

Council on General Affairs and Policy – March 2020

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	Prel. Doc. 6 of May 2019
Title	Conclusions and Recommendations of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meeting of 21-23 May 2019)	
Author	Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption	
Agenda item	IV.1.c	
Mandate(s)	C&R No 31 of the March 2019 meeting of the Council on General Affairs and Policy of the HCCH	
Objective	To report on the 2019 meeting of the Working Group, in particular on progress made in advancing the work on the Toolkit	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
Annex	List of participants of the 2019 meeting of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption	
Related documents	<ul style="list-style-type: none"> - C&R No 2 of the Special Commission of June 2010 on the practical operation of the <i>Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption</i> - C&R No 24 of the Council on General Affairs and Policy of April 2011 - C&R No 45 of the Special Commission of June 2015 on the practical operation of the <i>Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption</i> - C&R No 30 of the Council on General Affairs and Policy of March 2016 - Prel. Doc. No 11 of December 2016 and C&R No 24 of the the Council on General Affairs and Policy of March 2017 - C&R No 31 of the Council on General Affairs and Policy of March 2018 	

I. Introduction

1. From 21 to 23 May 2019, the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (hereinafter “the Group”) met at the offices of the Permanent Bureau (hereinafter “PB”) in The Hague. The meeting was attended by 31 experts representing 18 States, including both States of origin and receiving States, and three international organisations, as well as members of the PB.¹
2. The mandate of the Group is “to consider the development of more effective and practical forms of cooperation between States to prevent and address specific instances of abuse”.²
3. At its 2017 meeting, the HCCH’s Council on General Affairs and Policy (hereinafter “CGAP”) endorsed the proposal of the Group to develop a Toolkit for preventing and addressing illicit practices.³ The 2019 meeting of the Group focused on revision of the draft Toolkit.
4. Recalling the conclusions of the 2015 Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter “1993 Convention”), the Group recognised “the significant, positive impact which the Convention has had on laws and practices relating to intercountry adoption,”⁴ while acknowledging that illicit practices may still occur. The Group also reaffirmed that the proposed Toolkit would be a valuable resource in assisting States to identify, prevent and address illicit practices. The Group emphasised the importance of including the voices of adoptees in its work. In this regard, the Chair of the Group and the PB met with some adoptee associations before the meeting of the Group, and one international association representing several adoptee groups was present at the meeting of the Group.

II. Draft Toolkit

5. The Group discussed the scope of application of the Toolkit, recalling the recommendation of the 2000 Special Commission that “States Parties, as far as practicable, should apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States.”⁵ Therefore, it was recommended that the Toolkit should address

¹ The convening of the meeting of the Working Group was approved in March 2019 by the Council on General Affairs and Policy.

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

³ “Conclusions and Recommendations adopted by the Council on General Affairs and Policy (14-16 March 2017)”, C&R No 24 (see path indicated in note 2).

⁴ “Conclusions and Recommendations adopted by the Fourth Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (8-12 June 2015)”, C&R No 1.b (hereinafter, “C&R of the June 2015 SC”) (see path indicated in note 2)..

⁵ “Conclusions and Recommendations adopted by the First Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (28 November – 1 December 2000)”, C&R No 56 (see path indicated in note 2). Reaffirmed by the Second Meeting of the Special Commission, see “Conclusions and Recommendations adopted by the Second Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (17-23 September 2005)”, C&R No 19 (see path indicated in note 2); and C&R No 36 of the June 2010 SC.

how to respond to all cases of illicit practices, including those in non-Convention countries and those preceding the entry into force of the 1993 Convention.

A. Fact Sheets

6. The experts reviewed draft Fact Sheets in the Toolkit on the following topics:

- Forgery and falsification of documents
- Misrepresentation of identity
- Lack of, or deficient, consent
- Failure to respect subsidiarity
- Improper matching
- Circumventing the 1993 Convention procedure
- Improper financial and other gains
- Abduction, sale and trafficking of children
- Role of actors in illicit practices

7. The Group agreed that the Fact Sheets may include the following:

- a section identifying the relevant illicit practices;
- a section identifying systemic weaknesses and enabling factors that may facilitate or promote the occurrence of such illicit practices; and
- a section on prevention of such illicit practices.

8. The experts generally agreed with the substance of the Fact Sheets, which will be revised on the basis of comments made during the Group meeting and further written comments and examples to be submitted subsequently by the Group to the PB.

9. The Group discussed whether to raise standards in relation to improper financial and other gains. Some questioned on what children's rights basis the child protection system, including the adoption system, in a country should be partially funded by prospective adoptive parents or adoption accredited bodies through contributions, donations and / or cooperation projects. It was also noted that Article 32 of the 1993 Convention stipulates that only costs and expenses may be charged or paid. At the same time, it was generally agreed that the Group take into account the [Note on Financial Aspects on Intercountry Adoption](#). The Group proposed that this topic be examined in more depth at the next Special Commission meeting on the practical operation of the 1993 Convention.

10. The Group also discussed how to distinguish in certain cases illicit practices from systematic weaknesses / enabling factors that may facilitate such illicit practices, *e.g.*, determining whether authorities have given "due consideration" to domestic child care solutions in compliance with the 1993 Convention. It was suggested to add more practical examples to provide further guidance.

11. It was further agreed that the subgroup⁶ may develop additional Fact Sheets on the following topics:

- Abandoned and lost children
- Records
- Other actors (*e.g.*, children's institutions)

⁶ At the 2016 meeting, it was decided that a subgroup be established. See "Conclusions and Recommendations adopted by the Working Group on preventing and addressing illicit practices in intercountry adoption (13-15 October 2016)", C&R No 22 (hereinafter, "C&R of the October 2016 WG"), available on the HCCH website at < www.hcch.net > under "Adoption Section" then "Working Group on preventing and addressing illicit practices in intercountry adoption".

B. Model Procedure to respond to specific cases of illicit practices

12. The Group reviewed the draft Model Procedure for Responding to Illicit Practices. There was general support for the proposed structure of this tool, which may include:

- Awareness and disclosure of potential illicit practices
- Identification of illicit practices and investigation
- Communication with other authorities, bodies and persons
- Support for impacted persons⁷
- Assessment of the current status of the adoption process
- Assessment of the nature and seriousness of the illicit practice
- Remedies

13. The experts started discussions on the substance of the draft Model Procedure, which will be revised on the basis of comments made during the meeting and further written comments and examples to be submitted subsequently by the Group to the PB.

C. Guidelines on coordination to prevent and respond to patterns of illicit practices

14. The experts exchanged ideas on inclusion in the Toolkit of Guidelines for coordination to prevent and respond to patterns of illicit practices. There was broad agreement that such a tool should focus on coordination between States. It was noted that States of origin and receiving States have shared responsibilities in preventing and responding to patterns of illicit practices, while recognising that the powers of Central Authorities and competent authorities vary among States.

III. Draft Model Form for Article 17 of the 1993 Convention

15. The Group discussed a draft Model Form for Article 17.⁸ This Article concerns a critical stage where authorities have an opportunity to identify whether any illicit practices have occurred before the adoption proceeds.

16. The Group agreed with having separate versions of the Model Form for States of origin and receiving States, acknowledging that their requirements under Article 17 differ in certain respects. The PB will revise the draft Model Form on the basis of comments made during the meeting and further written comments to be submitted subsequently by the Group to the PB.

IV. Other matters

17. The Group agreed that information about contact points for persons impacted by illicit practices should be included in the Country Profile and / or under the section of authorities on the HCCH website.⁹

18. The Group also discussed the benefits of having an electronic version of the Country Profile that could be more easily updated by States, recognising that this would involve additional resources.

19. Some experts expressed an interest in establishing a secure portal on the HCCH website or a similar web-based tool where States could share information relevant to illicit practices.¹⁰ However, other experts raised concerns about data protection, privacy, and the use of the information.

⁷ Multiple terms can be used (*e.g.*, victims, persons with lived experience).

⁸ C&R No 16 of the June 2015 SC.

⁹ See C&R No 24 of the October 2016 WG.

¹⁰ *Ibid.*, C&R No 23.

V. Next steps on the Toolkit and Model Form on Article 17 of the 1993 Convention

20. The Group proposed the following next steps:

- Existing Fact Sheets, Model Procedure, and Model Form on Article 17: The PB will revise these documents in light of the comments received during the meeting. In addition, experts are requested to provide any further comments (*e.g.*, specific language, examples and comments on endnotes) to the PB by 31 August 2019.
- New Fact Sheets and Guidelines on coordination to prevent and respond to patterns of illicit practices: The subgroup will prepare drafts for circulation to the Working Group, tentatively by the end of the year.
- The PB will share the revised version of the full Toolkit with the Group for further comments.
- Once updated, the Toolkit and the Model Form on Article 17 will be sent to all HCCH Members, States Parties to the 1993 Convention, and relevant international organisations for comments in preparation of the next Special Commission meeting tentatively scheduled for 2021.
- The final version of the Toolkit and the Model Form on Article 17 will be submitted to CGAP for approval.

21. The Chair of the Working Group will report on the status of the Group's work to CGAP at its 2020 meeting.

ANNEX

ADOPTION

PREVENTING AND ADDRESSING ILLICIT PRACTICES
PRÉVENTION DES PRATIQUES ILLICITES

May / mai 2019



**MEETING OF THE WORKING GROUP
ON PREVENTING AND ADDRESSING ILLICIT PRACTICES IN INTERCOUNTRY ADOPTION**

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**RÉUNION DU GROUPE DE TRAVAIL
SUR LA PRÉVENTION DES PRATIQUES ILLICITES EN MATIÈRE D'ADOPTION INTERNATIONALE ET
LA MANIÈRE D'Y REMÉDIER**

21-23 May – 2019 – 21-23 mai

**Final list of Participants
Liste définitive des participants**

MEMBRES / MEMBERS**Australie / Australia***Excusé / Unable to attend***Belgique / Belgium**Ms Ariane VAN DEN BERGHE, Director, *Vlaamse Centrale Autoriteit Adoptie, Kind en Gezin*, Brussels**Brésil / Brazil**

Ms Natalia CAMBA MARTINS, Head of the Central Authority for the 1993 Intercountry Adoption, Ministry of Justice and Citizenship, Brasília-D.F.

Canada

Ms Erin O'DONOUGHUE-GIVEN, Autorité centrale fédérale pour la Convention adoption internationale de 1993 ; Équipe à l'adoption internationale, Citoyenneté et Immigration Canada, Services à l'adoption internationale, Ottawa

Ms Marie RIENDEAU, Counsel, Constitutional, Administrative and International Law Section, Department of Justice Canada, Ottawa

Corée, République de / Korea, Republic of

Mr Dongwon KANG, Judge, Daegu High Court, Daegu; Judge on Secondment, HCCH, The Hague

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Danemark / Denmark

Ms Karina HAAHR-PEDERSEN, Head of Section, National Social Appeals Board Division of Family Affairs, Copenhagen

Ms Karin RØNNOW-SØNDERGAARD, Head of Section, National Social Appeals Board, Division of Family Affairs, Copenhagen

États-Unis d'Amérique / United States of America

Ms Carine ROSALIA, Attorney Adviser, Office of Legal Affairs for Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State, Washington, DC
(Chair of the Working Group)

Ms Trish MASKEW, Chief, Adoption Division, Office of Children's Issues, Bureau of Consular Affairs, U.S. Department of State, Washington, DC

Ms Kjersti OLSON, Adoption Division, Office of Children's Issues, Bureau of Consular Affairs, U.S. Department of State, Washington, DC

France

Mme Nathalie BRAT, Mission de l'Adoption internationale (MAI), Ministère des Affaires étrangères et européennes, Paris

Irlande / Ireland

Ms Tara DOWNES, Board Secretary, Shelbourne House, Dublin

Luxembourg

Excusé / Unable to attend

Malte / Malta

Ms Edwina GOUDER, Manager (Adoptions CA Office), Social Care Standards Authority, Ministry for the Family, Children's Rights and Social Solidarity, Santa Venera

Mr Matthew VELLA, CEO, Social Care Standards Authority, Ministry for the Family, Children's Rights and Social Solidarity, Santa Venera

Mexique / Mexico

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Norvège / Norway

Ms Bente HOSETH, Senior Adviser, Norwegian Directorate for Children, Youth and Family Affairs, Oslo

Pays-Bas / Netherlands

Mr Arjan VAN LEUR, Policy Adviser, Central Authority for the 1993 Intercountry Adoption, Ministry of Justice and Security, The Hague

Ms Anyck ALDEWERELD, Policy Adviser, Ministry of Justice and Security, The Hague

Pérou / Peru

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Philippines

Ms Bernadette ABEJO, Executive Director, Inter-country Adoption Board (ICAB), Quezon City

Portugal

Ms Eliana COSTA MENDES DOS SANTOS TOMÉ, Central Authority for the 1993 Intercountry Adoption; Attorney, Office of Adoption and Civil Sponsorship, *Instituto de Segurança Social, I.P.*, Lisbon

Suisse / Switzerland

Mme Joëlle SCHICKEL-KÜNG, Cheffe, Unité droit international privé, Office Fédéral de la Justice (OFJ), Berne

Venezuela

Judge Rosa Isabel REYES REBOLLEDO, member of the International Hague Network Judges (IHNJ); Superior Court Judge and Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the Caracas Metropolitan Area and National Co-ordinating Judge of International Adoption, Supreme Court of Justice, Caracas

Viet Nam

Excusé / Unable to attend

Zambie / Zambia

Ms Nomsisi WONANI, Senior Social Welfare Officer, Ministry of Community Development and Social Services, Lukasa

ÉTATS NON-MEMBRES PARTIES / NON-MEMBER CONTRACTING STATES**Cap Vert / Cabo Verde**

Mme Margarida LOPES BORGES ANDRADE, Assistante sociale, Membre du CAI, Bureau du Procureur Général de la République, Praia

Haïti / Haiti

Excusé / Unable to attend

Togo

M. Abd-Nafiou MAMANH, Président du Comité National d'Adoption d'Enfants (CNAET), Ministère de l'Action Sociale et de la Solidarité Nationale, Comité National d'Adoption d'Enfants (CNAET), Lomé

OBSERVATEURS / OBSERVERS**Représentants d'organisations intergouvernementales / Representatives for intergovernmental organisations*****Fonds des Nations Unies pour l'enfance / United Nations Children's Fund (UNICEF)***

Mr Nigel CANTWELL, Senior Consultant, UNICEF

Représentants d'organisations non gouvernementales / Representatives for non-governmental organisations***Nordic Adoption Council (NAC)***

Excusé / Unable to attend

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