there to support orphans, but over 80% of the children have a living parent. The majority could be reunited with their families given the right support” (Lumos, Fact Sheet “[Children in institutions](#)”, 2017). See also UNICEF, [Children in alternative care](#), which states that “Many children in orphanages are not orphans and have at least one parent or other relative”.

**19 Poverty**

Poverty, usually combined with other factors (*e.g.*, lack of / or inadequate family support or alternatives to abandonment and relinquishment), can lead to parents abandoning their children. See GGP 1, Section 6.2.3.





## FACT SHEET 9

### Circumventing the Procedure to Apply for Adoption, the Preparation and Assessment of PAPs, as well as the Socialisation Period

On this topic, see also:  
FS 2 "Circumventing the Convention" and FS 10 "Matching"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Lack of assessment of the PAPs' eligibility and suitability to adopt.
2. A professional agreeing to and / or knowingly misrepresenting the PAPs' suitability.



RS

Establish and properly implement **procedures** to verify the eligibility and individually assess the suitability of the PAPs in accordance with the legislation and regulations of the receiving State.

3. PAPs intentionally mislead, lie to, or deceive the competent authority, body or professional (e.g., social worker) that is conducting the assessment of their circumstances (e.g., their habitual residence, their eligibility and suitability to adopt).



RS

SO

Ensure that PAPs provide **supporting documents**.

**Verify the information** provided by the PAPs. The professional assessing the PAPS should follow the established criteria and verify information where necessary (e.g., speak with other family members, older children).

Warn PAPs about **possible consequences** (e.g., refusal of their application to adopt) should they mislead, lie to or deceive authorities and ensure they have a full knowledge / awareness of the consequences.<sup>1</sup>

Establish and properly implement a mechanism for the determination of the **habitual residence** of the PAPs, including for intra-family adoptions;<sup>2</sup> and duly scrutinise their habitual residence.

4. Authorising or tolerating direct contact by PAPs with State of origin's authorities and / or bodies without the PAPs having first applied for an intercountry adoption to the Central Authority in the State of their habitual residence (HC, Art. 14).<sup>3</sup>



RS

Establish and properly implement clear mechanisms for persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, to apply to the Central Authority in the State of their **habitual residence** (HC, Art. 14) before having any contact with the State of origin's authorities and bodies.



SO

Ensure that where persons habitually resident in a Contracting State have made direct contact with the Central Authority in the State of the child's habitual residence, this Central Authority does not engage in the request and instead, directs these persons to the **Central Authority in the State of their habitual residence**.

5. Contact between the PAPs and the child's parents (or any other person who has care of the child) takes place before:

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.



RS

SO

**Prohibit any contact between the PAPs and the birth parents** (or person who has the care of the child) before the Article 29 requirements have been satisfied (with the exceptions<sup>4</sup> mentioned in HC, Art. 29), namely that:

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

6. PAPs abuse or neglect the child during the socialisation period.



RS  
SO

Establish and properly implement procedures for the **socialisation period**, including regular monitoring of the socialisation process through visits, support and counselling.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

7. Lack of or inadequate regulations and / or guidelines on the assessment of eligibility and suitability of PAPs.

8. Inadequate assessment of the PAPs' eligibility and suitability to adopt.

9. Assessment of PAPs focusing on their financial wealth, rather than their actual ability to take care of a child.



RS

Establish and properly implement clear and comprehensive **regulations or guidelines** on eligibility and suitability of the PAPs, that may include a home study, a psychological, mental health and emotional assessment and criminal background checks.

10. Discriminatory eligibility and / or suitability criteria.<sup>5</sup>



RS

Ensure that the **regulations or guidelines** on eligibility and suitability of the PAPs are not discriminatory but based on objective criteria.

11. Lack of or inadequate information and / or counselling provided to the PAPs.

12. Lack of or inadequate support provided to the PAPs and the child after the matching procedure.



RS  
SO

Provide appropriate **information, counselling and support** to the PAPs throughout the adoption procedure and after the adoption has been finalised.<sup>6</sup>

13. Submitting applications of PAPs suitable to adopt children with a certain profile (e.g., young children) when adoptable children in the State of origin have other profiles (e.g., children with special needs).<sup>7</sup>

14. Prioritising the needs of the PAPs rather than the needs of the children.

Ensure that only applications of PAPs are submitted to the State of origin where the **profile of children** the PAPs are suitable to adopt corresponds to the profile of children in need of adoption in the State of origin.<sup>8</sup>



RS

SO

Ensure that the State of origin makes clear to all its partner receiving States what the **general needs of adoptable children** are in its State.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the qualities of the PAPs can respond to the needs of the child, including for intrafamily adoption.<sup>9</sup>

15. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>10</sup>

Prevent practices leading to **pre-identification of children** for adoption by PAPs:



RS

SO

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).

- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>11</sup>

- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

16. PAPs pressure the Central Authority and / or AAB to circumvent or accelerate the intercountry adoption procedure.<sup>12</sup>



RS

SO

**Inform and educate PAPs** about the Convention, including the necessity to apply its safeguards and procedures.

17. Lack of or inadequate government processes and / or political will to identify, prevent and respond to irregularities regarding the assessment of PAPs.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to irregularities regarding the assessment of PAPs.

18. Misconception that children in the State of origin need to be “saved”.



RS  
SO

**Promote** that children grow up with their birth parents, family and community, as this is the best environment to support their development and health, when this environment is protective, loving and nurturing.

**Raise awareness** of the benefits of family support and reintegration programmes and the impact of family separation and alternative care on children.

## II. At the **CHILD PROTECTION** level

19. Voluntourism (see orange box 15 of this FS).



RS  
SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>13</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.

### III. At the **GENERAL** level

#### 20. Culture of secrecy around the child's adoption.<sup>14</sup>



RS  
SO

Establish and properly implement policies to address the reasons for a **culture of secrecy** around the child's adoption.

Inform and counsel PAPs about the importance to **speak to the child** about their adoption, and how they intend to do so in an age-appropriate manner.

Raise awareness on **benefits of openness** in adoption and preservation of the child's right to identity.

## FS 9 “PAPS” – additional information (endnotes)

- 1 Warning PAPS about possible consequences**  
In addition, one State mentioned that States should ensure that PAPS have full knowledge / awareness of the possible consequences (*e.g.*, by signing a form to that effect).
- 2 Determination of the habitual residence**  
See HCCH Note on Habitual Residence.
- 3 Direct contact of the PAPS with the State of origin**  
See FS 2 “Circumventing the Convention”, endnote 1.
- 4 Exceptions regarding contact under the Convention**  
See FS 10 “Matching”, endnote 3.
- 5 Discriminatory eligibility and / or suitability criteria**  
For example, determining that PAPS of a specific socio-economic class or religion are ineligible.
- 6 Counselling to PAPS**  
Counselling to PAPS should also include information concerning the preservation of the child's cultural background, the question of access to origins, courses against racism and about adopted children's possible traumas.
- 7 Submission of applications not fitting the profile of adoptable children**  
This practice may put pressure on the State of origin to match PAPS with children who have needs to which the PAPS are not able to appropriately respond, which can lead to higher chances of a breakdown in the adoption.
- 8 Sending file of PAPS to State of origin**  
GGP No 1, para. 332.
- 9 Comprehensive reports and evaluations**  
See FS 10 “Matching”, endnote 4.
- 10 Summer camps, hosting programmes and voluntourism**  
See FS 10 “Matching”, endnote 12.
- 11 Summer camps and hosting programmes**  
See FS 10 “Matching”, endnote 13.
- 12 Pressure to circumvent or accelerate procedures**  
For example, in the case of emergency situations; see further FS 2 “Circumventing the Convention”, red box 7.
- 13 Voluntourism**  
See FS 10 “Matching”, endnote 24.
- 14 Culture of secrecy**  
A culture of secrecy might lead to situations where PAPS do not want to inform their adopted child about the adoption or the context of their adoption, which may prevent adoptees from having access to information about their origins.





## FACT SHEET 10

### Circumventing Matching

On this topic, see also:  
FS 9 "PAPs" and FS 2 "Circumventing the Convention"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Bypassing or pre-empting the matching process, *e.g.*:



RS  
SO

Establish and properly implement **guidelines and procedures** for matching.<sup>1</sup>

2. - Children selected or chosen by the PAPs (*e.g.*, by photo listing, visiting a childcare institutions) instead of matched by a competent authority or body;<sup>2</sup>



RS  
SO

**Prohibit PAPs from selecting or choosing a child.**

3. - Private arrangements on matching between AABs, childcare institutions and / or persons.



RS  
SO

**Prohibit private arrangements** on matching between AABs, childcare institutions and / or persons.

**Inform** AABs, childcare institutions and persons that a privately arranged adoption application will be refused by the State of origin and the receiving State.

4. Contact between the PAPs and the child's parents (or any other person who has care of the child) takes place before:

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and

- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

**Prohibit any contact between the PAPs and the birth parents** (or person who has the care of the child) before the Article 29 requirements have been satisfied (with the exceptions<sup>3</sup> mentioned in HC, Art. 29), namely that:



RS

SO

- the PAPs have been declared eligible and suitable to adopt (HC, Arts 5(a) & 29); and
- the child has been declared adoptable (HC, Art. 4(a)); and
- due consideration has been given to the principle of subsidiarity (HC, Art. 4(b)); and
- intercountry adoption is determined to be in the best interests of the child (HC, Art. 4(b)); and
- the consents required by Article 4(c) of the Convention have been obtained.

5. Submitting false or outdated information about the child or the PAPs in order to favour PAPs being matched with a particular child.



RS

SO

Always **verify that the information** provided about the child and / or the PAPs is correct, and the source of this information is confirmed.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the PAPs are not favoured on the basis of false or outdated information in order to be matched with a particular child.<sup>4</sup>

6. Matching done by persons who have a conflict of interest.



SO

Ensure that **competent authorities and bodies doing the matching** are appropriately qualified, experienced, and trained; have adequate powers and resources; and high ethical standards and no conflict of interest.

7. Private and independent adoptions.<sup>5</sup>



RS

SO

**Prohibit private and independent adoptions.**<sup>6</sup>

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

8. Lack of, or inadequate, regulations or guidelines on matching, or their inadequate implementation.



RS  
SO

Establish and properly implement clear **regulations or guidelines** on matching and ensure transparent procedures.<sup>7</sup>

9. Matching done by persons who lack professional qualifications.<sup>8</sup>



SO

Build on the capacity of social workers and other appropriate professionals (e.g., psychologists, community workers) to **assess accurately and comprehensively** the legal, psycho-social and medical needs of children in order to improve the matching process.

10. Matching done by only one person (including by a government official).<sup>9</sup>



RS  
SO

Ensure that matching is done by a trained and **multidisciplinary team**.

11. Matching done by the childcare institution.

12. Matching done by AABs, if this task has not been delegated to them by the Central Authority, and / or is done without supervision.<sup>10</sup>



SO

**Prohibit matching by childcare institutions, AABs** and other persons or bodies not explicitly and specifically authorised and qualified to carry out this task.<sup>11</sup>

13. Contact between the PAPs and the child taking place before or outside the matching process (e.g., pre-identified or pre-arranged adoptions, children attending summer camps or hosting programmes, PAPs or persons volunteering in childcare institutions).<sup>12</sup>

Prevent practices leading to **pre-identification of children** for adoption by PAPs:



RS  
SO

- **Prohibit any contact between the PAPs and the child** before the child is declared adoptable, the PAPs are declared eligible and suitable to adopt, and before or outside the matching process (with the exception of intrafamily adoptions).
- In order to prevent the pre-identification of children for adoption, caution PAPs about risks of participation in **summer camps or hosting programmes**.<sup>13</sup>
- Inform PAPs that an application to adopt a child identified during such camps or programmes may be **refused** by the State of origin and the receiving State.

14. Lack of individual assessment and evaluation of the child and their special needs.<sup>14</sup>



SO

Ensure that there is an **individual assessment and evaluation** of the child and their special needs. Ensure also that there is an interview with the child taking into account their age and degree of maturity.<sup>15</sup>

See also green box 15 of this FS.

15. Allowing a fast-track procedure or expeditious programme for children with special needs, without due consideration of the principle of subsidiarity and without appropriate safeguards.<sup>16</sup>



RS  
SO

Clearly define what **special needs** are / entail in national legislation, policies or regulations.<sup>17</sup>

Ensure that a child is only assessed as having special needs after a **thorough evaluation**.<sup>18</sup>

Ensure that even where there is an **expeditious programme** for children with special needs, due consideration is given to the principle of subsidiarity, and all necessary safeguards are respected, before a child enters such programme.

16. Submitting applications of PAPs suitable to adopt children with a certain profile (e.g., young children) when adoptable children in the State of origin have other profiles (e.g., children with special needs).<sup>19</sup>
17. Prioritising the needs of the PAPs rather than the needs of the children.
18. Insufficient information available about the child and / or the PAPs, due to negligence, lack of capacities or resources, lack of comprehensive and detailed questionnaires, or lack of cross-checking of information.



RS  
SO

Ensure that only applications of PAPs are submitted to the State of origin where the **profile of children** the PAPs are suitable to adopt corresponds to the profile of children in need of adoption in the State of origin.

Ensure that the State of origin makes clear to all its partner receiving States what the **general needs of adoptable children** are in its State.

Ensure that the **matching** is carried out on the basis of accurate, comprehensive and updated reports and evaluations of the PAPs and the child, so that the qualities of the PAPs can respond to the needs of the child, including for intrafamily adoption.<sup>20</sup>

19. Lack of a centralised database and / or system that allows for efficient matching, and / or lack of knowledge on how to use it.



SO

Establish and properly implement a **centralised database or record system** for children brought into care that includes information on how, why and by whom they were brought into care, and ensure that personnel using it, and doing the matching, are duly trained.<sup>21</sup>

20. Announcement of adoptable children over the Internet (photo listing).<sup>22</sup>



SO

Prohibit the announcement of adoptable children over the Internet (**photo listing**).<sup>23</sup>

21. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving circumvention of the matching process.



RS  
SO

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving circumvention of the matching process.

## II. At the **CHILD PROTECTION** level

### 22. Voluntourism (see orange box 13 of this FS).



RS

SO

**Prohibit “voluntourism”** and visits by PAPs and other persons to childcare institutions in the State of origin in order to prevent any pre-identification of children for adoption.<sup>24</sup>

**Increase awareness-raising**, including campaigns, training to those working in childcare institutions, and providing information to PAPs about the fact that an application to adopt a child identified during such visits or voluntourism will be refused by the State of origin and the receiving State.

## FS 10 “Matching” – additional information (endnotes)

- 1 **Matching procedure**  
See GGP No 1, Section 7.2.5.
- 2 **Children selected or chosen by the PAPs**  
A few Contracting States have found that photo listing, for example, can be used in limited circumstances and with proper safeguards (e.g., protected website), to aid in the legitimate matching process. See GGP No 1, para. 65.
- 3 **Exceptions under the Convention regarding contact**  
Contacts are exceptionally permitted if “the adoption takes place within a family [or where] the contact is in compliance with the conditions established by the competent authority of the State of origin” (HC, Art. 29). Authorities should establish clear conditions under which any form of contact between the birth parents and the PAPs could be permitted and monitored to ensure strict compliance with these conditions. In any case, it is recommended to apply this exception very restrictively.
- 4 **Comprehensive reports and evaluations**  
See GGP No 1, Section 7.2.5. Matching must be done on the basis of the reports on the child and the PAPs. Having a centralised list of adoptable children may also facilitate the ability of authorities in the State of origin to match a child with suitable PAPs, and avoid bypassing the matching process.
- 5 **Private and independent adoptions**  
See the Glossary of this Toolkit; GGP No 1, Sections 8.6.6 and 10.1.1.6, and FS 2 “Circumventing the Convention”, endnote 2.
- 6 **Private and independent adoptions**  
See FS 2 “Circumventing the Convention”, endnote 3.
- 7 **Regulations and guidelines on matching**  
See GGP No 1, para. 356. The matching process requires precise sequencing. The State of origin does the matching on the basis of the reports and evaluations of the adoptable child and the PAPs. It then sends the proposal to the Central Authority or the AABs of the receiving State, which in turn notifies the PAPs. The PAPs must accept the proposed match before the adoption process may proceed. Each of these steps should be transparent and documented. See also GGP No 1, paras 316 and 394, regarding the reversal of the flow of the files.
- 8 **Lack of professional qualifications**  
See GGP No 1, para. 357.
- 9 **Matching by one person**  
See GGP No 1, para. 357.
- 10 **Matching done by the AAB without supervision**  
See GGP No 1, para. 361.
- 11 **Prohibition of matching by childcare institutions and by persons or bodies not authorised and / or qualified to do so**  
See GGP No 1, paras 357 and 361. A person working in a childcare institution who knows a child well may be invited by the Matching Committee to participate in the specific matching session, but this is an exception to the rule. Only the assigned professional team should be permitted to perform matching. Preferably, it should be done within the Central Authority.
- 12 **Summer camps, hosting programmes and voluntourism**  
“**Summer camps**” is a practice in which adoptable children and PAPs attend an event (usually a camp) in the PAPs’ State of habitual residence (*i.e.*, the receiving State) or in the State of origin, usually for a period of several weeks. In “**Hosting programmes**” (including “respite care” programmes to improve

the physical and psychological well-being of children) adoptable children are hosted by families living abroad, usually for a period of several weeks. "**Voluntourism**" refers to the practice of an person travelling to another State to volunteer in that State. One common practice is to travel to volunteer in a childcare institution.

In all these situations, PAPs, hosting families and volunteers may subsequently wish to adopt one or more children with whom they were in contact during these activities. This circumvents the matching process as the PAPs have been in contact with the child before matching is decided. In addition, these persons may not have been declared eligible and suitable to adopt. Such pre-selection encourages private and / or independent adoptions, which are contrary to the principles of the Convention. See also GGP No 1, Sections 7.2.5 and 8.8.9.

2022 SC, C&R No 14: "A majority of delegations specifically raised concerns regarding participation in summer camps" as well as hosting programmes.

### 13 **Summer camps and hosting programmes**

See GGP No 1, Sections 7.2.5 and 8.8.9. Most States do not organise summer camps or hosting programmes where PAPs can identify a child as this can lead to circumventing the Convention and to illicit practices. However, those States which do organise them report that such programmes, when carried out with sufficient safeguards, have proven helpful for the adoption of older children and / or children with special needs for whom no family (domestically or intercountry) could be found. Safeguards include the strict monitoring by the Central Authorities of the State of origin and the receiving State; ensuring that children and PAPs who participate in such programmes do so only if: the children have been declared adoptable; after careful consideration it has been determined that such a programme would not be harmful to them; the PAPs have been declared eligible and suitable to adopt; and the PAPs selected to host a child have been carefully selected based on criteria that fit the needs of the particular child.

### 14 **Lack of accurate assessment of the special needs of a child**

In order to facilitate and expedite intercountry adoptions, situations have occurred where children have been determined to have special needs when they did not, or to have more important special needs than they actually did.

### 15 **Individual assessment and evaluation**

See also FS 6 "Subsidiarity".

### 16 **Fast-track procedure**

See also FS 6 "Subsidiarity", red box 4.

### 17 **Defining special needs**

See also FS 6 "Subsidiarity", endnote 16.

### 18 **Children with special needs**

See FS 6 "Subsidiarity", endnote 17. See GGP No 1, Section 7.3. The assessment of whether a child has special needs should not be made by an AAB or a childcare institution.

### 19 **Submission of applications not fitting the profile of adoptable children**

See FS 9 "PAPs", endnote 7.



**20 Comprehensive reports and evaluations**

See *supra* endnote 4 of this FS.

**21 Databases**

A database of adoptable children and PAPs in the State of origin would facilitate the matching process and therefore also promote domestic adoption and the principle of subsidiarity.

**22 Photo listing**

See GGP No 1, paras 65, 357, Annex 3-4 (3.1.3.4); GGP No 2, Section 3.8. Such sites are generally not safe as they allow PAPs to identify and (pre-)select a child themselves, which prevents professional and independent matching. In addition, the practice of photo listing can violate the child's right to privacy.

**23 Prohibition of photo listing**

PAPs should not be allowed to (pre-)select a child, including by photo listing. See GGP No 1, para. 65: "Matching should not be done by the PAPs, [...] by selecting an appealing child [...] through a photo listing. Although photo listings can be a useful method of promoting adoption generally, [...] [States] of origin should be careful that the actual matching decisions are made by professionals and are based on the needs of the child with the qualities of the adoptive parents".

However, there have been situations where some States have found photo listings helpful to generally promote the adoption of older children or children with special needs. If, nevertheless, a State decides to allow photo listing for promoting adoption generally for such children, it should be regulated by both the State of origin and the receiving State, and it should in any case not permit the PAPs to select or choose a child through that process. For example, proper privacy protection measures should be in place to ensure confidentiality and anonymity of the child; the photo listing should be strictly monitored by the Central Authorities; information on adoptable children should never be shared publicly (as this promotes the selection of a child by PAPs, which circumvents the matching process); Central Authorities should take necessary actions towards agencies that operate such sites. See further GGP No 2, Section 3.8.

**24 Voluntourism**

Persons who have participated in voluntourism programmes should not be permitted to adopt children who are resident in the particular institution(s) in which they volunteered, or any other children that they might have pre-selected while volunteering.

Where legislation of receiving States does not permit them to prohibit actions taken by their citizens abroad, receiving States should nevertheless strongly and actively discourage their citizens from taking part in such practices. Furthermore, they should prohibit the operation of organisations established in their State which arrange voluntourism activities in other States.



## FACT SHEET 11

### No Preservation of, or Unlawful Denial of Access to, Information regarding Origins

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On this topic, see also:  
FS 4 "Identity", FS 5 "Documents", FS 7 "Consent", FS 8 "Unknown Parents" and FS 10 "Matching"

#### Illicit practices and possible preventive actions

##### I. At the **ADOPTION** level

1. Failure of competent authorities to:<sup>1</sup>

2. - take all appropriate measures to collect and preserve information about the situation of the child and the PAPs as necessary to complete the adoption (HC, Art. 9);<sup>2</sup>



RS  
SO

Ensure that all information about the situation of the child and the PAPs which is necessary to complete the adoption is **collected and preserved**.

Enact and properly implement **legislation, regulations and procedures** for the preservation of information on origins.<sup>3</sup>

3. - preserve information they hold concerning the child's origins (e.g., identity of parents, medical history) for a sufficient period of time (HC, Arts 9 & 30(1));<sup>4</sup>



RS  
SO

Ensure that all information and belongings relevant to the child are preserved and transmitted to a **repository**.

Ensure that information is preserved for a sufficient period of time, and ideally in **perpetuity**.<sup>5</sup>

4. - preserve the records of an AAB when it ceases to operate and / or a childcare institution when it closes;



RS

Establish a **centralised public database** or registry with all adoption records of that State.

SO

Ensure that **records of AABs and childcare institutions** which cease to operate are preserved, preferably in a centralised public database operated by the State.

5. - ensure that the adoptee, or their representative, has access to information about their origins, under appropriate guidance, in so far as is permitted by the law of that State (HC, Art. 30(2)).<sup>6</sup>



RS

Establish and properly implement a mechanism that ensures that the adoptee, or their representative, has **access to information** about their origins, under appropriate guidance, in so far as is permitted by the law of the relevant State.

SO

Ensure that **clear information** about access to information is provided to adoptees (including their descendants), birth parents and adoptive parents.

## Enabling factors and possible preventive actions

### I. At the **ADOPTION** level

6. Legislation that prohibits and / or penalises child relinquishment, resulting in birth parents abandoning their children without identifying information.<sup>7</sup>

7. Laws, regulations or policies that do not allow parents to reconsider their decision not to leave information for their child.



SO

Enact and properly implement legislation, regulations and procedures permitting **child relinquishment** with all the necessary safeguards, including making it possible for the birth parents to add information to the child's record at a later stage.

8. Lack of, limited or inadequate resources and procedures to properly preserve information (*i.e.*, inadequate record keeping).<sup>8</sup>



RS  
SO

Ensure resources and establish and fully implement procedures to **preserve information** properly.

Enact and properly implement legislation, regulations and procedures to ensure against **misrepresentation** of the adoptee or their birth parents' identity, reasons for adoption or 'adoption story' and other relevant information.

9. Lack of trained personnel to provide appropriate guidance to adoptees who (want to have) access to records.



RS  
SO

Establish and properly implement **guidelines** on how to provide counselling to adoptees who (want to have) access to such records, and ensure that the guidance is provided by appropriately qualified and trained persons.

10. Lack of a central database or registry for adoption records.

11. Records kept only by private institutions or AABs involved in the intercountry adoption process and not kept by a single centralised public authority.<sup>9</sup>



RS  
SO

Establish and properly implement a **centralised public database or registry** with all adoption records of that State, and ensure that all records are kept there.

12. Failure to provide access to information regarding origins free of charge.<sup>10</sup>



RS  
SO


Ensure that access to information is available **free of charge**.

13. Failure to take all appropriate measures to promote the development of adoption counselling and post-adoption services (HC, Art. 9(c)), including support in the search for origins.<sup>11</sup>




RS  
SO


Establish and properly implement **guidelines and procedures** to counsel and assist adoptees in their search for origins.

- 
RS  
SO
Provide **information and counselling to birth family / parents** who are searching for the adoptee or who have initiated the search for the adoptee.

14. Failure to record or keep track of the attempts made by the birth parents or the adoptee to find each other.<sup>12</sup>


- 
RS  
SO
Create a **registry** of who is searching for information on adoptions.

15. Lack of cooperation between receiving States and States of origin to assist adoptees and birth families in accessing information.<sup>13</sup>


- 
RS  
SO

**Promote cooperation** between States of origin and receiving States, through designated contact persons, to facilitate access to information.<sup>14</sup>  
 Provide **information and counselling to birth family / parents** who are searching for the adoptee or who have initiated the search for the adoptee.

16. Misconceptions that birth parents do not want to be contacted.

- 
RS  
SO
Provide **information and counselling to adoptees** and adoptive families about possible contact with birth parents and birth family.

17. Misconceptions that adoptees will reject their adoptive parents if the adoptee meets their birth family.

- 
RS
Before declaring **PAPs** eligible and suitable to adopt, address the question of access to origins through counselling and / or education (see also green box 5 of this FS).

18. Lack of or inadequate legislation, regulations and procedures on preservation of information on origins.

- 
RS
Enact and properly implement **legislation, regulations and procedures** for the preservation of information on origins.<sup>15</sup>

19. Lack of or inadequate legislation, regulations and procedures on access to information on origins, which:
- limits the possibility for adoptees to obtain information about their origins;
  - limits the possibility for interested persons (adoptees, adoptive family or birth family) to obtain information that could address concerns about suspected irregularities in the adoption process.



so

Consider reviewing legislation, regulations and practices to **permit access to information** on origins.<sup>16</sup>

20. Lack of or inadequate government processes and / or political will to identify, prevent and respond to situations involving no or inadequate preservation of, or unlawful denial of access to, information on origins.



so

Develop government capacity, and establish and properly implement **government processes** to identify, prevent and respond to situations involving no or inadequate preservation of, and / or unlawful denial of access to, information on origins.

## II. At the **CHILD PROTECTION** level

21. Measures which allow for the anonymous abandonment of children (e.g., baby boxes, anonymous or secret births).<sup>17</sup>



so

**Address reasons** why birth parents may not want to disclose their identity.

Establish and properly implement policies to prevent and address the reasons for **abandonment of children**.<sup>18</sup>

Establish and properly implement policies to provide adequate **clinical support for mothers** wishing to relinquish their child in a manner that ensures the safety of both mother and child(ren).

Promote **alternatives** to baby boxes and anonymous or secret births, such as confidential hospital births as a measure of last resort.<sup>19</sup>

Ensure that **information** about children born via anonymous birth, including the circumstances of their abandonment, is collected in order to preserve as much information as possible regarding their identity.<sup>20</sup>

22. Lack of, limited or inadequate resources and procedures to search for the parents and / or other family members.



SO

Establish and properly implement a mechanism to facilitate the **search for the parents** and family of the child.<sup>21</sup>

### III. At the **GENERAL** level

23. Culture of secrecy around the child's adoption.<sup>22</sup>



RS

Establish and properly implement policies to address the reasons for a **culture of secrecy** around the child's adoption.

SO

Inform and counsel PAPs about the importance to **speak to the child** about their adoption, and how they intend to do so in an age-appropriate manner.

Raise awareness on **benefits of openness** in adoption and preservation of the child's right to identity.

24. Discrimination or reprisals against birth parents or birth parents being cast out by their family or community if the existence and / or adoption of their child is revealed.<sup>23</sup>



SO

Provide **information, counselling and support** to birth parents if the existence and / or adoption of their child is revealed.

**Raise awareness** in the community of the importance to not discriminate against, take reprisals or cast out birth parents.

Enact and properly implement legislation prohibiting **discrimination against birth parents** and take necessary measures to support and empower them against such discrimination (e.g., prevent social stigma, promote gender equality, mainstream family diversity).

25. Lack of or inadequate legislation, regulations and procedures on data protection.

26. Lack of appropriate control over the use of records.<sup>24</sup>



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Enact and properly implement legislation, regulations and procedures on **data protection**.<sup>25</sup>



## FS 11 “Origins” – additional information (endnotes)

### 1 **Failure to comply with duties**

There are differing degrees of negligence which vary from lack of reasonable care in actions, wilful blindness to gross acts of negligence leading to criminal acts. While failure to comply with the duties mentioned in the FS is an illicit practice, the inadequate performance of these tasks (lack of reasonable care in actions) if unintentional may, in some cases, be considered as an enabling factor (and not an illicit practice).

### 2 **Not collecting, preserving or exchanging information on the child and on the PAPs**

Information about the child includes, for example, identity, adoptability, background, social environment, family history, medical history, special needs (see HC, Art. 16(1)(a)), any police report(s), the adoption order, and results of DNA tests. Information about the PAPs includes, for example, identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care (see HC, Art. 15).

The failure to collect, preserve and exchange information hinders the adoption procedure and the possible future access to such information.

### 3 **Establishment of laws, policies and procedures for the preservation of information**

These laws, policies and procedures should address, at a minimum:

- which authority will be responsible for preserving the information;
- what information shall be preserved (the 2010 SC meeting recommended that records should contain, at a minimum, the information referred to in Art. 16 of the Convention and, to the extent possible, any other information or personal items relating to the child or their birth family, see 2010 SC, C&R No 28);
- how the information should be preserved; and
- the length of time the information should be preserved (see endnote 5 of this FS for the recommendation of the 2010 SC).

### 4 **No preservation of information about the child's origins**

If information is not preserved, the child may not be able to fully enjoy their right to identity. If information is kept only for a short period of time, it may not be available when the adoptee is older and wishes to access such information.

### 5 **Preservation of adoption records in perpetuity and how to preserve them**

See 2010 SC, C&R No 28: The Special Commission “recommended that receiving States and States of origin preserve adoption records in perpetuity. The record must contain the information referred to in Article 16 and, to the extent possible, any other information or personal items relating to the child or [their] birth family.”

Competent authorities should scan any paper copies, and ensure that backups of records are kept.

### 6 **No access to information**

Conditions regarding access to information may however differ among States.

### 7 **Legislation on child relinquishment**

See also FS 4 “Identity”.

### 8 **Inadequate record keeping**

For example, misplacement of records in the registry; loss of records; inadequate computer equipment; lack of a record keeping policy; insufficient space for record management; ineffective means of retrieving records; inadequate record management; inadequate security for records;

inadequate professionally trained records managers; and inadequate resources to facilitate proper record management practices.

- 9 No centralised registry of records**  
Information kept by private institutions (e.g., childcare institutions) and AABs without backup at the governmental level could potentially be lost (e.g., if the private institutions or AAB close down or their records are destroyed). This could limit adoptees' access to information about their origins. Not having a centralised registry at governmental level can also be a source of irregularities.
- 10 Access to records and assistance with the search for origins not free of charge**  
If there are costs associated with accessing records, this may prevent adoptees from having access to information concerning themselves.
- 11 Failure to assist adoptees**  
The failure to take all appropriate measures to promote support in the search for origins may lead ill-intentioned persons to take advantage of adoptees, e.g., requesting high fees to assist them in their search, providing them with false information.
- 12 Failure to keep track of search attempts**  
The failure to record or keep track of attempts made by birth parents and / or adoptees to find each other may prevent them from knowing their whereabouts and / or origins, or delay their reunion.
- 13 Lack of cooperation**  
For example, a lack of cooperation between the State of origin and the receiving State may prevent adoptees from knowing how they can access their records or from receiving appropriate guidance when accessing their records.
- 14 Cooperation between States of origin and receiving States**  
It is important to ensure that when an adoptee goes before the authorities of one State, they receive support in accessing information, in particular, advice on whether information may have been preserved, in the other State. States of origin and receiving States should cooperate to ensure that adoptees have access to their records and receive appropriate support.
- 15 Establishment of laws, policies and procedures for the preservation of information**  
See endnote 3.
- 16 Establishment of laws, policies and procedures for access to information**  
See 2022 SC, C&R No 32: "The SC encouraged Contracting Parties to provide adoptees with as much information as possible regarding their origins to the extent allowed by laws pertaining to the protection of confidentiality and privacy. The SC heard from a number of delegations about the need to provide greater access and invited States to consider reviewing their laws and practices in this regard".
- 17 Anonymous abandonment of children**  
See FS 4 "Identity", endnote 8. The anonymous abandonment of children may make it impossible for the adoptee to have access to information about their origins.
- 18 Policies on abandonment of children**  
See FS 4 "Identity", endnote 9.
- 19 Confidential hospital births**  
See FS 4 "Identity", endnote 10.
- 20 Information regarding cases of anonymous birth**  
See FS 4 "Identity", endnote 11.

21

**Mechanism for facilitating searches for a child's family**

See FS 4 “Identity”, endnote 13 and FS 8 “Unknown Parents”, endnote 11.

22

**Culture of secrecy**

A culture of secrecy may lead to situations where little information is preserved and where no appropriate guidance is provided to adoptees when trying to access their records.

23

**Discrimination**

See FS 4 “Identity”, endnote 16.

24

**Lack of a control mechanism**

When there is no control mechanism in place, records may be accessed by third persons who use them for purposes other than those for which they were created.

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**Establishment of laws, policies and procedures on data protection**

These laws, policies and procedures should address, at a minimum:

- how data should be protected;
- who is permitted to have access to the records and for what purpose; and
- the possibility of using the data for general information (e.g., statistics).