

Séminaire international sur la
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L'impact du dossier d'adoption non conforme pour une personne adoptée dans la recherche des origines

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Search for origins



If the adoption file

- contains **false** information
- is **incomplete**

the search for origins will be more complicated

- Key issue in all files: **identity** of child and birth parents

1993 Adoption Convention: Art. 1



OBJECTIVES:

- to establish a **system of co-operation** amongst Contracting States
- to **ensure** that **safeguards** in intercountry adoption are respected and
- thereby, the abduction, the sale of, or traffic in children is **prevented**.

In practice – before and now



- Today, 101 States parties to the Convention.
- Before, many ICA **outside the scope** of the Convention because
 - Done before 1995
 - 1 or both States are not party to the Convention
- **Many abuses** being unveiled recently
- **Responsibility** for abuses

HCCH Working Group on Preventing / Addressing Illicit Practices on ICA



**The Hague, Netherlands
21 – 23 May 2019**

Objectives of the WG



Better **understanding** of:

- how illicit practices **arise**,
 - how they can be **identified** and **prevented**,
 - and effective **steps** to take when they **occur**.
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- Development of **practical guidance** through different tools - Draft Toolkit

Draft Fact Sheets



■ Fact Sheets:

- Forgery and falsification of **documents**
- Misrepresentation of **identity**
- Lack of, or deficient, **consent**

- Failure to respect **subsidiarity**
- Improper **matching**
- Circumventing the Convention **procedure**

Draft Fact Sheets



■ Fact Sheets:

- Improper **financial** and other gains
- Abduction, **sale** and trafficking of children
- Role of **actors** in illicit practices (CA, AABs)
- **Other** possible topics: children institutions, judges, abandoned and lost children, **records**.

Draft Fact Sheet on Identity

Misrepresentation of identity



- **Misrepresenting** the identity of:
 - the **child**,
 - a **parent** or
 - any person who has the **care** of the **child**
- to make the **child available for adoption**, *e.g.*:
 - Falsely claiming that the child is an **orphan or foundling**,
 - Parents **falsely claiming** to be the biological parents of children

Illicit Practices



- Declaring a child **adoptable** with **insufficient information** and documentation regarding the child's origin
- **Not collecting** and **preserving** the information
- **Not** allowing **access** to information, if permitted by the law

Enabling factors



- **Lack of documentation** of birth parents

- Birth **registration**:
 - **Lack** of a reliable **system**
 - **Barriers** to birth registration
 - Possibility of **changing records** without no guarantees

- Legislation that **prohibits child relinquishment**

Enabling factors



- Measures **encouraging the abandonment** of children **anonymously**
- Birth mothers **hiding their pregnancy/birth** to avoid discrimination, reprisals, etc
- **Inadequate recordkeeping** of adoptable children

Enabling factors



- **Illiteracy** and **poor education** of the birth family
- Lack of regulation / monitoring of **mid-wives / birth clinics** to ensure that they register / encourage birth parents to register the child
- Allowing birth **clinics** to **operate** child care **institutions**
- **Lack** of a cohesive government process to **respond** to false identity

How to prevent



- Always **verify the identities** of concerned people
- Establish a free, compulsory, efficient and accessible **birth registration system**
- **Any changes** to birth registration should have a legal basis.
- Establish **mechanisms** for:
 - **facilitating searches** for the biological parents
 - preserving the **proof** of investigations

How to prevent



- Competent authorities should:
 - **facilitate searches** to verify the identity of children whose parents cannot be identified
 - require **sufficient documentation** and/or **investigate** sufficiently before declaring a child to be adoptable
 - prepare a **report** including information about the **identity** of:
 - the child
 - the PAPs

How to prevent



- Enact **legislation**:
 - permitting child **relinquishment** with safeguards
 - **prohibiting discrimination** against pregnant / birth mothers

- Enact **policies** to address the reasons for **abandonment**
- Ensure that **only proper authorities** establish the **identity** of children and declare children to be **adoptable**
- Establish a **registry** of children determined to be **adoptable**

How to prevent



- Regulate, train and monitor **mid-wives** and personnel of birth **clinics**
- Prohibit birth clinics from operating child care facilities
- Ensure that **information** is preserved
- **Access** to such information, under appropriate **guidance**, in so far as is permitted by the law of that State

Draft Model Procedure



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

Draft Model Procedure



Remedies

- Determined on a **case-by-case** basis
- Paramount consideration: the **best interests** of the child
- Remedies will **vary, depending** on a variety of factors
- Key: Whether the adoption process has been **completed**
- **Historical cases**





**Merci beaucoup pour
votre attention!**

