

Questionnaire on Intercountry Adoptions – South Africa

1. DESCRIPTION

- a) Primarily a State of Origin
- b) Not Applicable
- c) Not represented

2. GOOD PRACTICE

- a) South Africa plans to establish a national register of children available for adoption and prospective adoptive parents to ensure that children are adopted nationally before being considered for an intercountry adoption.
- b) Include a chapter on the responsibility of the receiving state and state of origin. Also “the best interest of the child”.
- c) South Africa is still awaiting legislation on intercountry adoption.
- d) Not applicable.

3. QUESTIONS CONCERNING SCOPE

- a) No
- b) Yes
- c) Yes, guardianship orders currently are a problem.

4. GENERAL PRINCIPLES FOR PROTECTION OF CHILDREN

- a) Foster care, children homes, place of safety, adoption, school of industries, reform schools.
- b) Currently the adoption social workers/ organizations must declare all efforts made to place a child locally, before intercountry adoption proceedings can be initiated. Only after the Central Authority agrees in writing the proceedings can continue.
- c) A child is only adoptable after the Children’s Court has made a finding in terms of the Child Care Act. That can only happen if: The court is sure that the biological parents gave proper consent and were given enough time to reconsider (60 days), or proof of death of parents, or sufficient proof that parents cannot be traced (police reports, affidavits,

advertisements)

d) Legislation on adoption complies with Article 4c and d of the Convention. Courts must comply with these requirements and the Registrar of Adoptions will not register an adoption unless documentary proof are provided.

e) No.

f) Not applicable.

g) Adoption agencies and private social workers accredited to adoption work screen prospective adoptive parents with regard to their eligibility and suitability to adopt a specific child. A social work report is compiled and presented to the local Children's Court with a recommendation. (This is often not necessary in intercountry adoption as South Africa is mainly a State of origin.

h) Not applicable.

i) Not applicable.

j) Regular feedback is received on adoption placements in other countries and services are available in respect of search for roots by adoptees and biological parents.

5 CENTRAL AUTHORITIES

a) Article 17, Article 21, are performed directly by the Central Authority, although most of the other functions of Chapter 4 are performed by adoption agencies with the support of the Central Authority.

b) Two assistant directors full time. One deputy director, 50%. All three these staff members are qualified social workers with university degrees in social work with at least 10 to 15 social work experiences. Two administrative staff members are available who devote 10% of their time to intercountry adoptions.

c) The Central Authority is part of the Department of Social Development and the Department's procedures are followed.

d) Yes, South Africa acceded to the Convention in December 2003. Personnel were only appointed in October 2004.

e) None.

6 ACCREDITATION

1) Yes, we use adoption agencies although the Central Authority has not accredited them as yet. Currently each intercountry adoption takes place with the knowledge and support of the Central Authority.

- a) The Department of Social Development (Central Authority for South Africa) have the authority to grant accreditation.
- b) No bodies have been accredited as yet.
- c) Accreditation criteria and guidelines will be developed as soon as intercountry adoption legislation is finalized.
- d) Adoption agencies to apply to the Central Authority for accreditation in writing including a business plan. A panel will assist with the accreditation process guided by the criteria. Certificates of accreditation will be issued if approved. (Accreditation will be reviewed yearly)
- e) Kindly refer to c).
- f) Accredited organization will have to submit audited financial statements annually.
- g) Currently adoption agencies are accessed on a case-by-case basis, but we plan to organize regular visits to formally assess the performance of each accredited organization annually.
- h) Accreditation process has not yet been implemented.
- i) There are serious concerns about the abuse of guardianship orders issued by the High court to remove children to other countries with the intention of adopting the child in another country. New legislation will prohibit this practice, but is not in place as yet.
- j) Accreditation process and renewal of accreditation not yet in place.
- k) No.
- l) No.
- m) Yes.

2) No.

- 3) Not applicable.
- 4) Criteria, how to put a process of accreditation in place.
- 5) Yes.
- 6) No.

7 PROCEDURAL ASPECTS

- 1a) No.
 - b) No.
 - c) Yes, we foresee a problem in future as organizations are currently working according to their own fee structures.
 - d) No.
 - e) No.
 - f) No.
 - g) No.
 - h) No.
- 2) Not applicable.
- 3) Not applicable.
- 4) No breakdown of placements.
- 5) Yes.
- 6) None that we are aware of. If necessary it can be done at Government costs.

8. PRIVATE INTERNATIONAL LAW ISSUES

- 1a) Yes.
 - i) Yes.
- 2) No

9. RECOGNITION AND EFFECTS

- 1) Yes, our Central Authority issues the certificates.
- 2) No
- 3) No.
- 4) No.

10. PAYMENTS OF REASONABLE CHARGES AND FEES

- 1) The payments are established in the working agreement between the two organizations involved. The information on fees will be available.
- 2) No, but intend to have a fee cap and control methods in future.
- 3) No.
- 4) No.
- 5) No.
- 6) No.
- 7) We are striving to use fees to be utilized to support the national child care and protection system.
- 8) One must not forget the difference in currencies, e.g. the pound against the South African Rand and keep that in mind when fees are established.
- 9) No.

11 IMPROPER FINANCIAL GAIN

- 1) The current Child Care Act states: No person shall, give, undertake to give, receive or contract to receive any consideration, except fees prescribed, in respect of an adoption of a child. Any person who contravenes shall be guilty of an offence and on conviction liable to a fine or imprisonment.
- 2) We are aware of many disciplinary hearings in this regard.
- 3) No.
- 4) In the new Bill a section states that audited financial statements must be

submitted annually to the Central Authority.

- 5) The Bill prohibits any one to induce a person to give up a child for adoption.
- 6) No.

12 RELATIVE ADOPTIONS

We are of the opinion that the Convention can be used if two Convention countries are involved. However, if it is a inter-family adoption different criteria, screening, should be used.

13 CHILDREN WITH SPECIAL NEEDS

None, we treat them the same way as any other child

14 OTHER FORMS OF CROSS-BORDER CHILD CARE

- 1) None.
- 2) Not applicable
- 3) It falls under the jurisdiction of another Department.

15 AVOIDING THE CONVENTION

No.

16 ADDITIONAL SAFEGUARDS AND BILATERAL ARRANGEMENTS

Organizations have specific working agreements with organizations abroad. No, they are not applied generally but in relation to a specific state.

No.

17 LIMITS ON NUMBER OF STATES WITH WHOM CO-OPERATION IS POSSIBLE

Yes, we placed a moratorium on any new agreements in order to get the Central Authority to function properly and to finalize legislation. We are going to avoid a single organization in South Africa having too many working agreements with other countries and try to spread the working agreements equally between organizations. The reason for this is that an organization that has a working agreement must know the legislation and

policies of the other country very well and this will also prevent one organization having a monopoly.

B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

18. Seminars and workshops are planned, but not finalized yet. We will welcome participants from other countries and have received many visits from other organizations and Central Authorities.

19. Yes

20. Accreditation, Convention in non-Hague countries, How to handle cases where legislation in countries differ.