



## Fact Sheet N° 33

### Intercountry adoption

#### THE LEGAL AND PROCEDURAL CONTEXT

Intercountry adoption is mainly regulated internationally by the 1989 United Nations Convention on the Rights of the Child (CRC - <http://www.ohchr.org/english/law/crc.htm>) and by the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (HC-1993 - [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)).

##### Basic legal framework

The CRC was ratified by all countries, except the USA and Somalia. Its article 21 is dedicated to adoption. Among others, it specifies that the system of adoption shall respond to the best interest of the child. It also sets minimal guarantees relating to adoption procedures.

The HC-1993 was drafted under the auspices of The Hague Conference on Private International Law, an international governmental organization. The HC-1993 is currently in force in some seventy-one States. Its success appears to reside in giving up the objectives of approximations of domestic legislations that governed earlier international agreements. It focuses instead on the search for effective mechanisms to safeguard the rights of the child in adoption. Thus, it is based upon the principle of co-operation between authorities and an adoption process, which requires that the States concerned assume mutual responsibility, which is achieved by imposing a series of duties upon each of them.

##### Protagonists involved in HC-1993 intercountry adoptions

The HC-1993 envisages that in States Parties, the following protagonists should be permitted to participate in the application of the Convention:

- A governmental Central Authority: this is mandatory.
- Competent authorities: ministries, regional or local authorities, the courts. In all States, the intervention of competent authorities, besides the Central Authority, is indispensable. Thus, the authorities responsible in the application of the HC vary from State to State (Ministry of Social Affairs, Ministry of Foreign Affairs, regional authorities, municipal social services, the courts, etc.)
- Accredited bodies: their involvement in the application of the HC-1993 is optional (art.9). These bodies are private organizations to which the State delegates some of its responsibilities (varying according to the country), for which they are officially accredited and should be periodically evaluated and supervised. These bodies should be non-profit organizations, acting in accordance with the basic ethics of the HC-1993, managed and administered by people who are qualified in adoption matters and of high personal integrity (art. 10 and 11). They must be accredited by their own State, and additionally, they must be authorized by their State and by the other State involved if they wish to organize adoptions of children coming from that other State (art.12).

- Persons and bodies not accredited but authorized: Their involvement in the application of the HC is optional. They should present certain guarantees but may pursue profit-making objectives (it concerns mainly the for-profit accredited bodies). This was contested during the drafting of the HC and can be rejected by contracting States that make a declaration of the kind mentioned in article 22.4 of the Convention.

It was recommended in a session of the Hague Conference that each Contracting State of the Convention prepare an *organigramme* that shows clearly the role of each of the protagonists involved in the implementation of the Convention and their collaboration in and mutual contribution to the success of ensuring the mandatory guarantees. This organigramme enables:

- the various protagonists of the country concerned to understand their role and to locate it within the process as a whole;
- the protagonists of the countries with which this State shares the process of intercountry adoption, to get to know the domestic reality and take it into consideration;
- the State of the country concerned, like the States with which it shares the process of intercountry adoption, to define the terms of their co-operation in the best interests of the child, taking into account the strengths and weaknesses of each of the countries involved.

### Common elements in the adoption process

In many countries of origin, the procedure for undertaking adoption, be it domestic or

intercountry, generally takes place in *two stages*:

- an administrative one which includes all the work of selection, home studies, matching, psychosocial preparation;
- the other stage is judicial and is carried out by the competent courts that take the final decision that legally constitutes the adoption. However, in other countries there are other systems.

In the majority of cases, *the adoption decision* is pronounced in the State of origin, prior to the child's departure from the country together with his/her new family.

### Essential points relating to the implementation of the HC-1993 on intercountry adoption

As regards the *various stages* that arise in intercountry adoptions, the protagonists and the mechanisms vary from one country to the next. They depend upon the law and internal organization of the system in the receiving State and State of origin, as well as upon the agreement of both States on their mechanism for co-operation in matters of adoption.

However, the important thing is to analyse the *domestic system* to ensure that it offers the indispensable guarantees defined in international conventions and that it provides the necessary symbolic strength to change the child's legal bonds.

It is fundamental to note that the HC constitutes the mandatory minimum that States which have drafted it will agree to. But, *a State is free to fix higher criteria and more demanding duties than those mentioned in the Convention as long as their aim remains the best interests of the child.*

ISS/IRC March 2007

### For more information:

ISS/IRC, *Ethical Guide: The Rights of the Child in Internal and Intercountry Adoption - Ethical Principles - Guidelines for Practice*, Geneva, 1999/2004, 20 pp. Available from [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/EthicalGuide04ENG.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/EthicalGuide04ENG.pdf)

Permanent Bureau of the Hague Conference on Private International Law, *Report and conclusion of 2<sup>nd</sup> special commission on the practical operation of the Hague Convention of 29 May 1993 on protection of children and co-operation in respect of inter-country adoption*, The Hague, 17-23 September 2005, 61 pp. Available from [http://hcch.e-vision.nl/upload/wop/adop2005\\_rpt-e.pdf](http://hcch.e-vision.nl/upload/wop/adop2005_rpt-e.pdf)

**We are interested in your opinion!** To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org). We also invite you to share this file with other interested persons in your country. Thanks in advance!

The ISS/IRC would like to thank the Canton of Geneva, Switzerland, for its financial support for this Fact Sheet project and the Committee for Inter-country Adoption of the Presidency of the Council of Italy for its funding of the Handbook "The Best Interest of the Child and Adoption", which is the basis of several Fact Sheets.