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**125**

# How to ensure use of the correct procedures

*XIII EurAdopt International Conference  
The Intercountry Adoption Dilemma*

*"How can we provide the highest level of protection to abandoned children?"  
May 24-25th, 2018 Milan*

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# In this presentation

1. A bit of **history**
2. Intercountry adoption (ICA) procedures **before** the 1993 Hague Convention
3. **Legislation** and **actors** in the procedure
4. The **key stages** of a “correct” ICA procedure
5. What happens if the procedure has **not** been **followed**?
6. Last **practical tips**

# Celebrating 25 years and more...

- **1988**: Initial proposal for a Convention made by Italy
- **1992**: EurAdopt participates at the 3<sup>rd</sup> meeting of the Special Commission on Intercountry Adoption
- **1993 – 25 years!**
  - **EurAdopt** was formally established
  - The **1993 Hague Convention** was **concluded**
  - Brazil, Costa Rica, Mexico and Romania signed the 1993 HC
- **1995**: the **1993 HC enters into force**, with Mexico, Romania and Sri Lanka as the first three Contracting States
- **50 years** of **CIAI**
- **125 years** of the **HCCH**





# Before the Convention

- ⊘ 1 procedure in the State of origin  
+  
1 procedure in the receiving State  
=  
**Uncertainty** about adoption recognition (limping parentage)
- ⊘ Authorities in charge of adoption (if they existed) in the receiving State were only **informed** about the adoption procedure **once the child arrived in the receiving State**
- ⊘ **PAPs selected** a child, and then the child was declared adoptable (no professional matching at the correct timing) :
  - ⊘ Children who were not in need of adoption were adopted (*e.g.* babies in good health)
  - ⊘ Children in need of ICA remained in institutions (*e.g.* special needs children, older children)

# Before the Convention

- ⊘ Lack or deficient procedures for:
  - ⊘ giving **consent**
  - ⊘ **informing, counselling & preparing** all relevant persons
  - ⊘ matching
  - ⊘ **authorising** and **monitoring** agencies and other actors
  - ⊘ **preserving** information and **access** to origins
- ⊘ **Forgery and falsification** of documents
- ⊘ **Donations**, gifts, improper financial and other gain were very common
- ⊘ ...

# Legislation and actors

# Legal basis

- ✓ 1993 HC and the CRC establish **minimum standards** for adoption procedures
- ✓ **Each State develops its own procedures** in accordance with the 1993 HC and the CRC, to fit the particular needs of its country
- ✓ Adoption should be part of the **child protection system**
- ✓ **The best interests** of the child should be the primary consideration in the adoption procedure
- ✓ **Respect** of the **standards** of the 1993 HC is a **guarantee** that the procedure will respond to these **best interests**



# Authorities and bodies

- ✓ Clarity on **who does what** in legislation, rules of procedure...
- ✓ Authorities and bodies need the necessary **powers and resources** to implement the procedures
- ✓ Professionals need to have the necessary **qualifications** and the proper **knowledge** and **training**
- ✓ **AABs** should be accredited and authorised
- ✓ All authorities, bodies and actors should **co-operate** and should be properly **monitored, supervised** and **accountable**
- ✓ Regulation of **costs and fees**
- ✓ **Improper financial** and other **gain** is **prohibited**

# **Key stages of an ICA procedure**

# Declaration of adoptability

- ✓ Birth **registration** and **identity** documents
- ✓ Ensure **subsidiarity**:
  - ✓ proper support to birth family
  - ✓ reasonable efforts to find a domestic permanent family solution before considering ICA
- ✓ Consent:
  - ✓ of all relevant **authorities, persons** and **bodies**, including the child (depending on age and maturity)
  - ✓ **free, informed, in writing**
  - ✓ after **counselling**
  - ✓ **before competent authorities**

# Children

- ✓ The child is **heard** and his or her **views** are taken into account, according to the child's age and maturity
- ✓ Comprehensive and up to date **report**
- ✓ The child is provided with **information** about the PAPs and he or she is **prepared** to meet them

# Prospective adoptive parents (PAPs)

- ✓ PAPs have to **apply** to the Central Authority (or a public authority or accredited body, where this responsibility has been delegated in a Contracting State) in the State of their **habitual residence**
- ✓ The **preparation** and **counselling** of PAPs
  - ✓ is **compulsory**
  - ✓ targeted to the adoption procedure but as well for life once adoption has been pronounced
  - ✓ takes into account the **needs** of a specific **child**
- ✓ Comprehensive and up to date **report**

# Matching

- ✓ Matching **committee** composed of a **multidisciplinary** team
- ✓ Based on thorough and accurate **reports** on the child and the PAPs
- ✓ **No contact** between the PAPs and the child until after the matching has been completed
- ✓ Central Authorities (and, if applicable, AAB) have to agree that the intercountry **adoption may proceed** and hence agree on the **matching**

# Adoption decision and migration

## Adoption decision:

- ✓ Only a **competent authority** (in many cases a judge) may issue the adoption decree
- ✓ **Automatic recognition** in all States Parties with no further procedures – prompt issuance of Article 23 Certificate of conformity

## Migration:

- ✓ PAPs must usually now **travel in person** to the State of origin
- ✓ Must ensure that the child can **enter** the receiving State and **remain** there permanently.
- ✓ New procedures have facilitated the speedy acquisition of the **nationality** of the receiving State by the child, in some cases while the child is still in the State of origin.

# Post-adoption matters

- ✓ Post-adoption **support** services should take into consideration:
  - ✓ the large number of adoptees from the past
  - ✓ the fact that nowadays many adoptees have special needs
- ✓ **Access to origins:**
  - ✓ improved preservation of information
  - ✓ easier access, when permitted, with counselling



# Control and monitoring

- ✓ **Ensure** that the **right procedure** is **followed**
- ✓ **Central Authorities** should **control and monitor** the work of **all actors** involved in the adoption procedure
- ✓ Allow for constant **improvement of the procedure** based on the practice

**What happens if the procedure has not been followed?**

# When procedures have not been followed

- ✓ **Information** should be shared between authorities, and the Central Authority should ensure that **appropriate measures** are taken (Art. 33 HC)
  - ✓ **Address** that particular situation (assess the best interests of the child in that case)
- +
- ✓ **Prevent** the situation from **recurring**

# When procedures have not been followed

- ✓ Any **rectification** should **not** be seen as an **expedient** alternative to compliance with the 1993 HC.
- ✓ Contracting States have a **legal obligation** to adhere to the Convention and to apply its safeguards.
- ✓ Such rectification measures should be seen as **exceptional efforts** made, where practicable, to protect the best interests of the child.

# **Last practical tips**

# Practical tips

1. Ensure the procedures are **clear, feasible** and **realistic** – avoid bureaucracy
2. Have the procedures in **writing**
3. **Explain** these procedures in a **different format** according to the different audiences (children, birth families, PAPA, competent authorities and bodies, wider public)
4. Make procedures **easily accessible**
5. Set **deadlines** for each stage – decisions in timely manner
6. Ensure **compliance**
7. **Monitor, control** and **revise** procedures to improve them

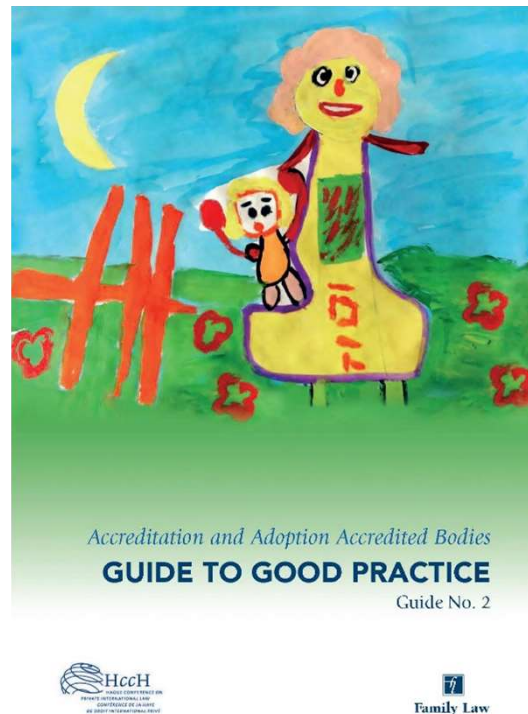
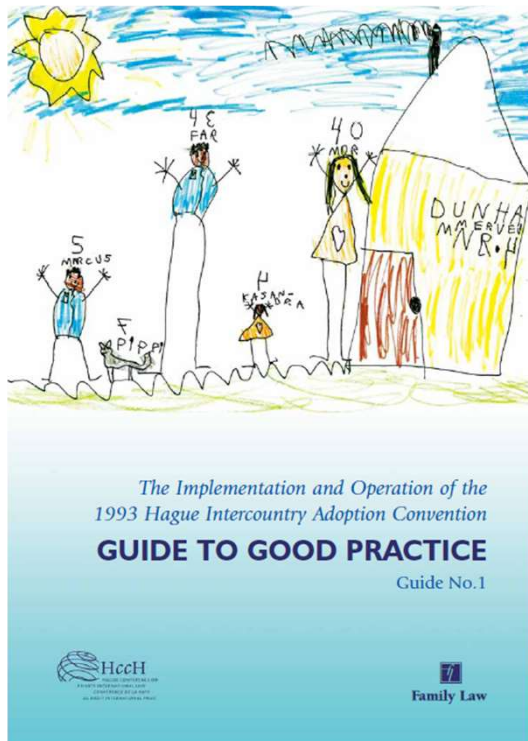
**Why??**

**Legal, ethical, clear  
and timely  
procedures**

**ensure protection  
of all actors involved**

# Publications

## GGPs and Brochure



The 1993 Hague Convention  
on Protection of Children and  
Co-operation in Respect of Inter-country Adoption  
**INFORMATION BROCHURE**





# Publications

Coming very soon:

**Brochure on the 25 anniversary  
of the 1993 Hague Convention:**

**25 YEARS OF  
PROTECTING CHILDREN  
IN INTERCOUNTRY ADOPTION**

**29 May 1993  
29 May 2018**

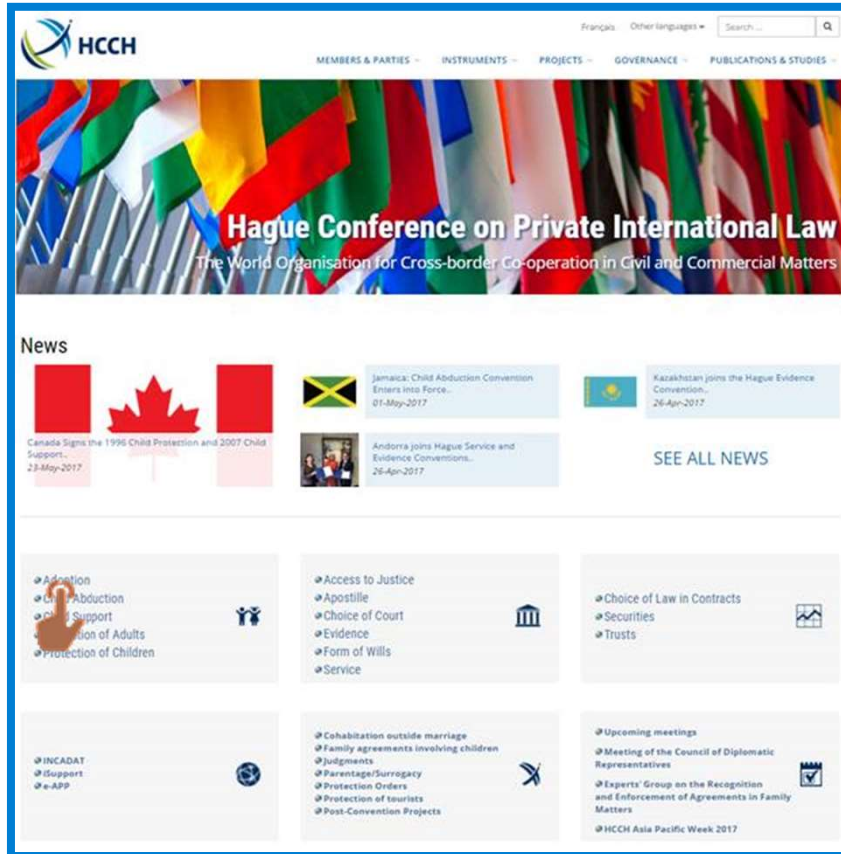


1993 Hague Convention on  
Protection of Children and  
Co-operation in Respect of  
Intercountry Adoption

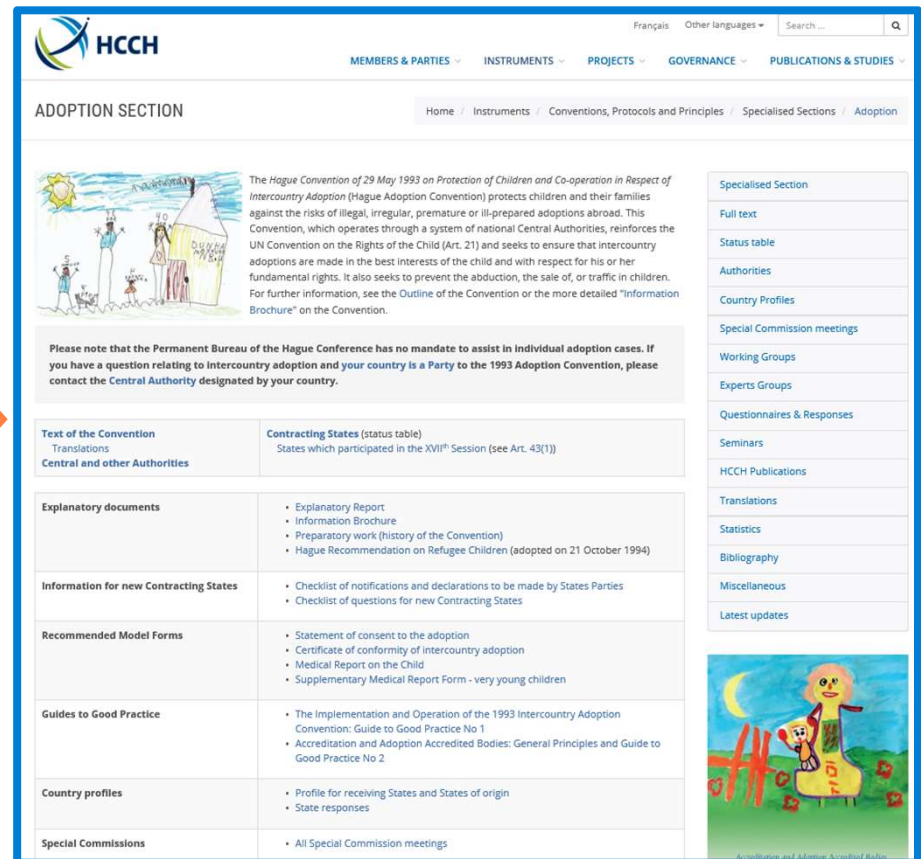
25 Years of  
Protecting Children  
in Intercountry Adoption

1993  
-  
2018

# www.hcch.net



The screenshot shows the HCCH homepage. At the top, there is a navigation menu with links for MEMBERS & PARTIES, INSTRUMENTS, PROJECTS, GOVERNANCE, and PUBLICATIONS & STUDIES. Below the menu is a banner for the Hague Conference on Private International Law, featuring a collage of national flags and the text "The World Organisation for Cross-border Co-operation in Civil and Commercial Matters". A "News" section follows, with several news items including "Canada Signs the 1996 Child Protection and 2007 Child Support...", "Jamaica: Child Abduction Convention Enters into Force...", "Kazakhstan joins the Hague Evidence Convention...", and "Andorra joins Hague Service and Evidence Conventions...". A "SEE ALL NEWS" link is provided. Below the news section are three columns of topic-based links, such as "Adoption", "Access to Justice", "Choice of Law in Contracts", "INCADAT", "Cohabitation outside marriage", and "Upcoming meetings".



The screenshot shows the "ADOPTION SECTION" of the HCCH website. It features a navigation breadcrumb: Home / Instruments / Conventions, Protocols and Principles / Specialised Sections / Adoption. A central text block explains the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, accompanied by a colorful illustration of a family. A prominent warning states: "Please note that the Permanent Bureau of the Hague Conference has no mandate to assist in individual adoption cases. If you have a question relating to intercountry adoption and your country is a Party to the 1993 Adoption Convention, please contact the Central Authority designated by your country." Below this is a table with two columns: "Text of the Convention" (Translations, Central and other Authorities) and "Contracting States (status table)" (States which participated in the XVII<sup>th</sup> Session (see Art. 43(1))). The table lists various resources such as Explanatory documents, Information for new Contracting States, Recommended Model Forms, Guides to Good Practice, Country profiles, and Special Commissions. On the right side, there is a "Specialised Section" sidebar with links to Full text, Status table, Authorities, Country Profiles, Special Commission meetings, Working Groups, Experts Groups, Questionnaires & Responses, Seminars, HCCH Publications, Translations, Statistics, Bibliography, Miscellaneous, and Latest updates. At the bottom right, there is a small illustration of a child and a dog.

**Thanks for your kind attention**

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**[www.hcch.net](http://www.hcch.net)**