

PRACTICE GUIDELINES ON INTERCOUNTRY ADOPTION



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA



FOREWORD

Adoption is a traditional permanent placement option for children in need of care and protection. For many years it has been regarded as the most effective means of providing a safe, healthy family environment that are intended to last for a lifetime.

The increasing number of orphans mainly due to HIV/AIDS has escalated the need for national and intercountry adoption. As a result South Africa is faced with a challenge of finding permanent placement for children who have been found in need of care and protection and are adoptable. There has been keen interest in various countries to adopt these children on an intercountry basis. Although adoption provides the best permanent placement for children, the placement of children on intercountry adoption has had many challenges due to risks such as, child trafficking that might occur if proper procedure is not followed.

Despite the challenges encountered, intercountry adoption has been in practice in South Africa since 2000. However with the exception of the basic provisions in the Child Care of 1983 as amended, there was no appropriate legislative framework in place from 2000 to 2003 to regulate placement of children on intercountry adoption. In recognition of the need for this service and as a mechanism to facilitate regulation of intercountry adoption, South Africa acceded to The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption in December 2003. The Department of Social Development, in collaboration with all relevant stakeholders developed the Children's Act 38 of 2005⁶, (Chapter 16) to give effect to this Convention.

The practice of intercountry adoption is also informed by the UN Convention on the Rights of the Child with regard to the principles of the best interest of the child and that every child should be raised by his/her family or extended family whenever possible. If that is not possible or practicable, other forms of permanent care in the country of origin should be considered. Only after due consideration has been given to national solutions and it is proven that the child cannot in any suitable manner be cared for in his/her country of origin, intercountry adoption should be considered as a placement option.

These guidelines have therefore been developed to ensure compliance with the Hague Convention as well as to meet our international obligations in relation to the United Nations Convention on the Rights of the Child and to facilitate the implementation of the Children's Act.

The mechanisms for the implementation of The Hague Convention as well as the Children's Act require sectoral collaboration. These guidelines outline the role the Department of Social Development as a Central Authority to regulate intercountry adoption. Furthermore they cover the role of accredited child protection organizations as key role players in facilitating placement of children and the mandate of the Department of Justice and Constitutional Development, which is to conduct children's court enquiries and approve all applications in respect of intercountry adoption. The document also outlines specific provisions when working with a child, natural parents, prospective adoptive parents as well as procedures to be followed when collaborating with The Hague and non Hague Convention countries.

We hope that these guidelines will contribute towards protecting the rights of children in all matters

concerning their placement on intercountry adoption including facilitating the establishment and strengthening of working relations with other countries as well as accredited child protection organizations..

A handwritten signature in black ink, appearing to be 'ZST Skweyiya', written in a cursive style.

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CHAPTER 1

1. INTRODUCTION

Adoption is a placement of a child in a permanent care of a person who is not his / her biological parent or permanent guardian. The main purpose of adoption is to protect and nurture the child by providing a safe, healthy environment with positive support and to promote the goals of permanency planning by connecting a child to another safe and nurturing family relationship to last a lifetime.

Intercountry adoption is a solution for children who need permanent placement, practised by many countries in the world. 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 State of origin. For South Africa intercountry adoption is a new practice, hence the need for these guidelines.

In South Africa, adoptions are regulated in terms of Chapter 4 of the Child Care Act, 1983 (Act No. 74 of 1983). This Chapter, however, was not developed to include the option of intercountry adoption. In terms of Section 18(4) (f), of the Child Care Act, non-South African citizens who were not resident in the country could not adopt South African children.

During May 2000, however, this Section of the said Act was found to be unconstitutional by the constitutional court and deleted in its entirety. This opened up the practice of intercountry adoption of South African born children. A chapter on intercountry adoption has been included in the Children's Act, 2005 (Act No. 38 of 2005), and it is the first intercountry adoption legislation for the country. South Africa acceded to the Hague Convention on 1 December 2003 in order to regulate intercountry adoption according to internationally accepted standards.

2. THE NEED FOR GUIDELINES

- The South African adoption practice has recently been broadened to include the option of intercountry adoption. A good quality level of intercountry adoption service and practice is therefore needed to ensure that the best interests of children, who cannot be placed into suitable care locally, are addressed.
- Guidelines are required: firstly to ensure that the intercountry adoption practice in South Africa adheres to internationally recognised standards, the Children's Act 2005 and the Hague Convention.
- Secondly to prevent or deter the sale, trafficking and abduction of children.
- Thirdly to improve service delivery through appropriate training
- Fourthly to serve as a guide to the Central Authority and accredited child protection organisations and other professionals working directly or indirectly with children.
- Fifthly to form the basis for, assessment, monitoring and evaluation of intercountry adoption services in South Africa.

3. DEFINITIONS AND ABBREVIATIONS

The following terms are used in these Guidelines:

Adopted child

A child who has been placed in the permanent care of a person who is not his/her biological parent in terms of a court order that confers full parental responsibilities and rights in respect of the child upon the adoptive parents.

Adoptable child

A child is adoptable if she/he is an orphan and has no guardian or caregiver who is willing to adopt the child, if the whereabouts of the child's parent or guardian cannot be established, if the child has been abandoned, if the child has been abused or deliberately neglected by the parent or caregiver and if the child is in need of a permanent alternative placement.

Adoptive parent

A person who is not a biological parent of a child, to whom the child is being legally, placed under his/ her permanent care.

Accreditation

The process of having the legal power to act on behalf of the Central Authority.

Accredited child protection organization

An organization accredited by the Central Authority to provide intercountry adoption services.

Natural parents

A male and female person whose gametes have contributed to the conception of a child as a result of a sexual relationship.

Child

Any person under the age of 18 years.

Child in need of care and protection

A child who is in a situation contemplated in Section 150 (1) of the Children's Act, 2005 (Act No. 38 of 2005)

(1) A child is in need of care and protection if, the child-

- (a) has been abandoned or orphaned and is without any visible means of support;
- (b) displays behaviour which cannot be controlled by the parent or care-giver;
- (c) lives or works on the streets or begs for a living;
- (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
- (e) has been exploited or lives in circumstances that expose the child to exploitation;
- (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;

- (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (h) is in a state of physical or mental neglect; or
- (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.

Children's Court

Every magistrate's court which has jurisdiction on adoption matters arising from the application of the Children's Act.

Presiding Officer

Every magistrate shall be a presiding officer of a children's court and every additional magistrate shall be an assistant presiding officer of a children's court.

Central Authority

In relation to the Republic, means the Director-General, or

In relation to a convention country, means a person or office designated by such convention country under Article 6 of the Hague Convention on Intercountry Adoption

Competent Authority

An authority which has capable, skilled and knowledgeable people to deal with intercountry adoption.

Department

In relation to the guidelines it refers to the Department of Social Development.

Family

A family is group of persons united by the ties of marriage, blood, adoption or cohabitation characterized by a common residence (household) or not, interacting and communicating with one another in their respective family roles, maintaining a common culture and governed by family rules. (Draft Family Policy)

ISS

International Social Services.

Marriage

Any marital relationship which is recognised in terms of civil union or customary law, or which was concluded in accordance with a system of religious law subject to specified procedures, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse shall be construed accordingly.

RACAP

Register on Adoptable Children and Prospective Adoptive Parents

SACA

South African Central Authority.

Social Worker

Any person registered as a social worker under the Social Work Act, 1978 (Act No.110 of 1978) or deemed to be so registered in terms of section 42, and is in the service of a state department or a provincial department of social development; a designated child protection organization or a municipality.

The Act

The Children's Act, 2005 (Act No. 38 of 2005)

The Current Act

Child Care Act, 1983 (Act No. 74 of 1983) to be repealed when the Chapter 16 and 17 are put into operation.

The Convention

The Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in respect of Inter-country Adoption.

4. LEGAL FRAME WORK

The guidelines endorse the ethical principles as given in the International and National legislation.

4. 1. International Legislation

The guidelines endorse the ethical principles as given in:

- United Nations Convention on the Rights of the Child.
- Hague Convention on The Protection of Children and Co-operation in respect of Inter-country Adoption.
- African Charter on the Rights of the child.
- Hague Convention on Civil Aspects of International Child Abduction.
- U N protocol to prevent trafficking in persons

The guidelines were developed in line with the following guiding documents:

- The Rights of the child in internal and intercountry adoption:
- Ethics and principles. Guidelines for Practice.
- Guidelines for practice on national and intercountry adoption and foster family care. (Sweden)
- Guide to good practice under the Hague Convention of May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

4. 2. National Legislation

- The Constitution of the Republic of South Africa Act,1996 (Act No. 108 of 1996)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Children's Act, 2005 (Act No. 38 Of 2005) and the Children's Amendment Act of 2007
- Criminal Procedure Act, 1951 (Act No. 77 of 1951)

- Social Services Profession Act, 1978 (Act No. 110 of 1978)
- Births and Death Registration Act, 1997 (Act No. 67 of 1997)

5. GENERAL PRINCIPLES:

Any measure taken for the protection of a child must be guided by the best interests of the child and for upholding the rights of the child

5. 1. Every child has the right to grow in a permanent and stable family.
5. 2. It is a priority that a child should be cared for by his/her natural parent/s.
5. 3. Governments and societies shall commit themselves to providing families the possibility and encouragement to care for their own children. Policies and programmes shall be formulated on the basis of equity and compassion.
5. 4. If a child cannot be cared for by his/her own biological parent/s, the Competent bodies responsible for child protection, shall consider all alternatives for permanent care or adoption within the child's extended family.
5. 5. Adoption of a child outside his/her own family shall be considered only if no appropriate placement or adoption within the extended family is possible.
5. 6. When biological parent/s and the extended family of origin for various reasons do not meet conditions which guarantee the full and harmonious development of a child, competent bodies responsible for child welfare and protection must ensure permanent placement of a child within the community.
5. 7. The natural father of the child born out of wedlock and or foster parents of the child shall be given preference to adopt the child if he/she becomes available for adoption. Offering a permanent substitute family to a child through adoption or long term foster family care when necessitated by circumstances shall prevail over care in an institution.
5. 8. Adoption of a child may be considered based on the foster care and residential care placement review.
5. 9. As a priority, the child shall be adopted within his/her own community and State of origin. Inter-country adoption can be considered as an alternative only after having ensured that a permanent placement for the child cannot be found within his/her State of origin.
5. 10. Stability, continuity and permanency of relationships promote a child's growth and development. The period of childhood and adolescence being of utmost importance for the development of a child's personality, all procedures must be completed and decisions taken without any unnecessary delay.
5. 11. The child needs the opportunities to establish lifetime relationships with caring adult models.
5. 12. The child's biological parent/s, the adoptive family and the foster family have a right to confidentiality. The Competent Authorities, accredited bodies and foster-care agencies shall treat all case records as classified documents. Access to recorded information by any party shall be in accordance with the laws of the State.
5. 13. The adoption of children shall not be a source of improper financial or other gain. Abuse, sale and trafficking in children shall lead to prosecution. In all procedures related to foster family care and adoption, it is important that the highest standards of practice are followed with the

- accepted principles.
5. 14. It is important to keep in mind that foreigners should not be allowed to visit the Child and Youth Care Centres for the purpose of linking up and adopting a child. These Centres should have a volunteer policy in place which do not allow adoption of pre-selected children.
 5. 15. Guardianship where the applicant is a foreigner is regarded as an intercountry adoption
 5. 16. The principles of the best interest of the child, non discrimination, participation and protection of the child must be ensured

6. GUIDELINES ON WORKING WITH VARIOUS KEY PERSONS:

The following guidelines will assist in establishing the adoptability of a child and assessing the possible matching with the adoptive parents and their preparation.

6. 1. *Natural Parents*

- 6.1. 1. Natural parent (s) or caregiver(s) must not be coerced into consenting to the adoption of their children.
- 6.1. 2. Natural parent (s) or caregiver(s) should be assisted and counselled to explore all avenues to take care of their children.
- 6.1. 3. Natural parent (s) or caregiver(s) must be made aware of the full implications of relinquishing their child for adoption, and to consider the implications before signing consent for adoption.
- 6.1. 4. Rights of natural parent (s) or caregiver(s) to participate in the decision of the best placement for the child must be respected taking into consideration that priority will be within the country of origin.
- 6.1. 5. Natural parent (s) or caregiver(s) must be adequately prepared / counselled regarding the needs of adult adoptees to be connected to their roots after the age of 18 years.
- 6.1. 6. The detailed background report on the natural parent(s) or caregiver(s), including copies of birth certificates or Identity document and photos where possible
- 6.1. 7. If the natural parent is a child, that parent must be assisted by his/her guardian when giving consent.
- 6.1. 8. In the absence of the natural parent(s), grandparent(s) and other relatives must be adequately prepared/counselled regarding the adoption of the children

6. 2. *The Child*

- 6.2. 1. The purpose of adoption should always be to provide a suitable home for an adoptable child and not to provide a family with a child (in other words the focus lies on the need of the child and not on the needs of the prospective adoptive parents).
- 6.2. 2. The best interests of the child is of paramount importance and must always be taken into consideration
- 6.2. 3. The child's language, culture, race and religion should always be respected and taken into consideration in the placement of the child.
- 6.2. 4. Twins and siblings should not be separated for the purpose of adoption, except if it is in their best interest.
- 6.2. 5. Before any adoption is considered, if the child is 10 years or older, his/her written consent

must be obtained through consultation and counselling in the prescribed manner. Furthermore all children depending on their age and level of maturity should be properly counselled and prepared for the adoption.

6.2. 6. A child study report with the following information shall be prepared by a professional social worker or experienced personnel who are supervised by such qualified workers of a Competent Authority:

6.2.6. 1. Identifying particulars

6.2.6. 2. Historical background

6.2.6. 3. Medical history

6.2.6. 4. Family relations

6.2.6. 5. Police report

6.2.6. 6. Affidavit

6.2. 7. The child has the right not to be advertised or paraded as being available for adoption through any means including the media and internet.

6. 3. *Prospective Adoptive Parents*

6.3. 1. The purpose of adoption is to find a suitable home for a child and not a suitable child for a family.

6.3. 2. Adoption mostly concerns children with a history of deprivation and neglect. Often these children have been through traumatic experiences. They need adoptive families who are committed, caring, supportive and offer stability and security to their lives.

6.3. 3. Prospective adoptive parents should have the capacity to handle the trans-racial, trans-cultural and trans-national aspects of adoption where required.

6.3. 4. Adoptive parents need to be provided with adequate counselling before and after adoption.

6.3. 5. Prospective adoptive parents must satisfy the requirements of Competent Authorities of both States concerned as agreed in the working agreement

6.3. 6. Prospective adoptive parents must be adequately prepared/ counselled regarding the needs of adopted children and adult adoptees to be connected to their roots.

6.3. 7. Prospective adoptive parents must be fit and proper persons and should not be found unsuitable to work with children. A person unsuitable to work with children is a person who has been found guilty of murder, attempted murder, rape, indecent assault and assault with the intent to do grievous bodily harm with regard to a child.

6. 4. *Screening and Preparation*

The Competent/Central Authority or accredited body in the receiving country shall be responsible for providing psycho-social services to prospective adoptive parent/s including:

6.4. 1. Relevant information and support to decide whether adoption is the best option for them after being made to understand that adoptive parenthood can involve tasks beyond biological parenthood.

6.4. 2. Evaluation of their ability and potential to satisfy the needs of child/children who require adoption including the acceptance of the siblings, children with special needs, whenever relevant.

6.4. 3. Preparing adoptive parents for the adoption i.e. arranging contact with adoptive families and an adult adoptee/s if possible.

- 6.4. 4. Pre-adoption placement services and support to finalise the adoption.
- 6.4. 5. Assist the applicant/s with counselling and/or referral to other services if a decision has been taken that a child should not be placed with them.

6. 5. *Prospective Adoptive Family Home Study*

The prospective adoptive family will participate in the preparation of the home-study which will include the following:

- 6.5. 1. Identifying information with necessary documents i.e. marriage certificate, Identity documents/ passport, proof of sharing a common residence if not married and the permanency of the relatives, etc.
- 6.5. 2. Background information of the prospective adoptive family including their own childhood experiences, e.g upbringing
- 6.5. 3. Information on other members of the family
- 6.5. 4. Attitude of other relatives of the adoptive family towards the adoption plan
- 6.5. 5. Social and religious identity of the prospective adoptive family
- 6.5. 6. Medical report of the family's health status & health history
- 6.5. 7. Employment and financial situation
- 6.5. 8. Motivation to adopt, including infertility treatment
- 6.5. 9. Statement of positive reference & emotional support from relatives, friends, community etc. Mentioning should also be in relation to disposition to cultural diversity
- 6.5. 10. Assessment by a multidisciplinary support team of professionals
- 6.5. 11. Police clearance certificate
- 6.5. 12. Proof of residence
- 6.5. 13. Check prospective adoptive parent against Part B of the Child Protection Register or equivalent in other countries

6. 6. *The Role of the Children's Courts*

The presiding officer of a children's court must hear all intercountry adoption applications presented to the court. If the presiding officer is satisfied with the information on the application, he/she can make an adoption order only if:

- 6.6. 1. The adoption is in the best interest of the child.
- 6.6. 2. The prospective adoptive parents complies with all the requirements
- 6.6. 3. Consent for adoption has been given from all parties mentioned in the Children's Act
- 6.6. 4. Consent has not been withdrawn

6. 7. *Documents to be considered by the Presiding Officer*

The following documents must be submitted:

- 6.7. 1. Application and affidavit in support of the adoption application
- 6.7. 2. Original birth certificate of the child concerned
- 6.7. 3. Consent and affidavit in support of consent by biological mother and or father
- 6.7. 4. Section 10 (1) placement by court dated
- 6.7. 5. Copy of applicant(s) Passport document(s) and marriage certificate
- 6.7. 6. Certificate of divorce decree and death certificate

- 6.7. 7. Consent by SACA
- 6.7. 8. Consent by CA of foreign country
- 6.7. 9. Consent of the child (10 years old and maturity)
- 6.7. 10. Detention order of Children's Court Enquiry
- 6.7. 11. Report from SAPS
- 6.7. 12. Newspaper adverts placed in
- 6.7. 13. Sworn affidavit by the social worker dated
- 6.7. 14. Social worker' report (child and home study report)
- 6.7. 15. Adoption fee structure

CHAPTER 2

7. COMPETENT CENTRAL AUTHORITIES AND ACCREDITED BODIES/ACCREDITED CHILD PROTECTION ORGANISATIONS

This chapter will focus on the accreditation, roles of Central Authority, Child Protection Organisations, processes and procedures of intercountry adoption with Hague and non Hague Countries.

7. 1. *Accreditation*

- 7.1. 1. Adoption arrangements should be made through government adoption authorities or accredited bodies, including government of the state of origin and the receiving states.
- 7.1. 2. Government shall formulate policies and enact legislations to deter prospective adoptive parents and unaccredited persons from directly arranging intercountry adoptions without the involvement of CA.

7. 2. *Personnel*

- 7.2. 1. South African Central Authority (SACA); The Director- General of the Department of Social Development is the CA and she/he has to appoint:
 - 7.2.1. 1. A competent team of personnel including professional social workers with working experience in child care and adoption.
 - 7.2.1. 2. The role of SACA is to:
 - regulate and monitor intercountry adoption
 - accredit child protection organizations to provide intercountry adoption services
 - approves adoption working agreements with foreign countries
 - prevent improper financial gain by service providers
 - establish a committee of 12 members from the Departmental provincial offices, Department of Home Affairs, Justice and Constitutional Development, Foreign Affairs, Health, South African Police Services, National Councils for Welfare Organisations and South African Council for Social Service Professions.
 - The committee will be a support structure for SACA and assist with decisions on crucial matters

- such as: policy issues, accreditation process and agreements.
 - Administrative support staff shall be supervised by registered social workers.
- 7.2. 2. The accredited child protection organisation shall employ:
- 7.2.2. 1. A competent team of personnel including professional social workers and other professionals such as psychologists and legal personnel with working experience in child care and adoption.
- 7.2.2. 2. The staff will comprise of social workers with integrity, professional competence and are accredited to do adoptions.
- 7.2.2. 3. Administrative support staff shall be supervised by registered social workers.
- 7.2. 3. The role of accredited child protection organisations is to:
- Establish/enter into an adoption working agreement with an accredited adoption agency in another country in conjunction with SACA
 - Provide intercountry adoption services as per approved working agreement in conjunction with SACA
 - Annually submit audited financial statement to SACA of fees received and payments made.
- 7.2. 4. The role of the Provincial Departments of Social Development is to:
- Issue a letter by the Provincial Head of Social Development that accompany an application for the adoption of a child recommending the adoption of the child
 - Monitor the matching and placement of children by ensuring that national adoption option is considered before intercountry adoption.

7. 3. *National Department of Social Development*

The Central Authority and the accredited child protection organisation shall ensure that:

- All alternatives for placing the child in a family in the state of origin have been considered.
- Inter-country adoption is the best option for the child concerned.
- The database of adoptive parents has been consulted and notification of provinces has been complied with
- Child Protection Register has been consulted to establish the suitability of the adoptive parent(s).

7. 4. *Legal Requirements*

- 7.4. 1. Before any adoption plan is considered, the accredited child protection organisation is responsible to establish that the child is adoptable based on the following.
- 7.4.1. 1. a child is an orphan and has no guardian or caregiver who is willing to adopt the child
- 7.4.1. 2. the whereabouts of the child's parents or guardian cannot be established.
- 7.4.1. 3. the child has been abandoned.
- 7.4.1. 4. the child's parents or guardian has abused or deliberately neglected the child or has allowed the child to be abused or deliberately neglected
- 7.4.1. 5. the child is in need of a permanent alternative placement
- 7.4. 2. SACA shall ensure that the necessary documents are legally valid in both the state of origin and

the receiving state and there is no conflict of laws adverse to the rights of the child.

7. 5. *Monitoring*

The Competent Authorities or accredited bodies/accredited child protection organisations in both states concerned shall monitor all procedures before finalization of an adoption. This shall include amongst others:

- 7.5. 1. The appropriate matching of a child with an adoptive family has been done in the best interest of the child. The Provincial Department of Social Development shall be involved in the monitoring of the matching and placement of children before intercountry adoption
- 7.5. 2. All legal formalities to finalize the adoption are concluded at the earliest and not later than two (2) years after the adoption application
- 7.5. 3. Only costs and expenses including reasonable professional fees may be charged in processing the adoption. The fee must not be unreasonably high and lead to profiteering and trafficking in children. Audited financial statements of the accredited child protection organizations pertaining to adoptions must be submitted on an annual basis to the CA.

7. 6. *Supervision / After care services*

When a child is placed in adoption, the competent authority or accredited body in the receiving country shall:

- 7.6. 1. Accept the responsibility for supervising the placement.
- 7.6. 2. Provide the necessary progress report to the Central/Competent Authority and/accredited body in the sending country for the period of 5 years.

8. THE PROCESS OF AN INTERCOUNTRY ADOPTION

The process that should be followed where an intercountry adoption is concerned is intensive and it involves different countries and different legislation. The other challenge is that there are different kinds of adoptions and every adoption should be handled on the basis of its own merit.

One important aspect is that SACA, situated at the National Department of Social Development, be contacted for guidance when an intercountry adoption is being considered.

The following scenarios will be discussed:

- Hague adoptions
- Non-Hague adoptions
- Family/ blood related adoptions
- Local adoption with an intercountry element
- Intercountry adoptions with a local element (dual citizenship)

8. 1. *Hague Convention Adoptions*

8.1. 1. *Hague Convention adoptions where South Africa is the country of origin* and the adoption is processed with another foreign country which is the member state of the Hague Convention. This kind of adoptions can be done by designated child protection organisations accredited to do intercountry adoptions. Intercountry adoptions can only take place where a working agreement between South Africa and the other Hague country was established and the working agreement was approved by the Central Authorities of the two countries, unless the child is being adopted by a blood related family member.

8.1. 2. *Procedure to be followed as a Country of Origin*

- Prospective adoptive parent/s in the foreign country interested to adopt a South African child will contact the Central Authority in the receiving country, which will in turn refer them to the organisation accredited to do inter-country adoption in this country and who has a working agreement in place with an accredited child protection organisation in South Africa.
- The South African accredited child protection organisation that has a child available for adoption and cannot find adoptive parents locally will provide a background report to SACA. The child will be placed on RACAP for 60 days and only after SACA agrees in writing that no local adoptive parents can be found, an intercountry adoption can be considered.
- Where a natural parent/s gave consent for the child to be adopted, she must be informed that an intercountry adoption only becomes an option after all local resources have been explored even if she prefers that her child be adopted through an intercountry adoption.
- The local accredited child protection organisation can then consider the possibilities/profile of screened adoptive parents from the organisation they have a working agreement with and decide on a possible match. The local accredited child protection organisation will then inform SACA who will, if in agreement, complete a section 17 consent (described in The Convention) indicating the name and details of the child as well as the name and details of the prospective adoptive parents.
- The social worker of an accredited child protection organisation will ensure that every person that needs to consent to the adoption gives consent through the children's court.
- The foreign organisation will discuss this with the suitable adoptive parents and if all parties agree, a section 17 will be completed by the Central Authority of the foreign country and forwarded to the South African organisation. A copy will be forwarded to SACA.
- The designated child protection organisation will arrange for a court date and for the prospective adoptive parents to visit South Africa. The designated child protection organisation will take the responsibility to ensure that the bonding takes place between the prospective adoptive parents and the child for a minimum of at least two weeks, and accompany them to the Children's Court.
- The Children's Court will issue an adoption order, only if section 17 consents were submitted from both the receiving and country of origin.
- The minutes of the adoption procedures will be forwarded to SACA who will ensure that registration of adoption takes place.
- SACA will issue a Certificate of Conformity in terms of Section 23 of The Convention within 5 working days, ensuring that the adoption will be recognised in the foreign country. The

designated child protection organisation will ensure that the Department of Home Affairs receives a copy of the adoption order and that the changing of names is effected.

- The designated child protection organisation will forward the new birth certificate to the adoptive parents.
- After care services should be rendered according to the legislation in the receiving country and follow up reports will be submitted to the designated child protection organization and SACA as agreed upon in the working agreement.

8.1. 3. *Hague Convention adoptions where South Africa is the receiving country* and the adoption is done in another foreign country which is the member state to the Hague Convention. This kind of adoption is not encouraged as South Africa has many children in need of permanent and stable homes.

However, some adoptive parents feel that they have the right to make enquiries in foreign countries and if the child is available for adoption, to adopt a child of a race of their choice. This kind of adoption can only be done by designated child protection organisations accredited to do intercountry adoptions. Intercountry adoption can only take place where a working agreement between South Africa and the other Hague country was established and approved by the Central Authorities of the two countries.

8.1. 4. *Procedure to be followed as a Receiving Country*

- South African prospective adoptive parent interested to adopt a foreign child will contact SACA, who will in turn refer the couple to organisation accredited to do intercountry adoptions in South Africa and who has a working agreement in place with an accredited organisation in a sending country.
- The local accredited child protection organisation will do a thorough screening and submit a comprehensive home study report as prescribed in the working agreement with the foreign country.
- The foreign accredited organisation will indicate if they have made a match with a child that will benefit from being adopted by the specific South African and a comprehensive child study report to be provided to the local organisation.
- If both organisations and the adoptive parents are in agreement, the foreign organisation will propose the match to their Central Authority.
- The foreign Central Authority will issue Section 17 consent (as prescribed in The Convention).
- All documentation will be submitted to SACA to also issue a Section 17 consent including all details of the child and prospective adoptive parents. The local organisation will ensure that all documents needed as prescribed in the working agreement be forwarded to the foreign organisation.
- The local accredited child protection organisation will prepare the couple for their trip and court proceedings and will finalise all arrangements with the foreign organisation. The foreign organisation will assist the couple going through the court process.
- Once an adoption order is issued, the Central Authority in the foreign country will issue a certificate of conformity (as prescribed in Section 23 of The Convention). If a certificate of conformity has been issued, it is the responsibility of SACA to ensure that the adoption is

recognised.

- The South African accredited child protection organisation will render aftercare services and submit follow-up reports to the foreign organisation through SACA for a period of 5 years.

8. 2. *Non-Hague Adoptions*

8.2. 1. *Non Hague Adoptions where South Africa is the country of origin* and the adoption is done with another foreign country which is not a member state of the Hague Convention. This kind of adoptions can only be done by child protection organisations accredited to do intercountry adoptions. Intercountry adoptions can only take place where a working agreement between South Africa and the other country was established and approved by SACA and a Competent Authority in the other country.

8.2. 2. *Procedure to be followed as a Country of Origin*

- Prospective adoptive parent in the foreign country interested to adopt a South African child will contact the Competent Authority in the receiving country, which will in turn refer the couple to the organisation accredited to do inter-country adoption in that country and has a working agreement in place with an organisation in South Africa.
- South African accredited child protection organisation that has a child available for adoption, and cannot find adoptive parents locally will provide a background report to SACA. The child will be placed on RACAP for 60 days and only after SACA agrees that no suitable local adoptive parents can be found, intercountry adoption can be considered.
- Where natural parent/s gave consent for the child to be adopted, she/he must be informed that an intercountry adoption only becomes an option after all local resources have been explored even if she prefers her child to be adopted via an intercountry adoption.
- An appropriate organisation/social worker as recommended by the Competent Authority/ISS in the foreign country will screen, prepare the prospective adoptive parents and submit a home study report to the local organisation.
- The local accredited child protection organisation can then consider the possibilities/profile of screened adoptive parents from the organisation they have a working agreement with and decide on a possible match.
- The local accredited child protection organisations will then inform SACA who will, if in agreement, complete a letter supporting the match indicating the name and details of the child as well as the name and details of the adoptive parents.
- The foreign child protection organisation/social worker will discuss the matching with the prospective adoptive parents and if everyone agrees a letter supporting the adoption will be issued by the Competent Authority of the foreign country and forwarded to the South African organisation. A copy should be forwarded to SACA.
- The local accredited child protection organisation will arrange for a court date and for the couple to visit South Africa. The South African designated child protection organisation will take the responsibility to ensure that bonding takes place between the couple and the child, for a minimum of at least two weeks, and accompany them to the Children's Court.
- The Children's Court will issue an adoption order and the minutes of the court proceedings as

well as all other documents as prescribed in legislation and will be forwarded to SACA.

- The accredited child protection organisation will ensure that the Department of Home Affairs receive a copy of the adoption order and that the changing of names is done and a new birth certificate is issued. The designated child protection organisation will forward the new birth certificate to the adoptive parents.
- After care services should be rendered according to the legislation in the receiving country and follow up reports be submitted to the child protection organization as agreed upon in the working agreement.
- The role of Embassy is to issue visas and entry clearance that will enable the child to be accepted in another country.

8.2. 3. *Non Hague adoption where South Africa is the receiving country* and the adoption is done in a foreign country which is not a member state to the Hague Convention. This kind of adoption is not encouraged as South Africa does not yet have legislation in place recognising a foreign adoption order; also there are many children in need of placement with families. However, some adoptive parents feel that they have the right to make enquiries in foreign countries and if the child is available for adoption, to adopt a child of a race of their choice. In case a child is related to a prospective adoptive parent/s such an adoption is encouraged.

This kind of adoption can only be done by designated child protection organisations accredited to do intercountry adoptions. Intercountry adoption can only take place where a working agreement between South Africa and the other country was established and approved by SACA as well as a Competent Authority in the other country.

8.2. 4. *Procedure to be followed as a Receiving Country*

- South Africans interested to adopt a foreign child will contact SACA. SACA will explain the procedures involved with such an adoption to the prospective adoptive parent and attempt to encourage them to adopt a South African child. If the prospective adoptive parents insist and a working agreement with the country they are interested to adopt from, is in place, SACA will refer them to the organisation accredited to do intercountry adoptions in South Africa and who has a working agreement in place with an organisation in a sending country.
- The local organisation will do a thorough screening and submit a comprehensive home study report as prescribed in the working agreement with the foreign country.
- The foreign organisation will indicate if they have made a match with a child that will benefit from being adopted by the specific South African and provide a child study report to the local organization. If both organisations and the adoptive parents are in agreement, the foreign organisation will propose the match to their Competent Authority. Once the Competent Authority and SACA is in agreement the adoption can proceed.
- The local organisation will ensure that all documents needed as prescribed in the working agreement be forwarded to the foreign organisation.
- The local organisation will prepare the couple for their trip and court proceedings and will finalise all arrangements with the foreign organisation. The foreign organisation will assist the couple

through the court process.

- The accredited designated child protection organisation will render after-care services and submit a report as agreed upon in the working agreement.

8. 3. *FAMILY OR BLOOD RELATED ADOPTIONS*

8.3. 1. *This is where South Africa is the country of origin* and the adoption is done with another country (Hague or non-Hague) and the child is blood related to the prospective adoptive parents.

This kind of adoption is encouraged and applicable when a child for example is orphaned and the only family left lives in another country, or if the family for good reasons, e.g. imprisonment or illness, cannot take care of the child. It is important to keep a child in his/her own family. Parents are however not encouraged to give up their children for adoption with the intention of accessing better education and free schooling as the result of the adoption process. This kind of adoption is called an adoption of convenience and most countries do not agree with such an adoption.

This adoption can be done without a working agreement in place and not necessarily by a designated child protection organisation accredited to do intercountry adoptions. SACA will refer the matter to an appropriate organisation or accredited social worker.

8.3. 2. *Procedure to be followed as a Country of Origin*

- Person/s in the foreign country interested to adopt a South African child related to them will contact the Competent Authority in the receiving country.
- If the receiving country is a non-Hague country and there is no Central Authority or Competent Authority, International Social Services (ISS) can also be used for this purpose. The Competent Authority or ISS office will contact SACA and report the matter.
- If the matter was reported to SACA, SACA can also refer the matter to the appropriate organisation/authority in the receiving state. SACA will refer the matter to an appropriate child protection organisation or accredited social worker to investigate the situation of the child and to establish whether or not the child is adoptable.
- The social worker will ensure that every person that needs to consent to the adoption gives consent through the Children's Court.
- Once a report has been received in favour of an adoption for the child, SACA will request a home study report from the receiving state.
- An appropriate organisation/social worker as recommended by the Competent Authority/ISS in the foreign country will screen, prepare the prospective adoptive parents and submit a comprehensive home study report to SACA.
- Should the report recommend the adoption, and the prospective adoptive parents are suitable to adopt, SACA will refer the case to the local social worker/child protection organisation handling the matter.
- The social worker will negotiate with the prospective adoptive parents to travel to South Africa once the 60 days provided for the withdrawal of consents, have lapsed and also arrange for a court date. The Children's Court will issue an adoption order and the relevant documentation will

be forwarded to SACA for registration of adoption.

- If this adoption was arranged with another Hague country, SACA will ensure that the Section 17 consent in terms of the Hague Convention is issued and will issue a certificate of Conformity.
- The South African designated child protection organisation will ensure that the Department of Home Affairs receives a copy of the adoption order and that the changing of names is done and a new birth certificate is issued. The designated child protection organisation will forward the new birth certificate to the adoptive parents.

8.3. 3. *This is where South Africa is the receiving country* and the adoption is done with another country (Hague or non-Hague) and the child is related to the adoptive parents. This kind of adoption, is encouraged when a foreign child is orphaned and the only family available is in South Africa, or if the family cannot support the child for good reasons such as imprisonment or illness. It is of paramount importance to try to keep a child in his/her own family, even if an intercountry adoption has to take place to ensure that a child stays in the family, however it is not encouraged if the child's parents are still alive and the only reason for the adoption is to get a South African passport for the child or if the motive is better education/free schooling. This kind of adoption is called an adoption of convenience and most countries do not agree with such an adoption, it can also be done without a working agreement in place and not necessarily by a designated child protection organisation accredited to do intercountry adoptions. SACA will refer the matter to an appropriate organisation or accredited social worker.

8.3. 4. *Procedure to be followed as a Receiving Country*

- South African couples interested to adopt a foreign child related to them, will contact SACA who will in turn contact the appropriate Competent Authority in the country of origin and request assistance. If the country of origin is a non-Hague country and there is no Central Authority or Competent Authority, ISS can also be used for this purpose.
- The Competent Authority or ISS will refer the matter to an appropriate organization/social worker to investigate the circumstances of the child and to establish whether or not the child is adoptable. Once all the legal requirements are met and the country of origin recommends an adoption for the child, a report will be forwarded to SACA.
- SACA will refer the prospective adoptive parents to an appropriate social worker or organization to screen and compile a home study report on their circumstances.
- SACA will submit the report to the Competent Authority or ISS in the country of origin.
- Should the Central/Competent Authority or ISS agree with the adoption, the accredited social worker or organization will prepare the adoptive parents for the finalization of the adoption.
- The foreign organisation will make travelling arrangement with the adoptive parents and prepare them for court proceedings.

8. 4. *Local Adoptions with an Intercountry element*

8.4. 1. This is where the child is a South African and the prospective adoptive parents are non-South African citizens residing in the country. This kind of adoption can be dealt with by an accredited social worker or by an organisation not necessarily those accredited for intercountry adoptions.

This adoption is encouraged, if it is in the best interest of the child. The prospective adoptive parents must reside in South Africa for a period of five years and must submit proof of residence and or work permit. The prospective adoptive parent/s may then lodge an application for the adoption and it would be regarded as national adoption.

The procedures would be the same as with a local adoption, should there be enquiries at a later stage regarding the adoption order from the country where the adoptive parent/s originate from, the enquiries will be dealt with by SACA

8.4. 2. This is where the child was born in a foreign country, (refugee and illegal immigrants) *currently residing in South Africa and the prospective adoptive parents are South African*. The child's background and his/her biological parents' whereabouts must be investigated and confirmed with the Competent Authority or ISS in a foreign country before proceeding with adoption. The countries' Embassies in South Africa may also be approached for assistance in this regard.

The procedure would be the same as with a local adoption. Should consent from the biological parents or any other documents be needed from a foreign country, SACA can be approached for assistance.

8. 5. *Intercountry Adoptions with local element*

8.5. 1. *This is where South Africa is the country of origin and the prospective adoptive parents are South Africans residing in another country and not related to the child.*

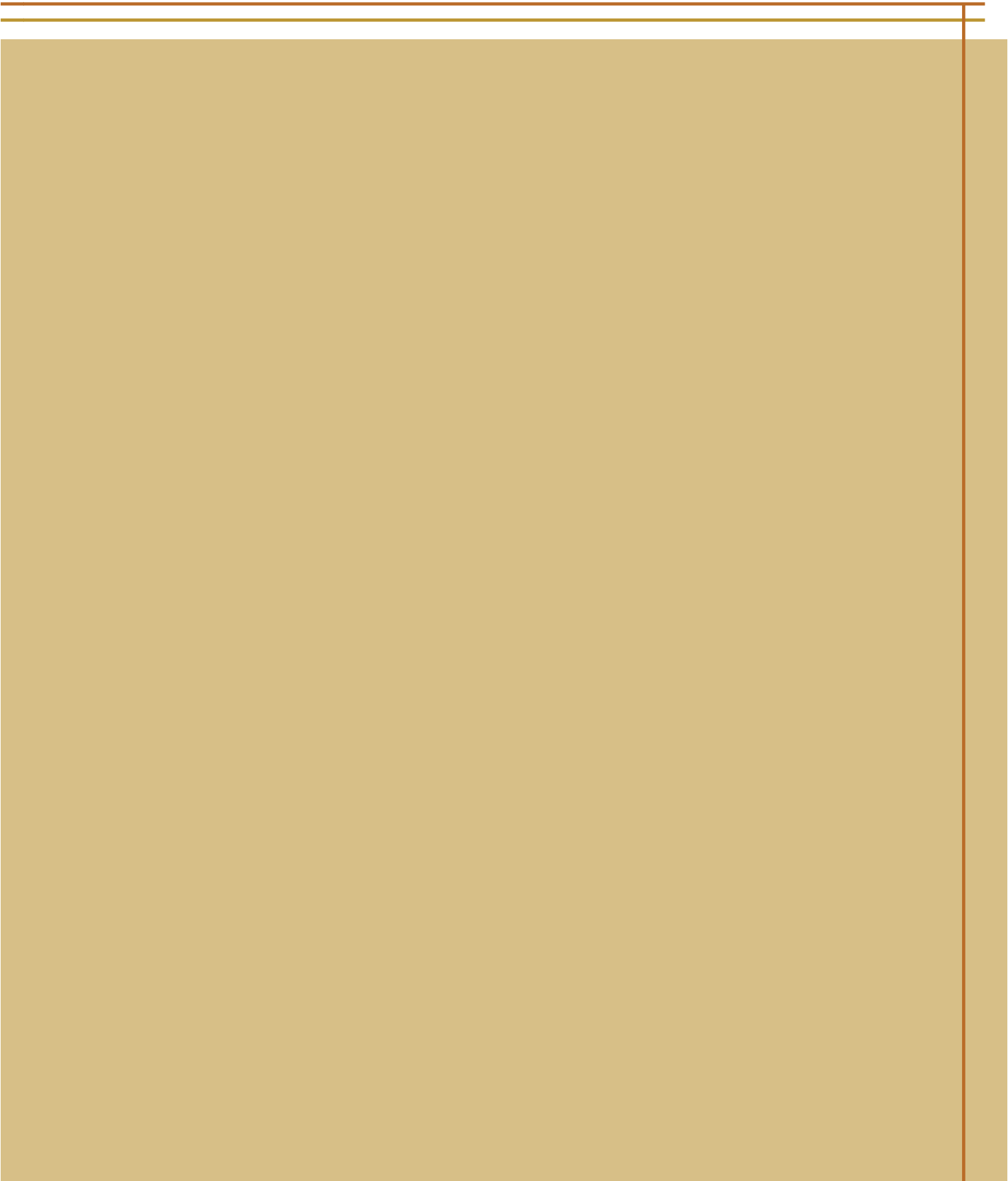
8.5. 2. *Procedure to be followed as a Country of Origin*

- South African person/s in the foreign country interested to adopt a South African child not related to them will contact the Competent Authority in the receiving country.
- If the receiving country is a non-Hague country and there is no Central Authority or Competent Authority, International Social Services (ISS) can also be used for this purpose. The Competent Authority or ISS office will contact SACA and report the matter.
- If the matter was reported to SACA, SACA can also refer the matter to the appropriate organisation/Competent Authority in the receiving state. SACA will refer the matter to an appropriate child protection organisation or accredited social worker to investigate the circumstances of the child and to establish whether or not the child is adoptable.
- The social worker will ensure that every person that needs to consent to the adoption gives consent through the Children's Court.
- Once a report has been received in favour of an adoption for the child, SACA will request a home study report from the receiving state.
- An appropriate organisation/social worker as recommended by the Competent Authority/ISS in the foreign country will screen, prepare the prospective adoptive parents and submit a home study report to SACA.
- Should the report recommend the adoption, and the prospective adoptive parents are suitable to adopt, SACA will refer the case to the local social worker/child protection organisation handling the matter.

- The social worker will negotiate with the prospective adoptive parents to travel to South Africa once the 60 days provided for the withdrawal of consents, have lapsed and also arrange for a court date. The Children's Court will issue an adoption order and the relevant documentation will be forwarded to SACA for registration of adoption.
- If this adoption was arranged with another Hague country, SACA will ensure that the Section 17 consent in terms of the Hague Convention is issued and will issue a certificate of Conformity.
- The designated child protection organisation will ensure that the Department of Home Affairs receives a copy of the adoption order and that the changing of names is done and a new birth certificate is issued. The designated child protection organisation will forward the new birth certificate to the adoptive parents.

9. CONCLUSION

It is envisaged that the guidelines formulated will ensure that South Africa adheres to internationally recognised standards of intercountry adoptions and that the best interests of children who cannot be placed into suitable care locally are taken care of by placing them with the adoptive parents of foreign countries.



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