

## **OUTLINE**

# **HAGUE INTERCOUNTRY ADOPTION CONVENTION**



## ***The Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption***

### **Introduction**

Intercountry adoption is a relatively recent phenomenon. It expanded slowly after World War II, until the 1970s, when the numbers increased dramatically. By the 1980s, it was recognised that this phenomenon was creating serious and complex human and legal problems and the absence of existing domestic and international legal instruments indicated the need for a multilateral approach.<sup>1</sup> It was in this context that the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* was developed to establish safeguards which ensure that intercountry adoptions take place in the best interest of the child and with respect for the child's fundamental rights.

The Convention recognises that growing up in a family is of primary importance and is essential for the happiness and healthy development of the child. It also recognises that intercountry adoption may offer the advantage of permanent family to a child for whom a suitable family cannot be found in his or her Country of origin. By setting out clear procedures and prohibiting improper financial gain, the Convention provides greater security, predictability and transparency for all parties to the adoption, including prospective adoptive parents. The Convention also establishes a system of co-operation between authorities in countries of origin and receiving countries, designed to ensure that intercountry adoption takes place under conditions which help to guarantee the best adoption practices and elimination of abuses.

The 1993 Hague Convention gives effect to Article 21 of the *United Nations Convention on the Rights of the Child*<sup>2</sup> by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child. The 1993 Convention establishes minimum standards, but does not intend to serve as a uniform law of adoption. While making the rights and interests of the child paramount, it also respects and protects the rights of families of origin and adoptive families.

The Convention makes clear that Receiving States and States of origin must share the burdens and benefits of regulating intercountry adoptions. It sets out clearly which functions within the adoption process are to be performed by each State.

### **Principal features of the Convention**

#### ***The best interests of the child are paramount***

The Convention contains certain rules to ensure that adoptions take place in the best interests of the child and with respect for his or her fundamental rights. For example, States, must: consider national solutions first (implement the principle of subsidiarity); ensure the child is adoptable; preserve information about the child and his/her parents; evaluate thoroughly the prospective adoptive parents; match the child with a suitable family; impose additional safeguards where needed. This fundamental principle of the child's best interests should guide the development of an integrated national child care and protection system, of which one part is an ethical, child-centred approach to intercountry adoption.

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<sup>1</sup> See Explanatory Report to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*, by G. Parra-Aranguren, at paragraph 6. Available on the Hague Conference website, [www.hcc.net](http://www.hcc.net) under Intercountry Adoption Section/Explanatory Documents.

<sup>2</sup> *United Nations Convention on the Rights of the Child*, G.A. Res. 44/25, UN GAOR, 61<sup>st</sup> Plenary Meeting, Annex. Available at [www.ohchr.org](http://www.ohchr.org)

### ***Subsidiarity principle***

'Subsidiarity' in the Convention means that Contracting States recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. As a general rule, institutional care should be considered as a last resort for a child in need of a family.

### ***Safeguards to protect children from abduction, sale and trafficking***

States should establish safeguards to prevent abduction, sale and trafficking in children for adoption by: protecting birth families from exploitation and undue pressure; ensuring only children in need of a family are adoptable and adopted; preventing improper financial gain and corruption; regulating agencies and individuals involved in adoptions by accrediting them in accordance with Convention standards.

### ***Co-operation between States and within States***

The Convention envisages a system in which all Contracting States work together to ensure the protection of children. Co-operation between Contracting States is essential to ensure the effectiveness of any safeguards put in place (Article 1 b)). In practice, this principle is implemented first through international co-operation between Central Authorities, and between other public authorities and accredited bodies performing the functions of Central Authorities (Article 7); second, through intra-State co-operation between authorities and agencies regarding Convention procedures (Article 7(1)); and third, through co-operation to prevent abuses and avoidance of the Convention (Article 33).

### ***Automatic recognition of adoption decisions***

The 1993 Convention achieved a major breakthrough in establishing a system of automatic recognition of adoptions made in accordance with the Convention. Every adoption, whether a simple or full adoption, which is certified to be made in accordance with Convention procedures, is recognised "by operation of law" in all other Contracting States (Article 23). In other words, the Convention gives immediate certainty to the status of the child, and eliminates the need for a procedure for recognition of orders, or re-adoption, in the receiving country.

### ***Competent authorities, Central Authorities and Accredited Bodies***

The Convention requires that only competent authorities should perform Convention functions. Competent authorities may be Central Authorities, public authorities including judicial or administrative authorities, and accredited bodies. The Convention provides for a system of Central Authorities in all Contracting States and imposes certain general obligations on them, such as: co-operation with one another through the exchange of general information concerning intercountry adoption; the elimination of any obstacles to the application of the Convention (Article 7(2) b)); and a responsibility to deter all practices contrary to the objects of the Convention (Article 8). Central Authorities also have specific obligations in Chapter IV in respect of individual adoptions.

Accredited Bodies may perform some of the functions of Central Authorities. The process of accreditation of bodies is one of the Convention's safeguards to protect children in adoption. Any private adoption body or agency must be accountable to a supervising or accrediting authority (see Articles 6-13). They must play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption. If accredited bodies are to be used, the Convention sets out a regulatory framework of minimum standards for their operation in Articles 10, 11 and 32. Additional standards may be imposed by Contracting States.

## **Guide to Good Practice for the 1993 Hague Intercountry Adoption Convention**

*The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: A Guide to Good Practice* is the 1st Guide to Good Practice for the 1993 Hague Intercountry Adoption Convention. The new Guide identifies important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It will assist policy makers involved in short term and long term planning to implement the Convention in their country, as well as judges, lawyers, administrators, caseworkers, accredited bodies and other professionals needing guidance on some practical or legal aspects of implementing the Convention. An outline of the procedure for a Convention adoption is found in the Guide at Chapter 7.1. The Guide is on the Hague Conference website at [www.hcch.net](http://www.hcch.net)

### **The Intercountry Adoption Technical Assistance Programme (ICATAP)**

In order for the 1993 Hague Convention to operate successfully, the initial steps necessary for its effective implementation in each Contracting State must be carefully planned. The Convention places heavy burdens of responsibility on States, and implementation and technical assistance may be particularly vital in some countries that have few resources available for this purpose. The ICATAP was designed to provide assistance directly to the governments of certain States which are planning ratification of, or accession to, the Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention. The ICATAP is operated directly by the Permanent Bureau, using staff and resources dedicated to this project, as well as international consultants and experts. The Hague approach takes full account of the need to integrate the intercountry adoption process within the broader child care and protection system. For more information on this programme, please refer to the website of the Hague Conference.

***The Intercountry Adoption Section on the website of the Hague Conference contains the latest information about the status of the 1993 Convention, and the contact details of Central Authorities. For this, and much more information about the 1993 Convention, see < [www.hcch.net](http://www.hcch.net) >.***

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