Private and independent adoptions: Perspectives of the HCCH

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Laura Martínez-Mora
Principal Legal Officer
What is the HCCH?

- An intergovernmental organisation; origin goes back to 1893; working towards “progressive unification of the rules of private international law”

- Drafts and approves Hague Conventions (normative work)

- There are currently 38 Conventions and Protocols, as well as 1 soft law instrument

- Provides Post-Convention work

- Very practical, directly benefits “people’s lives” (adults, children, commercial parties and investors)
81 Members of HCCH

80 States + 1 Regional Economic Integration Organisation (EU)

- **Member State**
- **Admitted State**
  Applied for membership, admitted by affirmative vote, must still accept Statute
- **Candidate State**
  Applied for membership (six-month voting period)

NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depositary (NL MFA). Neither should be taken to imply official endorsement or acceptance.
A “Connected” State is either a Member or a Contracting State to one or more of the Hague Conventions.
The Hague Intercountry Adoption Convention of 1993
1993 Intercountry Adoption Convention

Minimum standards for the protection of children who are the subject of intercountry adoption, according to their best interests

- Gives effect to Article 21 of the UNCRC
- A tool to prevent the abduction, the sale of, or traffic in children, and to eliminate profiteering and other abuses associated with intercountry adoption
- Establishes a system of co-operation amongst Contracting States
- Ensures the automatic recognition of adoptions in all States parties
1993 Hague Convention: 96 States parties

In light blue, States that have signed but not yet ratified the Convention

NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depositary (NL MFA). Neither should be taken to imply official endorsement or acceptance.
## Number of ICAs

### Major States of origin*

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In capital letters and blue, States Parties to the 1993 Hague Convention (from the year of the entry into force).

* Sources: HCCH website and P. Selman, *Key Tables for Intercountry Adoption: Receiving States 2001-2013 and States of Origin 2003-2013*, Newcastle University, 2014. This data is subject to possible future updating.

# The Convention entered into force in Haiti in 2014.

Source:
In capital letters and blue, States Parties to the 1993 Hague Convention (from the year of the entry into force).

Source: P. Selman, Key Tables for Intercountry Adoption: Receiving States 2001-2014 and States of Origin 2003-2014, Newcastle University, March 2016. This data is subject to possible future updating.

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A fundamental principle: Subsidiarity

Always examine the possibility of permanent, family alternative care ...

A child should be raised by his or her birth family or extended family whenever possible

- Importance of the support for birth families (i.e. birth mothers)
- First duly consider suitable permanent family care in the State of origin
- Only thereafter may Intercountry adoption be determined as being in the particular child’s best interests

Bearing in mind that:

- A permanent home abroad is, in most cases, preferable to a temporary home or institutional care in the State of origin
Some additional guarantees

Offer a family to a child, and not a child to a family ...

- Ensure that adoptions take place *in the best interests of the child* and with respect for his or her fundamental rights

- Establish adoptability of child; all counselled and duly informed; free consent, of mother only *after* birth (Arts 4, 16)

- Establish PAPs are eligible and suited to adopt; counselled; child authorised to enter and reside (Arts 5, 15)

- Placement with PAPs must be in child’s best interests (matching) (Art 16)

- Involvement of both SO and RS authorities in all adoptions (Art. 17)

- Preserve information about the child and his / her parents; access to info subject to domestic law (Art 30)

- Placement within home country preferred (subsidiarity - Art. 4)
Art. 29 of the 1993 HC

To prevent inappropriate or illegal practices before matching:

Art. 29 **prohibits any contact between the PAPs and any person whose consent** might be influenced, intentionally or otherwise, by the PAPs

**Exceptions**: in-family adoptions or if the competent authority sets some conditions for contact
Private adoptions

Adoptions arranged directly between biological parents and prospective adoptive parents
Independent adoptions (GGP)

Adoptions where the PAPs are approved as *eligible and suited to adopt* by their Central Authority or accredited body *in the receiving State*

Then, they *travel independently* to a country of origin to *find a child to adopt,* without the assistance of a Central Authority or an AAB *in the State of origin*
Alternative definition of “independent adoption” by some NGOs:

- ICA where an AAB is not involved.
- In this definition, PAPs adopt through CAs.
In practice

- Private and independent adoptions are **not compatible** with the Convention.

- Private and independent adoptions **do not satisfy** the Convention’s requirements.

- Private and independent adoptions should **not be certified** under Article 23 as being in accordance with the Convention.

- **Sometimes no distinction** is made between the terms “independent adoption” and “private adoption” and this may cause confusion.
Risks

- The risk of **direct contact between** the **birthparents** and the **applicants** is increased, which also **increases the risk of direct payments, abuse and child trafficking**

- Intercountry adoption may not be in the child’s **best interests**

- **Subsidiarity** may not be followed

- There may not be a proper determination of **adoptability** of the child, and thus increased risk of illicit practices
Risks

- The PAPs may not be appropriately declared **eligible and suitable**

- Absence of a meaningful **matching** process; the PAPs may not be suited for the child

- Allowing **unauthorized bodies or persons** to assist applicants in the procedures means that there is **no control** and therefore **no monitoring** connected to actions that are in conflict with national legislation or the Hague Convention.

- Increased risk of **improper financial** or other gain
15. The Special Commission recommends that States **actively discourage direct contacts between PAPs and authorities in the State of origin until authorised to do so**. Exceptionally, such contact at the appropriate time may be desirable, for example in the case of a child with special needs.
1. Concerned to prevent, in the context of intercountry adoption, the abduction, sale and traffic in children and their illicit procurement, the Special Commission draws the attention of States to the following as essential features of a well regulated system:

\(g\) prohibition on private and independent adoptions;
22. Adoptions which are arranged directly between birth parents and adoptive parents (i.e., private adoptions) are not compatible with the Convention.

23. Independent adoptions, in which the adoptive parent is approved to adopt in the receiving State and, in the State of origin, locates a child without the intervention of a Central Authority or accredited body in the State of origin, are also not compatible with the Convention.

24. It was strongly recommended that training be provided for judges and other authorities or persons exercising functions under the Convention. This training should address in particular the problems surrounding private and independent adoptions, as well as other possible ways in which the procedures and safeguards of the Convention are circumvented.
46. Recalling 2010 SC C&R Nos 22 and 23 and the fact that private and independent adoptions are not compatible with the Convention, the SC encouraged Contracting States to **move towards the elimination of private and independent adoptions.**
Areas with specific challenges

- **Financial issues** of intercountry adoption have led in the past to many issues and abuses
  - Problems include those arising from costs, but contributions, co-operation projects and donations as well
  - There is a need for transparency and reasonability in this area

- **Preventing and addressing illicit practices:**
  - Importance of a frank and open dialogue,
  - Sharing good practices
  - Co-operation and co-ordination between States is key to preventing illicit practices

- **Accreditation and authorisation of adoption accredited bodies** – extremely important to prevent abuses
Suggestions

- Private and independent intercountry adoptions are not consistent with the 1993 Hague Convention.

- Therefore, States parties should try to eliminate them and create the necessary safeguards in order that they are not possible in practice.

- It is important that the general public is aware of the risks of these adoptions.

- It is also key that professionals and authorities are properly trained on this issue.
www.hcch.net

"Intercountry Adoption Section"
Thanks for your kind attention

secretariat@hcch.nl

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