



ANNEXE III : De la résolution des conflits de droit : du droit des personnes adoptées d'accéder à leurs origines au droit des parents biologiques de conserver leur anonymat (Question 4 de la Circulaire)

<p>Afrique du Sud</p>	<p>In terms of access to adoption records/information, there is conflict of rights in that the adoptee can be given access to adoption records without consent from biological parents while the biological parent can only be provided access on condition that the adoptee and the adoptive parents give consent in writing.</p> <p>In terms of tracing, we try to balance the rights of both the biological parent and adopted person by ensuring that the person being traced is consulted for permission before a meeting of the parties concerned is facilitated.</p>
<p>Allemagne</p>	<p>Under German law, the right of every person to know his or her own history is, as said before, a constitutional right. It faces a general constitutional right of every person to determine the disclosure and use of ones own personal data.</p> <p>The German ordinary law provides – in case of anonymous adoptions – a principle of prohibition of disclosure and exploitation: Facts that reveal an adoption or the circumstances of the adoption must not be revealed without the consent of the adoptive parents and the child, except if grounds of public interest require the revelation (Section 1758 paragraph 1 Civil Code). However, his principle aims to protect the new family primarily. The biological family shall not be able to interfere the relationships build in the adoptive family.</p> <p>The rights of the members of the biological family are not unprotected under ordinary law, though: According to Art. 9 b) of the Adoption Placement Act, the request of an adopted person to get access to his adoption file shall be refused as far as overriding interests of a concerned person are opposed. Persons concerned can, in the first place, be the biological parents of a child. This rule requires that the personnel of the authority keeping the adoption files carefully weighs up the interest of an adopted person to get a certain information</p>

	<p>against the interest of a person concerned to have this information kept secret. This flexible rule allows to find a suitable solution for every single case. It can, for example, be the best solution that an adopted person does not get access to the entire content of the adoption file, but that the relevant information is extracted from the file.</p>
Andorre	<p>Cette situation ne s'est jamais produite jusqu'à maintenant. Si tel était le cas, le droit de l'enfant prévaudrait sur celui des parents d'origine.</p>
Australie	
South Australia	<p>Ultimately yes, the right of access to origins of an adopted person prevails over the biological parents' right to remain anonymous unless there is a veto restricting the release of identifying information in place. This is provided for in section 27 of the Act as described above.</p> <p>If there is a conflict of rights the Department will offer mediation between the parties.</p> <p>Furthermore, according to Section 27D of the South Australian Adoption Act of 1988, the Minister has the power to disclose any information if the disclosure is in the interests of the welfare of an adopted person.</p>
Tasmania (Australie)	<p>Yes. Birth parents can register a Contact Veto. There are legal penalties for breaching this. Adoptees are required to sign a legally binding agreement not to contact his or her birth parent if a Contact Veto has been registered before the adoptee receives identifying information from the record of adoption. All Tasmanian registrants are required to attend a counselling interview with an authorised counsellor to receive information from the adoption records. Counsellors are available for ongoing support and advice.</p>
Australia (Victoria)	<p>In the case of Victoria, an adult adopted person (18 years and over) , does have access to identifying information about his/her birth parent/s. There is no requirement to first obtain the consent of the birth parent/s. In the event of conflict, parties can recontact the Service that released the records to discuss their concerns. The agency provides support as well as can assist with a referral to a funded government service, VANISH, for additional support.</p>
Western Australia	<p>Subject to provisions of Adoption Act 1994, parties have equal right of access to adoption information.</p> <p>Information Vetoes no longer have effect as a result of legislative amendment to the Act in 2003.</p> <p>Contact Vetoes continue to have effect, but no new Contact Vetoes can be placed since amendments to the Act in 2003. Persons subject to current Contact Vetoes may access adoption information subject to legislative requirement of interview with an officer of the Department for Child Protection and signing of an Undertaking (document) to not contact the person who has placed the veto. Penalties currently exist for breach of the Undertaking.</p> <p>In case of conflict of wishes, mediation and counselling is offered.</p> <p>Release of information is subject to the discretion of the CEO of Department for Child Protection. Where</p>

	<p>there is 'good reason' to not authorise access to adoption information, such as serious risk factors, parties are provided with counselling and may be provided with limited information about the adoption.</p>
Communauté flamande (Belgique)	<p>There are no legal rules on this conflict between the right of access and the right of privacy. The VCA has not yet had a situation where this was a problem. The Belgian adoption agencies have experienced this problem with internal adoptions where they contact the biological parents to find out if they still want to stay anonymous. (They might have changed their minds over the years).</p>
Communauté française (Belgique)	<p>La loi belge n'a pas prévu de solution à ce sujet.</p> <p>Néanmoins, en ce qui concerne le droit interne, on ne peut pas réellement parler d'anonymat de la mère, puisque l'acte de naissance de l'enfant reprend automatiquement (selon la loi) le nom et le(s) prénom(s) de la mère qui a accouché. L'enfant ayant accès à son acte de naissance (à la commune où cet acte a été transcrit) peut donc connaître le nom de sa mère (mais il n'a pas la possibilité de faire une recherche par l'intermédiaire du registre national).</p> <p>En pratique : lorsque l'OAA est consulté pour une recherche d'origine, il reprend (discrètement) contact avec la mère de naissance, pour voir si elle serait disposée à ce que ses coordonnées soient transmises à l'enfant, ou à une éventuelle rencontre. Un travail de médiation est alors entamé, pour expliquer à la mère l'importance pour l'enfant de la connaissance de ses origines, travail qui aboutit, régulièrement, à un dénouement positif du dossier.</p> <p>Parfois aussi, une mère de naissance signale à l'OAA, d'initiative, qu'elle serait prête à rencontrer l'enfant. Dans ce cas, l'information est donnée à l'adopté au moment où il en fait la demande.</p>
Brésil	<p>Sim. O caso é de consagração do direito à identidade genética ou "Direito ao Reconhecimento das Origens". É direito personalíssimo da criança e do adolescente, não sendo passível de obstaculização, renúncia ou disponibilidade por parte da mãe ou do pai.</p>
Burkina Faso	<p>Aucun texte juridique n'existe en la matière. Dans la pratique, si la famille biologique de l'enfant est retrouvée, le professionnel est chargé de faire un accompagnement de cette dernière, une sensibilisation pour les amener à accepter de rencontrer leur enfant. Toutefois, cela dépend de la raison pour laquelle l'enfant a été abandonné. Par exemple, dans certaines régions du BF, les enfants dits incestueux ou adultérins n'ont pas le droit de séjour dans leur famille d'origine (les coutumes l'interdisent et quiconque les enfreint s'expose à des malédictions).</p> <p>En cas de conflit de droit, les juridictions compétentes pourront s'y pencher à la requête d'une des parties.</p>
Canada	

British Colombia (Canada)	Decisions about releasing personal information are made case-by-case. Sometimes more information may be available, such as when a reunion has already occurred.
Alberta (Canada)	<p>If the adoption occurred before January 1, 2005, an adult adoptee, birth parent or adoptive parent under a previous adoption order may register a veto with the Post Adoption Registry. Registration of a Veto will prevent the registry from releasing that person's identifying information to the applicant.</p> <p>The registry can still release non-identifying information including: province of birth, marital status, occupation, education, physical description, personality, interests of parent and medical history of family.</p> <p>S.74.2(9) allows the Minister to "deem" a veto if the adult adoptee is not aware of the adoption and the adoptive parent can satisfy the Minister that releasing the adoptee's information would be extremely detrimental to the adoptee.</p>
Saskatchewan	Current legislation requires mutual consent, which limits the rights of one party over another.
Manitoba (Canada)	<p>Manitoba has provided a progressive approach in how we manage the rights of birth parents and adult adoptees. Adoptions prior to March 15, 1999 require the consent of birth parents to release identifying information. The Post-Adoption Registry staff will do searches and outreaches to birth parents to seek their consent to release identifying information. If birth parents do not wish to proceed, they can file a disclosure and/or contact veto.</p> <p>Disclosure vetoes prevent identifying information from being released and contact vetoes prevent individuals from contacting each other.</p> <p>For adoptions that occur pos-March 15, 1999, adoption records are open and identifying information can be released. The option of vetoes is available but rarely utilized.</p> <p>There are no other options provided outside the legislation and regulations regarding the release of identifying information.</p>
Ontario (Canada)	Each party has the right to prevent the disclosure of their identifying information. The legislation is clear in terms of what information can be disclosed and to whom.
Prince Edward Island (Canada)	<p>In intercountry adoption, the law within the country where the adoption was finalized would prevail. At the time a child is presented to adoptive parents, information on the birth family may be included on the child referral which is provided to the adoptive parents. Therefore, the adoptee could access such information from his/her adoptive parents.</p> <p>When adoptions are finalized within this province, our adoption legislation governs how information is shared. Mutual consent of both parties is required. In intercountry adoption, solutions to conflict of rights would be governed by legislation where the adoption was finalized.</p>

Newfoundland (Canada)	<p>If a person is adopted under our current legislation, the adopted person's rights prevail to their birth family name. They will be provided with other non-identifying information. If the person they are trying to locate is in agreement they will be provided with agreed upon (between the two parties) identifying information.</p> <p>The social worker can assist to mediate a solution.</p>
Québec (Canada)	<p>Non. Selon l'article 582 du Code civil du Québec, les dossiers judiciaires et administratifs ayant trait à l'adoption d'un enfant sont confidentiels et aucun des renseignements contenus dans le dossier Secrétariat à l'adoption internationale (Québec) ne peut être révélé, si ce n'est pour se conformer à la loi. L'article 71.15 de la Loi sur la protection de la jeunesse indique que tout sommaire doit respecter l'anonymat des parents biologiques ou de l'adoptant. Ainsi, l'anonymat des personnes impliquées (personne adoptée, parent biologique, parent adoptif) est conservé tant qu'elles n'ont pas consenti à divulguer leur identité.</p>
Croatie	<p>In line with the Family Act, an adopted person has the possibility to access his/her own adoption file in the Centre for Social Welfare. In the case of a conflict of rights, there are several possibilities. First of all, it is necessary to seek parental consent. If necessary, experts of the Centres for Social Welfare will convince parents that their privacy is protected. If a biological parent refuses any communication, this decision should be respected, not insisting on further proceedings. If a parent expresses guilt, concern or discomfort from the encounter with a child who is adopted, an expert for counseling or mediation from the Centre for Social Welfare could be involved to help in such circumstances.</p>
Espagne	<p>Sólo desde 1999*, el derecho de los adoptados a acceder a sus orígenes prevalece sobre el derecho de los padres biológicos a conservar su anonimato, ya que en 1999 desapareció el derecho de 'parto anónimo' (Véase la sentencia del Tribunal Supremo (TS) 776/1999, del 21 de septiembre, que se pronunció sobre la inconstitucionalidad sobrevenida del art. 167 del reglamento del registro civil, que permitía a la madre ocultar la maternidad, no descubriendo su identidad en el parte médico de asistencia al parto. El TS declara que este sistema se opone frontalmente a diversos preceptos constitucionales. No puede permitirse que el hijo/a biológico/a pierda por completo el nexo que le permita conocer su verdadera filiación, debido aún a un acto voluntario de la madre, expresivo de su no asunción de la maternidad y de sus responsabilidades inherentes). El conflicto principal se encuentra en ese margen de años, en casos de personas adultas que, en la actualidad, buscan sus orígenes (derecho reconocido), pero que nacieron antes de 1999 y existía ese derecho a conservar el anonimato.</p> <p>Asimismo, en la actualidad, en la mayoría de casos prevalece el derecho del adoptado frente al derecho de los padres biológicos. Sin embargo, en algunas</p>

	Comunidades, se contemplan excepciones en los casos los que este acceso pudiera poner en peligro los derechos de los progenitores o en casos de inestabilidad psíquica del adoptado o motivación inadecuada. En estos casos, se deniega el acceso mediante resolución administrativa motivada recurrible ante los tribunales.
Hong Kong	Basic information without identifying data can be provided to the adopted person. However if further contact is requested, it will depend on whether the birth parents have given their consent for future contact were indicated at the time of relinquishment. Furthermore, the views of the birth parents will be respected if they change their minds regarding the contact.
Italie	<p>Italian law specifically established a limit to the right of access to origins of an adopted person when the biological mother has expressively declared her will to remain anonymous (art. 28, para. VII). Paragraph 7 stated that <i>“Access to information shall not be permitted to a mother who stated at the child’s birth she did not want to be named pursuant to Article 30(1) of Presidential Decree No 396 of 3 November 2000”</i>.</p> <p>Hence, whenever a biological mother exerts the anonymous right, the child has no chance, according to the Italian law, of seeing his right prevail and thus accessing to information relating biological parents. In the Italian case law, the mother’s right prevails on the adopted child’s right to know his origins, being this due to the guarantees that the Italian Legislator decided to offer to the mother as well as to the child in order to give birth in the most appropriate conditions. According to the Italian Constitutional Court, art. 28, paragraph. VII has the double purpose to protect the mother and the child at the birth time as well as to deter the mother from severe decisions that could be detrimental for the child. (Constitutional Court n. 425/2005).</p>
Mexique	
Mexique (Hidalgo)	No existe al respecto nada establecido en la ley para la Familia en el Estado de Hidalgo
Mexique (Jalisco)	Sí prevalece el derecho del adoptado a conocer sus orígenes sobre el de sus padres biológicos. No se da conflicto debido a que la ley es clara en este sentido; los derechos del adoptado se anteponen.
Mexique (Oaxaca)	Sí prevalece el derecho del adoptado sobre el de sus padres biológicos, atendiendo lo dispuesto por el artículo 14 de la Ley para la Protección de los derechos de NNA, en el que se contempla el derecho de prioridad de las NNA.
Norvège	Yes, the birth parents have no right to remain anonymous if the adopted person wants information about their identity. But since this often are sensitive cases, the birth parents are contacted by the authorities and given information about the request from the adopted person, and their reaction is forwarded to the adoptee. If the parents, for example, do not wish any contact, this information

	<p>must be given to the adoptee gently and carefully. It is however not allowed to attach any conditions to the information given. The adoptee decides him- or herself what to do about the information. These are the procedures that apply most often in national adoptions. In intercountry adoptions, the adopted person has the same right to information of his or her origins, but in practice the possibilities to give the same information can be different because information about the origins does not always exist.</p>
Nouvelle-Zélande	<p>Adult adopted persons who were born after 1986 can access identifying information and the birth parent has no right to remain anonymous. Prior to 1986, a birth parent could place a veto on release of information about themselves via the birth adopted person original birth certificate. Birth parents who wish to place a veto must do so in writing; the objective of this is to ensure that it is the birth parent who is placing the veto and no other person. Birth parents intending to place a veto are invited to have counselling (this is not mandatory) and to leave a 'letter of explanation' for the veto with Child, Youth and Family. If an adopted adult encounters a veto on his/ her original birth certificate, the adopted person is advised that he or she may ask if a letter of explanation has been left for him/her.</p> <p>An adopted person who encounters a veto may apply to the New Zealand Family court for release of Court adoption information on "special grounds."</p> <p>Adopted persons' rights "prevail" in a sense because under the Adult Adoption Information Act, a person over 19 years may still place a veto so that they are not identified to their birth parents. In any event, a birth parent is not entitled to directly access the adopted person's adoptive name; neither does a birth parent have access to identifying information about an adopted adult without the permission of the adopted adult first being obtained via Child, Youth and Family. If Child, Youth and Family receives an application from a birth parent for information about the son or daughter placed for adoption, and if Child, Youth and Family finds that the adopted adult has placed a veto, then no approach or contact will be made to the adopted person on behalf of the birth parent unless the adopted person has left instructions that this may be done. The adopted person's veto is construed to be an expression of a wish for no approach to be made with him/ her by any party.</p>
Pays Bas	<p>According to Article 17f of the WOBKA, information from the file or access to the file can be refused if another person's private life (mostly the birthparents) could be damaged. This decision is up to the licensed agency. If a person does not accept that he can turn to the court.</p>
Portugal	<p>Le système légal portugais prévoit un droit à l'anonymat relatif qui n'est pas opposable à l'enfant lui-même. Ainsi l'article 1985 du Code Civil portugais sous l'épigraphe « Secret d'identité » prévoit :</p>

	<p>1. L'identité de l'adoptant ne peut être révélée aux parents biologiques de l'enfant adopté, sauf si l'adoptant déclare expressément ne pas s'opposer à cette révélation.</p> <p>2. Les parents biologiques de l'adopté peuvent au moyen d'une déclaration expresse s'opposer à que son identité soit révélée aux parents adoptifs.</p>
République Dominicaine	En todo momento, el derecho al origen de los adoptados prevalecerá sobre el anonimato de los padres biológicos.
Suède	In Sweden, birth parents if they are known cannot be anonymous. In national adoptions, they are almost always known. If there is information about the birth parents in intercountry adoptions depends on the information from the country of origin. Information about the identity of birth parents is registered by the Swedish Tax Agency.
Suisse	<p>Relating to the information regarding the identity of the biological parents as of the date of adoption, <i>the right of access the origins of an adopted person of 18 years or older prevails over the biological parents' right to remain anonymous</i>. In case of the adopted person being underage, the contradicting interests have to be balanced by the responsible authority or government body. <i>Relating to the updated information regarding the identity of the biological parents, their will to refuse contact prevails over the interests of the child</i>, i.e. no such information shall be revealed by the respective authorities or government bodies.</p> <p>The Federal Law on Internatioanl Private Law does not foresee a specific solution for the conflict of rights related to the question the search of origin. If a request based on the art. 268.c of the SCC is presented to the authorities of Geneva, these latters will have to apply the Swiss Law.</p>
