

### **Short questionnaire**

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

<b>Name of State:</b>	South Africa
<b><u>Information for follow-up purposes</u></b>	
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### **A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES**

#### ***The law and procedure in your State***

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

The South African Central Authority (SACA) is guided by the Children's Act 38 of 2005 to recognise domestic adoptions granted in other states

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

The rules applied by SACA to recognise these adoptions are universal

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

The adoptive parents must provide SACA with the following documents:

- Adoption order issued in another State
- Birth certificate of the child
- Identity documents/passports of adoptive parents

SACA verifies the authenticity of the adoption from the country that granted the adoption (whether the adoption was not rescinded and the adoption in that country has the same effect it would have had if the order was granted in the Republic). After receiving a positive confirmation of adoption from the foreign country, SACA issues a Declaration recognising the adoption. The adoption is then registered in South Africa (SA) as if the adoption was granted in SA. The adoptive parents are referred to the Department of Home Affairs for application of SA birth certificate and citizenship.

If the response is negative, SACA issues a Declaration of non-recognition of adoption and the adoptive parents are referred to the Children's court to apply for the adoption to be re-done according to the South African legislation.

In particular, please specify what legal or administrative steps are required for recognition.

Refer to the above

3. What is the competent authority in your State for such matters?

The Department of Social Development

#### ***Cases which have arisen in your State***

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

(a) How many such cases have arisen in the past year?

In 2016, SACA received 12 cases

Past three years?

2013 = 6

2014 = 20

2015 = 6

(b) In such cases, why was recognition of the domestic adoption sought?

Adoptive parents seek citizenship for their adopted children

(c) What type of document was presented for recognition?

SACA issues a Declaration recognising the adoption and letter to the Department of Home Affairs

(d) Was recognition permitted?

Recognition was permitted in cases where requirements were met

(e) In cases where recognition was refused, what were the reasons?

SACA refused recognition of adoptions that did not have the same effects as adoptions granted in SA and those with guardianship orders

In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

No

(f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

The applicants are referred to the Children's court to apply for adoption in terms of the South African legislation

(g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

With all the cases, SACA communicates with relevant Authorities in foreign countries

5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

Many families come to SA without having the child's adoption formally recognised

Does this create any problems for the family?

They cannot automatically get citizenship for the child

## **B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE**

***The law and procedure in your State***

6. In relation to the granting of domestic adoptions in your State:

- (a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (*e.g.*, it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

A South African married to a foreign national who does not have permanent residency and would like to adopt a SA child as a couple, additional information is requested from the country of origin of the partner.

If a foreign national child habitually residing in SA and is to be adopted by a South African national, SACA engages with the child's country of origin to ascertain the child's adoptability.

- (b) What type of document is issued for domestic adoptions granted in your State?

Adoption Order

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

South Africa issues a confirmation letter stating that the adoption complied with its legislation

### ***Cases which have arisen involving your State***

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

Yes

If so:

- (a) How many such cases have arisen in the past year of which you are aware?

SACA does not keep statistics on such cases

Past three years?

SACA does not keep statistics on such cases

- (b) Which competent authorities were addressed in your State? And in the other State(s)?

Department of Social Development. Contact is mainly done by adoptive parents

- (c) In such cases, why was recognition of the domestic adoption sought?

Citizenship

- (d) Was recognition permitted by the other State(s)?

Some States recognised

- (e) In cases where recognition was refused, what were the reasons?

Some States require Certificate of Conformity (Article 23) which SA cannot issue, if the adoption was a domestic adoption.

Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

No

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

Request are mainly done by adoptive parents and follow up on the matter becomes difficult

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

Requests are mainly from adoptive parents

### **C. PRACTICAL PROBLEMS REQUIRING ACTION**

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

If communication can be between the two States, it will enable the country that granted the adoption to follow up on the status of the child habitually residing in another state.

Lack of cooperation and delay from other countries in verifying adoptions granted from their states