

Guidelines for Action on Intercountry Adoption of Children In Africa

DRAFT

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PREAMBLE

Convinced that the family, as a fundamental group in society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded protection and assistance so that it can fully assume its role and discharge its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Concerned that, despite the large number of children deprived of their family environment in Africa, domestic adoption and other family based suitable solutions (such as foster care, kinship care, *Kafalah*) for children deprived of a family environment are not sufficiently promoted, developed or applied as suitable alternative to public care.

Recalling and drawing from:-

The African Charter on the Rights and Welfare of the Child (1990)

The African Charter on Human and Peoples' Rights (1981) and the Protocol on the Rights of Women (2005)

The Declaration and Plan of Action for an Africa Fit for Children (2001)

The Call for Accelerated Action towards an Africa Fit for Children (2007)

The UN Convention on the Rights of the Child (1989) (CRC)

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)

The UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009)

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and its two Guides to Good Practice (titled "The Implementation and Operation of the 1993 Inter-country Adoption Convention: Guide to Good Practice No. 1 (2008)" and "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2 (2012)") and Recommendations from the Special Commissions.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000)

UN Convention on the Rights of Persons with Disabilities (2006)

Reports of the UN Special Rapporteur on Violence against Children and the UN Special Rapporteur in Trafficking in Persons, especially Women and Children

Recalling further that:

The African Charter on the Rights and Welfare of the Child (ACRWC) recognises that the best interests of the child shall be the primary consideration to be respected at all times;

States which have ratified the ACRWC have undertaken to promote to the fullest extent, the rights of the child, as enshrined in the Charter provisions;

Human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated;

The child occupies a unique and privileged position in African society;

The promotion and protection of children implies the performance of duties on the part of everyone, and particularly African states;

Noting that:

Although a number of significant achievements have been made in Africa in the promotion of child survival, protection, development and participation, there is room for improvement;

Children's rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues;

Various African States are designing and implementing measures from very different starting points, in terms of existing legal, institutional and service infrastructures, cultural customs and professional competencies, as well as levels of resources to address the various challenges faced by children deprived of a family environment;

While Africa is "the new frontier" for intercountry adoption - it is highly questionable if the continent is equipped enough to provide its children with the necessary safeguards and to protect children's best interests in respect of the practice;

It is resolved to adopt the present Guidelines on Action on Intercountry Adoption in Africa.

A. OBJECTIVES OF THE GUIDELINES

1. The objectives of the present Guidelines are to:
 - (a) facilitate and support the efforts of States to take all appropriate legal, administrative, and other measures to ensure that all persons and organisations involved in the adoption of a child act in conformity with applicable international legal instruments;
 - (b) ensure, in line with the ACRWC and the, CRC that “the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary”;
 - (c) assist States to be constantly vigilant to ensure standards are maintained and violations of the ACRWC, CRC, the Hague Convention and other relevant instruments are prevented or addressed;
 - (d) ensure that the intercountry adoption process is child-centred and is about finding a family for a child as opposed to finding a child for a family;
 - (e) ensure that the best interests of the child are taken into account before, during, and after adoption procedure;
 - (f) highlight, while not covering all aspects of intercountry adoption related issues, the areas which African countries should prioritise for action;
 - (g) promote, at the levels of governmental, professional and civil society institutions the development and implementation (through participatory processes which encourage ownership and sustainability) of intra- and inter-agency child protection policies and collaboration frameworks; professional ethics codes, protocols, memoranda of understanding and standards important for promoting children’s best interests in general, and in relation to intercountry adoption in particular.
2. It is not the objective of the present Guidelines to promote or encourage intercountry adoption.

B. SCOPE OF APPLICATION

3. These Guidelines apply to: -
 - (a) all procedures of an administrative, judicial, or other nature where children are or may be concerned in the context of intercountry adoption;
 - (b) intercountry adoption of children habitually resident in African countries to any other country
 - (c) all children aged below 18 years habitually resident in Africa.
4. The application of the present Guidelines must be undertaken within the context of national legislation and international standards.

5. The present Guidelines shall be used by the Judiciary, the Executive, the Legislator, service providers such as adoption accredited bodies, the media and other stakeholders in the intercountry adoption process.
6.
 - (a) In their application, the present Guidelines shall take cognisance of the need for respect of family life, and the diversity of family and kinship forms in Africa that sustain and support children's growth and development in a family environment.
 - (b) Where the Guidelines refer to a 'parent', the context may require that care-givers and members of the extended family or others who fulfill a parental responsibility role are accorded recognition.
 - (c) Appointed guardians or appointed legal representatives may substitute for parents or care-givers.
 - (d) The support role of parents, family members and members of the kinship group, and the need to reintegrate children into families and communities shall be recognised. Contact with parents, family and friends shall be encouraged and supported, except where restrictions are required in the interests of the child.
 - (e) The UN Guidelines on Alternative Care (2009) are the relevant Guidelines for general alternative care issues.

C. DEFINITIONS / TERMINOLOGY

7. **Accredited body** is an adoption agency which has been through a process of accreditation in accordance with Articles 10 and 11 of the 1993 HC; which meets any additional criteria for accreditation which are imposed by the accrediting country; and which performs certain functions of the Convention in the place of, or in conjunction with, the Central Authority.
8. **Adoption** is a permanent care solution and should be after reasonable efforts have been made to determine that a child cannot remain within his or her family of origin, or cannot be cared for by members of the family.
9. **Birth family** which may also be referred to as the biological family, consists of the birth mother, birth father and the constellation of genetically related family members that includes siblings, aunts, uncles, grandparents, etc.
10. **Central Authority** is the legally designated office or authority within a country to implement the obligations, responsibilities and procedures outlined within the 1993 Hague Convention. Central Authorities may be responsible for activities such as developing policies, procedures, standards and guidelines related to intercountry adoption; overseeing accreditation and monitoring adoption accredited bodies; cooperation with other Central Authorities and competent authorities; and collecting data related to adoption and children in need of permanent care.
11. **Child** means, in accordance with the ACRWC, any person under the age of 18.
12. **Children with disabilities**, which form part of the general concept of children with special needs "include those who have long-term physical, mental, intellectual, or

sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

13. **Competent Authority** refers to any authority appointed by a State to perform a function attributed to this type of authority in the 1993 Hague Convention. In other words, the notion of “competent authorities” encompasses “the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child”. For some functions, the competent authority must be a public authority while other functions may be performed by an accredited private body.
14. **Country of origin** or state of origin refers to the country where the child is a habitual resident, according to the Hague Convention (Article 2(1)). In some contexts it is also referred to as a “**sending country**”.
15. **Domestic adoption**, also referred to as **national adoption**, refers to an adoption of a child by a family habitually residing within the same country where the child is habitually resident.
16. **Family** includes the nuclear family, as well as extended families and other forms of family-type care arrangements
17. **Illicit/irregular activities** in respect of intercountry adoption envisaged in the present Guidelines include: child trafficking, child abduction, and child stealing, buying and selling; improper financial gain and corruption; private adoption; falsification of documents; and circumventing adoption procedures, for instance, through guardianship orders. The term “laundering” is also used to collectively describe: child trafficking; child abduction; and child buying, selling and stealing.
18. **Intercountry adoption** refers to a social and legal process whereby a child habitually resident in one State (the State of origin) is placed legally and permanently for adoption with a parent or parents (other than the birth (biological) mother or father) habitually resident in another State (the receiving State).
19. **Receiving country** refers to the country where the adoptive parent(s) are habitually resident and where the child has moved or will move to for the purpose of the adoption.
20. **Social workforce** includes social workers, allied professionals, child and youth workers, community workers, volunteers and civil society participants who contribute to the functioning of child protection and alternative care related systems.

D. OVERARCHING/ GUIDING PRINCIPLES

21. A child rights approach is a central principle to the understanding and implementation of these Guidelines. This approach is based on the declaration and understanding of the child as a rights holder.

22. In principle, the family, as the fundamental unit of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.
23. The principle of the “**best interests of the child**” which refers to systematically considering the needs and interests of the child in all decisions that affect the child, should be *the paramount* consideration in all actions, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. It must be recognised that the best interests of the child are best determined in a multidisciplinary approach in which the physical, social, psychological and emotional wellbeing of the child can be fully explored.
24. The child’s **right to non-discrimination** shall be guaranteed with special protection to be granted to the most vulnerable children, including children living with or affected by HIV/AIDS, children with disabilities, and children deprived of their family environment.
25. Children’s best interests require that their **right to dignity** be ensured and that any intercountry adoption process treats all children with care, sensitivity, fairness and respect.
26. The child’s **right to survival and development**, as provided for in Article 5(2) of the ACRWC, must be ensured to the maximum extent possible.
27. When a child is to be placed for intercountry adoption and finally will be adopted, it is vitally important that the **child is heard** in accordance with the age and maturity of the child. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.
28. It should be recognised that meaningful, effective and well-informed participation of children and adolescents is one of the most effective ways to enhance their social development, self-esteem as well as respect for others and the need for responsible behavior. To enable children to exercise their right to participate, sufficient information on how the child may exercise his or her right should be provided by the competent authority, views expressed by the child should be given due consideration, and decisions or rulings which do not accord with the child’s expressed wishes or views explained to the child in language that the child can understand.
29. Article 24 of the ACRWC and Article 21 of the CRC state that the best interests of the child shall be the paramount consideration. In decisions of adoption, the “best interests” of the child cannot be defined without consideration of the child’s views in accordance with the age and maturity of the child.
30. In respecting the subsidiarity principle highlighted in Article 24 of the ACRWC, Article 21 of the CRC and Article 4 of the 1993 Hague Convention, and in the light of the child’s best interests, as a matter of principle, efforts should be made to place the child in the country of birth before opting for intercountry adoption –

which, according to the ACRWC, should be a measure of last resort. This also means that priority must be given to adoption by relatives in their country of origin. Where this is not an option, preference should be given to other suitable options such as adoption within the community from which the child came or at least within his or her own culture.

E. WHEN INTERCOUNTRY ADOPTION SHOULD NOT BE CONSIDERED

31. States should not allow intercountry adoption to be considered:
- (a) Where a State does not provide the basic minimum substantive and institutional safeguards necessary to promote a child's best interests in the context of intercountry adoption.
 - (b) Where a State has officially declared a moratorium/suspension of intercountry adoption. In instances of transitory cases, adoption processes will continue in very exceptional cases, such as where the process is already advanced.
 - (c) Where systemic irregular activities are taking place in a State in the context of intercountry adoption, and efforts are underway to address the irregularities.
 - (d) Where poverty, however defined, seems to be the sole reason why the child cannot grow up in his or her biological (including extended) family environment.
 - (e) Where there is a possibility for successful tracing and family reunification in the child's best interests;
 - (f) If it is contrary to the expressed wishes of the child or the parents;
 - (g) Unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members has been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing. However, the process of tracing must be completed within a reasonable period of time.
 - (h) In haste at the height of an emergency, including in both natural and manmade disasters or situations.

F. ADOPTABILITY

32. States should recognise through their laws, policies and practice that the term "Adoptable" child refers to the status of a child who is officially recognised, after proper verification, as having a legal status enabling adoption to be considered, and deemed to require and to be potentially able to benefit from such a measure.
33. States should recognise through their laws, policies and practice that the child's psycho-social adoptability should determine that it is impossible for the birth family to care for the child, and that the child will benefit from a family environment while the child's legal adoptability should be ascertained (relying on the law of the country of origin) which forms the basis for severance of the filiation links with the birth family, in particular parents.
34. In recognition of the fact that the establishment of criteria for adoptability and of procedural requirements to be respected will promote a transparent process that respects children's best interests, States shall endeavor to provide a clear and

detailed definition and criteria for children to be declared genuinely adoptable. In particular, such clear definition and criteria is vital so that the concept of “adoptable children” is not confused with that of “children currently in out-of-home care”.

35. States should devise measures to ensure that the mere orphan status of a child or the status of a child as a person deprived of his or her family environment does not automatically qualify such a child as adoptable. States should undertake all measures, including awareness-raising, to address the common misconception that prevails that the mere deprivation of a child of his or her family environment, temporarily or permanently, would automatically make such child adoptable.
36. While the task of determining adoptability could be given to courts, administrative structures or government authorities, in order to ensure an independent process and avoid conflict of interest, States should emphasise the need to allow the declaration of adoptability to be made, as much as possible, by an independent and professional qualified body, such as a court.
37. States should recognise and emphasise the importance of involving the child in the decision making process of adoptability.
38. Since a child is often not adoptable unless the parental rights of his or her birth parents have been properly terminated, State laws should impose stringent safeguards against a hasty, coerced, or otherwise improperly influenced parental relinquishment of rights and responsibilities in respect of a child for adoption.
38. States should undertake all necessary measures to ensure that parental rights and responsibilities cannot be relinquished before a child is born.
39. States should undertake legislative, administrative, and other measures to facilitate the adoption of children with special needs such as children with disabilities, children with serious health conditions, children with siblings, and older children. Such measures can include prioritising the processing of the application of prospective adoptive parents in an expedited manner, for instance, by shortening the waiting period for adoption, without exposing the children to less stringent safeguards that can compromise their best interests. All efforts should be made to ensure that siblings remain together, except in circumstances where such is not in the best interest of the child.
40. The competent authority deciding on the adoptability of the child shall ensure that reasonable efforts have been made for the child to maintain links with and be cared for by his/her [extended] family and community, and that intercountry adoption is used as a measure of last resort.
41. As a result of religious background, the adoptability of Muslim children, if allowed at all, should be approached with extra caution and sensitivity.

G. CONSENT

42. States should recognize that “consent for adoption” is a written permission by the person or body with parental authority (hereinafter referred to “the parent or guardian”), which is often the biological parents or a guardian, or other competent body, authority, or person, that is given to declare a child adoptable and afterwards adopted. Consent must be given only after the person giving consent has been counselled and duly informed of the consequences of the adoption and of his/her consent to adoption. The consent must have been given freely and not induced by payment or compensation of any kind.
43. Consent can be given by the parent(s) or guardian of the child and the child. A child can consent to adoption if he or she is ten years or older, though depending on their level of maturity, children younger than ten years should also be allowed to give their consent. In all these instances, a State should ensure “appropriate counselling” as a compulsory element of consent.
44. When a child becomes available for adoption, the competent authorities must without delay serve a notice on each person whose consent to the adoption is required by domestic law. Such a notice must be made in a simple and understandable language and inform the person whose consent is sought of the proposed adoption of the child; and request that person either to consent to or to withhold consent for the adoption, or, if that person is the biological father of the child to whom the mother is not married, request him to consent to or withhold consent for the adoption.
45. Such a notice should contain a specified reasonable timeframe to respond to, so that failure to comply with the request contained in the notice within the timeframe should allow the competent authorities to undertake measures deemed to promote the best interests of the child, including a waiver of the need to secure consent.
46. Competent authorities should allow the possibility of the parent of a child who has given consent to the adoption of his or her child has the right to withdraw such consent within a minimum of ninety days after the consent has been given. A competent authority, such as a court, shall not make any order of adoption final before the period of withdrawal of consent ninety days has expired.
47. The competent authority, such as a court, may require the consent of any additional person for an adoption order if it considers that such person has any rights or obligations in respect of the child under an agreement or court order.

H. ELIGIBILITY AND SUITABILITY TO ADOPT

48. States have the discretion to establish criteria for the eligibility and suitability of prospective adoptive parents to adopt children from their jurisdiction. In this regard, while States recognise that a liberal requirement on eligibility and suitability to adopt helps to increase the pool of prospective adoptive parents, they also take cognizance

of the fact that a highly unregulated eligibility and suitability requirement poses a potential threat to children's best interests.

49. Eligibility criteria should be established with a view to protecting children's best interests and could relate to age, residency, marriage status, criminal records, [sexual orientation], and income.
50. A State can decide to provide a residency requirement for prospective adoptive parent(s). Where a country of origin decides to have a residency requirement as a condition for the eligibility of prospective adoptive parent(s), the best interests principle should be central in interpreting and applying such a requirement including the possibility of limiting or doing away with such requirements by competent authorities when considered to be in the best interests of the child.
51. When an application is made for a guardianship order or decision by a person who is not habitual resident of the country of origin the application must be regarded as an application for an intercountry adoption and should comply with all requirements necessary for the granting of an adoption order.

I. PRINCIPLE OF SUBSIDIARITY

52. States shall recognize that using intercountry adoption as a measure of last resort requires undertaking legislative, administrative and other appropriate measures and work towards ensuring the promotion of family preservation, family reunification, and suitable domestic measures such as domestic adoption and foster care.
53. States shall recognize that it is only when all other options to keep the child with his or her family have been given due consideration and proved inefficient or impossible that adoption (or any other suitable alternative care option) should be envisaged.
54. States shall ensure that the subsidiarity principle is seen as constituting an active principle that requires reasonable efforts to find child-suitable domestic placements and make intercountry adoption a measure of last resort.
55. States should take all necessary measures to ensure that the fees and cumbersome processes required for suitable domestic measures [such as domestic adoptions] do not contribute to the violation of the subsidiarity principle, where they make these domestic options inaccessible to residents.
56. States are encouraged to establish a national register of adoptable children as a centralised database containing the history, profile, personal details and other particulars on an adoptable child.
57. States shall ensure that such a register will create the conditions for the Central Authority to verify whether adequate measures have been taken to support the family of origin, to re-integrate the child, to place the child within the extended families or find alternative national placements, thereby conferring control to the

Central Authority over the practical application of the subsidiarity principle in individual adoption cases.

J. MATCHING

58. States shall recognise and take measures to ensure that a multidisciplinary team of professionals (such as social workers, lawyers, and psychologists) should determine matching in order to uphold children's best interests.
59. States shall take measures to address non-existent or very weak birth registration systems that make information about adoptable children inadequate or insufficient, thereby limiting a matching process that should be done on the basis of comprehensive and up-to-date information on the child.
60. States recognise that decisions on the basis of false, misleading or incomplete information about the eligibility, suitability, and general child rearing skills and abilities of prospective adoptive parents compromise children's best interests. States should undertake all necessary measure to address this problem which partly emanates from the fact that there is non-compliance with the requirement that there be a detailed and complete exchange of relevant information between the authorities in the receiving and sending countries.
61. States of origin should proactively engage with and assist receiving States in establishing their criteria for the selection of prospective adoptive parents by providing information about the characteristics and needs of adoptable children within their jurisdiction with the aim to protect their children's best interests, for instance by contributing to the development of preparation materials on intercountry adoption directed to prospective adoptive parents, and to the management of their expectations.
62. Through such engagement, States of origin can demand that prospective adoptive parents go through a country specific preparation in order to have some knowledge of the culture of the child and his or her language in order to communicate with the child from the matching stage.

K. IMPROPER FINANCIAL GAIN

63. States, in particular through their Central Authorities, have a responsibility to regulate the cost of intercountry adoption by taking measures to prevent improper financial gain and other similar inducements. As actors in the adoption procedure, accredited bodies also share this responsibility and should ensure that only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
64. States should be vigilant in addressing improper financial gains by not only the traditional intermediaries, but also by others such as lawyers, notaries, public servants, even judges who might be attracted to accepting excessive amounts of money or lavish gifts from prospective adoptive parents.

65. When an accredited body seeks and is granted accreditation, it is agreeing to act in the place of its government authority, the Central Authority or a competent authority and therefore must accept responsibility to prevent improper financial gain in intercountry adoption.
66. The prohibition on improper financial gain should apply to every person, body or authority involved in adoptions, and applies equally to entities in the receiving State and in the State of origin.
67. States should ensure that the directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.
68. Since the determination as to when remuneration is unreasonably high, is left to the State's discretion, the State should give clear guidelines / guidance on this. In this respect, in particular, States should prohibit improper financial gains and set measures to limit unreasonable salary of the accredited body's representative in the State of origin; regulate and limit (exaggerated) professional services offered by certain persons or bodies in the receiving State or State of origin; regulate and limit administration costs of the accredited body; and regulate and limit contributions required from prospective adoptive parents and accredited bodies, as well as donations which may be offered or sought.
69. The State law and practice should regulate whether to allow the so-called "reimbursement of expenses of birth family". In addition, "expediting fees", "clearance fees" and other similar fees should be prohibited or strictly regulated.
70. States should also ensure through law, policy and practice that there shall be no [initial] contact between the prospective adoptive parents and the child's parents or any other person who has care of the child [such as orphanages] until the requirements [notably adoptability, fulfilment of the best interests criterion, compliance with the subsidiarity principle, and obtaining of the necessary consents, eligibility, suitability and counselling of the adoptive parents] have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the state of origin.
71. States should ensure that all actors in the adoption process take appropriate measures to refuse and prevent improper financial gain including by publishing their costs for an intercountry adoption, and related costs in the State of origin and providing information to the competent authorities of both the States of origin and receiving States concerning trafficking in children, improper financial gain and any other abuses.
72. States shall ensure that representatives and co-workers who might influence the number of children placed for adoption should not be paid on a per case basis.

L. POST ADOPTION ISSUES

73. States should undertake measures, including securing guarantee that the child will be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. This should be done especially with the overriding importance of avoiding a situation in which an adopted child is stateless.
74. States are urged to seriously consider the question of whether nationality will be granted to the child as a critical factor when they consider starting a co-operation and working relationship with a particular receiving State.
75. In instances where an intercountry adoption is refused recognition in a receiving country for whatever reason, the State of origin, in particular through its Central Authority, should work towards protecting the best interests of the child concerned, which could include ensuring the safe return of the child back to the country of origin as a last measure.
76. States should promote the establishment of a requirement mechanism for post adoption follow-up of children adopted from their territory through reasonable periodic reports or other measures deemed appropriate and practical. In this regard, States should consider the preparation and sharing of a model form highlighting their specific requirement of what such a report should contain.
77. States should undertake legislative and other measures to ensure the preservation of information on the origin of adopted children, in particular information concerning the identity and medical history of the biological parents, and ensure that children are informed about the fact of their adoption and have access to such information at the appropriate age and level of development, and after appropriate counseling.
78. States of origin should collaborate with receiving States to provide different forms of assistance and counselling for different stages of the child's development to adulthood, including preparation for origin searches and reunions of the adoptees with members of their biological families.

M. CENTRAL AUTHORITIES, COMPETENT AUTHORITIES AND ACCREDITED BODIES

79. In recognition of the fact that the absence, or incompetency, of institutional structures might result in the best interests of the children involved in intercountry adoption being compromised, States should work towards creating/ designating and strengthening institutional structures relevant for intercountry adoption.
80. States shall create or designate a Central Authority, which acts as the point of contact, coordination, and responsibility within each country for the implementation of the various duties and activities called for by the CRC, African Children's Charter, and the 1993 Hague Convention.

81. Since the implementation of criterion to determine adoptability, the principle of subsidiarity, requirements relating to giving valid consent, and, generally, the upholding of the best interests of the child in intercountry adoption are dependent on competent authorities that are able to fulfil the relevant tasks, States should give Central Authorities sufficient powers to effectively undertake their obligations.
82. Sufficient powers of Central Authorities should be accompanied with the placement of the Central Authority under or within the appropriate State organ or office that is closely related to intercountry adoption activities. They should also provide adequate human and financial resources, including trained staff.
83. States shall limit the number of countries and accredited bodies that their Central Authorities will co-operate with, taking into account the number and needs of adoptable children in that particular State of origin .
84. Depending on various criteria such as the internal laws, structures, the number and profile of children that need adoption, States have the discretion to decide whether or not they need to work with adoption accredited bodies.
85. When deciding to work with adoption accredited bodies, States are urged to limit the number of adoption accredited bodies that they allow to operate within their jurisdiction.
86. States should promote and uphold a mandatory procedure for the accreditation or licensing of adoption accredited bodies which undertake intercountry adoptions under the 1993 Hague Convention, and their supervision by the Central Authorities.
87. States are also urged, as much as possible, to work with agencies that are accredited and authorized according to the 1993 Hague Convention.
88. The State shall ensure that accredited bodies shall demonstrate competence to carry out properly the functions entrusted to them; only pursue non-profit objectives; be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoptions; be subject to supervision by competent authorities as to their composition, operation and financial situation; and ensure that their directors, administrators and employees shall not receive remuneration which is unreasonably high in relation to services rendered.
89. States should prohibit in law and practice private adoptions (which are arranged directly between birth parents and prospective adoptive parent(s)) and independent adoptions (in which prospective adoptive parent(s) is/are approved to adopt in the receiving State and, in the State of origin, they locate a child without the intervention of a Central Authority or accredited body in the State of origin) as a tool for reducing or eliminating improper financial gains and illicit activities in the context of intercountry adoption.
90. Before making an adoption order or decision, a competent authority should be satisfied that the intercountry adoption is in the best interests of the child and is

being considered as a measure of last resort. In particular, a competent authority should be satisfied that no person had made or given or agreed to make or give to any other person, including the birth family, any payment or other reward in consideration of the adoption.

91. States are urged to provide clear conditions under which an adoption order by a competent body shall not be made. In particular, States should require through law and practice that an adoption order should not be made unless there is a social investigation report in support of the application by a social [welfare] officer, and competent body is satisfied that the consent required has been obtained, or dispensed with, as the case may be; and that the parent or guardian of the child understands that the effect of the adoption order shall mean permanent deprivation of parental rights; the wishes of the child have been given due consideration provided that the child has the maturity and age to express his or her views; the applicant has not received or agreed to receive any payment and that no person has made or agreed to make any payment or given or agreed to give any reward to the applicant for the adoption except as a competent authority such as a court may order; and the adoption order is in the best interest of the child.
92. Competent authorities shall provide conditions when making an adoption order that are intended to promote and protect the best interests of the child. In particular, when granting an adoption order, the competent authority may impose conditions and may require the applicant to enter a bond to make such provision in respect of the child as the competent authority considers necessary. Such conditions may relate to respecting the identity rights of the child in relation to [first] name, religion, or cultural background.

N. ACCOUNTABILITY FOR VIOLATIONS

93. Domestic law and policy should provide that no person may process or facilitate an intercountry adoption otherwise than in terms of the relevant law in the State and proscribe all forms of illicit activities related to intercountry adoption. Violations of the present Guidelines should be able to attract some form of accountability within a State.
94. States shall also proscribe any measures that violate children's rights such as their right to privacy. In particular, States shall proscribe, through law, any person who publishes, in any manner, any advertisement which contains information indicating that – the parent or guardian of a child desires to cause the child to be adopted; a person desires to adopt a child; or a person is willing to make arrangements for the adoption of a child.
95. States shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) the sale of children
 - (b) Improperly inducing consent for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (c) child laundering

- (d) falsification of documents
- (e) improper financial gain

96. Penalties provided should be severe enough to serve as deterrent by taking into account the gravity of the offence. Such penalties should include the possibility of withdrawal of accreditation of adoption bodies, fines, as well as imprisonment.
97. States should provide remedies for breaches of children's rights in the context of intercountry adoption through mechanisms such as competent authorities, in particular, National Human Rights Institutions. Such institutions, in order to be able to effectively carry out investigations, must have the powers to compel and question witnesses, access relevant documentary evidence and access places of care. They also should have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights.

O. TRAINING, RESEARCH AND DATA COLLECTION

98. States shall actively work towards offering continuing training for all stakeholders in the intercountry adoption process such as judges, law enforcement officers, social workforce, and in particular will seek assistance for the realisation of such trainings from relevant organisations such as the Hague Conference on Private International Law and States with good practices in the field.
99. States shall recognise and work simultaneously to effect the following national policies: the creation of a network of social workers with expertise to assist those families capable of being reunited; to provide targeted and adequate social welfare to ensure that children are not being abandoned for reasons of poverty alone; to develop training and assistance for prospective adoptive parents within the State of origin of the child, and with a view to making domestic adoption a socially desirable and widely accepted option.
100. In order to strengthen children's family environments, and promote children's best interests in the context of intercountry adoption, States are encouraged to draw on regional expertise and technical and other assistance from intergovernmental, non-governmental, academic institutions, and international and regional financial institutions. These efforts should be directed towards research, disseminating information, strengthening infrastructure and information systems, including birth registration systems; training; the development of measures to promote family preservation and family reunification and suitable alternative care measures and services aimed at promoting children's best interests; and implementing these Guidelines.
101. States should, in cooperation with families and communities, collect data on the family situation of children, especially on those deprived or are at the risk of being deprived of their family environments and in adoption processes. Such information should be used to design policies relating to the family environment and alternative care of children in a culturally sensitive way.

102. States are urged to ensure that the determining factors leading to children being deprived of a family environment are systematically researched and addressed, including by ensuring that children are not placed in out-of-family care on the sole basis of socio-economic hardship, and by strengthening the financial and social services provided for parents to care for their children.

P. INTERNATIONAL CO-OPERATION INCLUDING REGIONAL CROSS-BORDER COOPERATION

103. The State may on such conditions as it deems fit enter into an agreement with a foreign State(s) in respect of any matter pertaining to intercountry adoption aimed at upholding children's best interests, in particular with a view to preventing and addressing irregular/illicit activities in intercountry adoption.
104. The State shall ensure that such an agreement may not be in conflict with the ACRWC, the CRC, the Hague Convention, or other relevant regional or international instruments.
105. States are urged to work towards the realisation of the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development projects and humanitarian aid.
106. States are urged to promote regional and international cross-border cooperation which is also needed to address child protection issues which cut across national borders such as: cross-border movement of children – either unaccompanied or with their families – either voluntarily or under duress (for example due to conflict, famine, natural disasters or epidemics) which can put children at risk of harm; cross-border trafficking of children for labour, sexual exploitation, adoption, removal of body parts or other purposes; and disasters that impact several countries simultaneously.
107. States recognise that specific legislation, policies, programmes and partnerships may be required to protect children affected by cross-border child protection issues (for example trafficking for the purpose of intercountry adoption, and cybercrime).

Q. MONITORING AND IMPLEMENTATION

108. States must ensure, especially through civil, criminal, and administrative law that States, national and local accredited bodies and organisations, and relevant civil society stakeholders proactively and cooperatively establish and apply standards, indicators, tools, and systems of monitoring, measurement and evaluation to fulfil their obligations and commitments to protect children from a violation of their rights in the context of intercountry adoption.
109. A monitoring framework, including independent mechanisms as

appropriate, shall be established to oversee the implementation of the present Guidelines, in accordance with national judicial, administrative, and social protection systems.

110. State reports to treaty bodies, in particular to the African Committee of Experts on the Rights and Welfare of the Child shall reflect on the progress made towards the implementation of these Guidelines.
111. Civil society and in particular institutions and bodies which aim to promote and protect the rights of the child, including independent human rights institutions, shall participate fully in the monitoring of the present Guidelines. The monitoring process should provide sufficient information so as to enable the identification of both good practices to be further developed, and to identify shortcomings in implementation warranting immediate attention.
112. States shall promote the dissemination of child friendly versions of relevant regional instruments, including the present Guidelines. States are further encouraged to disseminate knowledge by, *inter alia*, conducting systematic awareness-raising campaigns, producing appropriate material, and using the mass media to foster positive attitudes towards children in a view to allow children grow up in a family environment in an atmosphere of love, happiness and understanding.