

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 considerably. 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.¹ It was in this context that the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("1993 Hague Convention" or "Convention") was developed to establish safeguards which ensure that intercountry adoptions take place in the best interests 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 a 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*² 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.

¹ 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 para. 6. Available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" then "Explanatory Documents".

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

This fundamental principle of the child's best interests should guide the development of an integrated national child care and protection system. If intercountry adoption is needed as part of such a national child care system, it must be ethical and child-centred.

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 State 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 (Art. 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 (Art. 7); second, through intra-State co-operation between authorities and agencies regarding Convention procedures (Art. 7(1)); and third, through co-operation to prevent abuses and avoidance of the Convention (Art. 33).

Automatic recognition of adoption decisions

The 1993 Hague 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 (Art. 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 State.

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 (Art. 7(2) *b*)); and a responsibility to deter all practices contrary to the objects of the Convention (Art. 8). Central Authorities also have specific obligations under 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 Arts 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.

Guides 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 first Guide to Good Practice developed to support the implementation and practical operation of the 1993 Hague Convention. This Guide identifies important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It also assists 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 >.

Guide No 2, *Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice* will be published shortly. This second Guide under the 1993 Hague Convention emphasises that the principles and obligations of the Convention apply to all actors in Hague Convention intercountry adoptions; clarifies the Convention obligations and standards for the establishment and operation of accredited bodies; encourages acceptance of higher standards than the minimum standards of the Convention; identifies good practices to implement those obligations and standards; and proposes a set of model accreditation criteria which will assist Contracting States to achieve greater consistency in the professional standards and practices of their accredited bodies.

The Intercountry Adoption Technical Assistance Programme (ICATAP)

The Permanent Bureau has, for many years, undertaken the review and monitoring of the 1993 Hague Convention's practical operation, including promotional activities, and has also regularly provided advice and support to requesting countries on a wide range of issues related to general implementation and operation of the Convention.

In order for the 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. Therefore, more recently, the Permanent Bureau has provided, on request, more extensive technical assistance to targeted States specifically related to the implementation and application of the Convention.

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.

Subject to the availability of funding, ICATAP is operated directly by the Permanent Bureau, as well as in co-operation with international consultants and experts, and international organisations such as UNICEF. The Hague approach takes full account of the need to integrate the intercountry adoption process within the broader child care and protection system. Technical assistance may include:

- assistance in developing and in reviewing implementation legislation and regulations;
- providing advice on the creation and functions of Central Authorities and other competent authorities;
- providing training and other operational assistance to authorities and other relevant actors;
- help in developing the tools to achieve the above activities, by means of diagnostic visits, the use of external consultants, partnerships with other organisations, etc;

- providing judges with relevant training, information and opportunities for informal exchanges; and
- providing information and advice to States considering ratification or accession to assist their decision making and other factors relevant to effective implementation.

The "Intercountry Adoption Section" of the Hague Conference website 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 >.