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## COUNTRY SITUATION

### South Africa

Not revised by local contacts



#### TABLE OF CONTENTS

<b>GENERAL SITUATION</b>	<b>1</b>
<b>CHILDREN DEPRIVED OF PARENTAL CARE AND ALTERNATIVE CARE OPTIONS</b>	<b>3</b>
COMMENTS OF THE ISS/IRC	7
<b>ADOPTION</b>	<b>8</b>
COMMENTS OF THE ISS/IRC	17
<b>LEGISLATION</b>	<b>18</b>
<b>PARTICULARLY RELEVANT SOURCES OF INFORMATION</b>	<b>19</b>



## GENERAL SITUATION

### Geographical situation

- [The Republic of South Africa](#) is located on the southernmost part of the African continent. It borders Namibia Botswana, Zimbabwe, Mozambique, Eswatini, the Atlantic Ocean and Indian Ocean. South African territory also surrounds Lesotho, an independent country.
- There are [three capital cities](#), each representing a branch of government, Pretoria (executive/administrative capital), Cape Town (legislative capital) and Bloemfontein (judicial capital).

### Political situation & governance

- South Africa has [a legacy of colonisation and racial segregation](#): a Dutch colony from 1652 and a British colony from the late 19<sup>th</sup> century. The ruling white government instituted [apartheid](#), a policy of racial segregation separating the development of races in favour of the white population, which ended in 1994. It was replaced by a constitutional democracy and black majority government. The country has since achieved significant political, legal, economic and social progress recognising the rights of all South Africans.
- The [Constitution of the Republic of South Africa \(1996\)](#) is the supreme law of the country providing the legal foundation for the existence of the republic, setting out rights and duties of citizens and structure of government. It also states that the country be run on [a system of co-operative governance](#).
- A [parliamentary republic with a three-tier system of governance](#) at national, provincial and local levels which all have legislative and executive authority in their own spheres. Operating at both national and provincial levels are advisory bodies drawn from South Africa's traditional leaders.
- The country is assessed as ['a flawed democracy'](#) and ranked 45 out of 167 countries, with a 7.05 score.
- South Africa has a mixed legal system, a hybrid of Roman Dutch civilian law, English common law, customary law and religious personal law.
- Regarding the rule of law, the [World Justice Project 2022](#) ranked South Africa 54 across 140 countries and 5 out of 34 in the sub-Saharan Africa region.
- [Transparency International 2022 Corruption Perception Index](#) placed South Africa at 43 on a scale from 0 ("highly corrupt") to 100 ("very clean"). According to the [2021 Afrobarometer Round 8 Survey in South Africa](#), 9.1% of South Africans believed that corruption was the most important problem facing the country, meaning that corruption ranked second only to unemployment in the priorities of those surveyed.

### Population

- The [population](#) of South Africa in 2022 was 62million, a 19.8% points growth from 51.7million in 2011. [Black Africans](#) constitutes the largest proportion of the South Africa's population at 81,4% followed by coloureds (8,2%), white (7,3%) and Indian/Asian (2,7%).
- South Africa has a young population with 26.4% of the population are [children aged 0-14yrs](#). In 2021 the [crude birth rate](#) declined to 19.82 live births per 1,000 inhabitants whilst [infant mortality rate](#) decreased to 26.4 deaths per 1,000 live births.
- [Most children live in provinces with large rural populations](#). Gauteng, the smallest province in terms of physical size is the [province with the largest child population](#) with 22% of all children in the country living in Gauteng.

### Economic & social situation

- The economy is ranked as upper-middle income by the [World Bank](#) though with flat growth in past decade.



- South Africa has made significant strides to reduce extreme poverty since 1994 by providing basic services such as water, electricity, sanitation and housing to large segments of its population. However, it remains one of the most unequal country in the world with the highest [income Gini index globally](#) at 63 percent as of 2018 and persistent extreme disparities in economic status and delivery of services amongst its nine provinces (ACERWC, concluding observations, [2019](#), para 20 & [2023](#), para 2016)
- As of 2023, [18.2 million people](#) in South Africa were living under the international absolute poverty threshold, with more than half of children living below the poverty line ([UNICEF](#)). Poorest households also carry the greatest burden of care for orphans with more than a third (36%) of all orphans resident in the poorest 20% of households ([Univeristy of Cape Town](#), Statistics on children in South Africa, July 2023)

### Children's rights.

- **Violence against children and adolescents (hereinafter C&A):** South Africa has [one of the world's highest crime rates](#), with children and women being amongst a significant proportion of victims for cases involving murder, rape and common assault. According to [UNICEF](#) (2022), boys, girls and women still face high levels of abuse, neglect and violence both at home and in their communities. Further, South Africa's [child homicide rate](#) is double the global average, nearly half of all child homicide cases are due to abuse and neglect.
- **Covid 19 pandemic:** Covid 19 pandemic significantly increased vulnerabilities for children in South Africa : 95 000 children had lost a parent or guardian by 30 November 2021, the highest number of Covid ophans in Africa ([UNICEF COAR](#) 2022).
- **HIV/AIDS:** Uneven routine immunization, children consistently left behind in HIV response. Globally South Africa is one of the top ten high burden countries for severe acute malnutrition and HIV/AIDS in the world. According to [UNAIDS](#), in 2022 South Africa had 7.6million adults and children living with HIV and 4.1 million children under 14years were HIV exposed representing 27% of global total ([UNICEF COAR](#), 2022).

## CHILDREN DEPRIVED OF PARENTAL CARE AND ALTERNATIVE CARE OPTIONS

### Applicable laws and policies & competent authorities

- Key instrument in matters of child and youth care are:
  - [Constitution of the Republic of South Africa](#);
  - [The Children's Act No. 38 of 2005](#) is the main law on alternative care;
  - The [Act No. 17 of 2022: Children's Amendment Act](#) published in Gazette [47828](#) is expected to come into effect on a date still to be determined by the President. This [aims to amend](#) the Children's Act, 2005, to strengthen the care and protection of children.
  - [Social Assistance Act \(No.13\) 2004](#)
  - [Social Assistance Amendment Act \(No.16 of 2020\)](#) enacted to provide for additional payments linked to cash transfers including benefits to child headed households, orphaned and vulnerable children.
- The **Department of Social Development** is the lead/competent authority for child protection and care in South Africa. It decides on the admission of a child into formal alternative care at the provisional and national level.
- **Policies and guidelines:**
  - [National Child Care and Protection Policy 2019](#) focuses on preventative and protective services that respond to the specific risks faced by individual families. It expressively promotes positive parenting practices and programmes.

### Family support & prevention of unnecessary family separation



- Besides several social assistance grants (e.g. Child Support Grant, Foster Child Grant and Care Dependency Grant, maternity benefits, maintenance), the government provides for parenting support e.g. information on child development, responsive caregiving, positive discipline and healthy family relationships ([CRC/C/ZAF/3-6](#), 2023, para. 120, 121, 134, 139).
- Home and Community Based Care programmes ensure children access integrated services addressing their basic needs for food, shelter, education, psychosocial support, family or alternative care, health care and protection from abuse and maltreatment. Programmes empower families and communities to adequately care for their vulnerable members, including orphans and vulnerable children.
- [17 Community Care Centres](#) built in most rural areas of Kwazulu Natal, Limpopo and North West Provinces to provide community based care and support from multi-disciplinary teams and youth services in the form of social and technical skills for 15-24yr olds.
- In 2021 government launched [RISIHA](#), a community based child protection programme aimed at protecting orphans and vulnerable children i.e. living in child and youth headed household, have chronic health conditions as well as those living and working on the streets during Covid pandemic.
- There are also campaigns targeting children and broader community to educate, raise awareness and strengthen the protection children's rights e.g. [National Child Protection Week](#), [365 Days Child Protection Programme of Action](#), [National School Safety Framework on Violence Prevention](#), ECDmessages aimed at parents.

#### Gatekeeping mechanism & family reintegration

- Children's Act (section 150) of the Children's Act 2005 defines a child in need of protection.
- Any person or professional who on reasonable grounds concludes that a child has been abused, abandoned or deliberately neglected must report to the relevant authority for a social worker to conduct an assesment.
- If the child is found to be in need of care and protection, the social worker supports the child and his family or makes a referral to other suitability qualified person or organisation for support.
- Should the child be at risk of immediate harm, or become increasingly vulnerable despite support, the social worker or police officer can remove the child to a temporary safe place with or without a court order depending on circumstances and place them into temporary alternative care. Efforts are made for family reintergration or alternative permanent care is considered for the child including adoption.
- **Family reintegration:** children who cannot be reunified will be referred for admission in Child and Youth Care Centres (CYCC) in terms of Sections 151 and 152 of the Children's Act.

#### ALTERNATIVE CARE OPTIONS

**Competent authorities:** The Department of Social Development.

**Main reasons:** Children in South Africa end up requiring alternative care mainly due to poverty, abuse, neglect, violence against children, being orphaned due to HIV/AIDS, child abandonment ([National Child Care and Protection Policy 2019](#)).

**Database:** As per Children's Act 38 of 2005 (section 111) Director Genral must keep and maintain a register called **National Child Protection Register** which consists of two parts (Part A and B). Part A lists children at risk of harm and part B list adults who are a risk and cannot work with children. The register acts as an alert highlighting children at risk and brings a multidisciplinary teams around the child and family to support the family, minimise risk to child and keep families together. The Register also highlights children at immediate or increasing risk of significant harm who need alternative care as a safeguarding measure. The National Child Protection Register is at all times kept confidential.



**Statistics:** According to [Annex n. 1](#) to the latest periodic report to the CRC Committee (2023), about one-fifth (21,3%) of all children did not live with their parents. Also, according to the [Alternative Report of the South African National Child Rights Coalition](#) (SANCR) submitted to the CRC Committee in 2020 “Although there is a lack of formal statistics on the number of child abandonments reported, service providers working in this area have reported a significant growth in numbers compared to 2019. The Gauteng Department of Health issued a report stating that 118 babies had been abandoned in Gauteng hospitals during lockdown”. An estimated [3000 newborns](#) are abandoned safely at childcare facilities every year. However, there are reports of increasing ‘unsafe’ and ‘anonymous’ abandonments with new-borns found in bins or thrown in bushes. According to the [University of Capetown Children’s Count](#) (2023), there were 2.9million orphans in South Africa.

### **Kinship care**

**Legislation/policy:** Children’s Act 38 of 2005, sections 150, 152; Social Assistance Act (2004).

**Type:** children in need of care being cared for by their relatives within their extended family.

**Monitoring and complaint mechanism:** No information found.

**Available support:** According to the latest periodic report to the CRC Committee, the value of the Child Support Grant to orphans in the care of their relative and children in child headed households have been increased and came into effect in 2022 ([CRC/C/ZAF/3-6](#), 2023, para. 167).

**Statistics:** Almost all orphans live with relatives in informal and kinship care arrangements. According to the [South African statistics](#), only 1 in 3 children in South Africa live with both biological parents, the majority (64%) live with their grandparents or (22%) with relatives.

### **Foster care**

**Legislation/policy:** Children’s Act 38 of 2005, sections 150-152, 155 et ss; Social Assistance Act (2004); National Child Care and Protection Policy 2019. The anticipated Child Care Amendment Bill 2022 is expected to bring some changes.

**Types:** There are different types of foster care i.e. temporary foster safe care pending an application for and finalisation of the adoption of a child or family reunification, shared care where different care givers or centres alternate in taking responsibility for the care of a child at different times or periods and long term foster care where a child remain with foster carers through their minority.

**Requirements for carers:** A foster carer must be a South African citizen, permanent resident or refugee, suitable and willing to care for a child under 18years placed with them under order of the court. Interested foster parents must apply to the nearest Department of Social Development office or an accredited child protection organisation to foster a child. The required forms can be found [here](#).

**Monitoring and complaints mechanism:** Fostering placements are formalised through legal custodial processes, needing review every two years by court process.

**Support and follow up:** The Social Assistance Act (2004) provides fostering parents with a monthly subsidy (Foster Care Grant). It is payment to a foster carer of a child under the age of 18years as specified by a valid



court order. According to [SASSA GRANTS \(2023\)](#) and the [South African Government](#), the value of the grant is [R 1 130](#) per child as of 01 October 2023 an increase of R10 from 1 April 2023. The grant value is subject to change every 6 months (April and October each year). The grant is reviewed when the court order expires which is generally every 2 years.

**Statistics:** Foster Care Grants figured indicate there are nearly [400 000 children](#) in foster care in South Africa.

### Residential care

**Legislation/policy:** Children's Act 38 of 2005, sections 150-152, 155-159; Social Assistance Act (2004). The Child Care Amendment Bill 2022 is expected to bring some changes.

**Types:** According to [Annex n. 1](#) to the the latest periodic report to the CRC Committee (2023), there are three categories of Children and Youth Care Centres in South Africa:

- Reception and temporary safe care of children pending their placement
- Reception, care and development of children other than in their family environment
- Reception, development and secure care of children with behavioral, psychological and emotional difficulties.

There are mainly private owned with a small percentage government owned.

**Monitoring and complaint mechanism:** Monitoring of residential institutions is conducted quarterly at provincial level ([CRC/C/ZAF/3-6](#), 2023, para. 169).

**Support and follow up:** no information available

**Statistics:** With regards to the number of residential care centres, according to [Annex n. 1](#) to the latest periodic report to the CRC Committee (2023), there are in total 442 care facilities, the vast majority of which is private. The same source indicate that there are 11 766 children in care facilities, whereas there are 2377 children placed in temporary care facilities pending a decision on their placement.

### Leaving care

- The South African legislation does make provision for independent living preparation for children aging out of foster care, but [there is no guidelines or programmes](#) in place to assist social workers to provide these services to foster children, starting from the age of 15 years old.
- 2018, a [qualitative study](#) was conducted with four Child and Youth Care Centers in a town in the Eastern Cape on preparation to transition out of care and aftercare support. The study found that *"aftercare services were provided on an ad hoc basis, and there was no policy with respect to services to care leavers. The findings suggest that ongoing experiential learning and implementation of in-house policies may better prepare care leavers for emerging adulthood."*
- The [Developmental Assessment Tool for Children in Alternative Care](#) and [Guidelines for Independent Living Programme 2019](#) both provide guidance for social workers in assessing young people's needs in preparation for leaving care and supporting positive transition out of care.

### Focus on specific groups of children:

**Migrant children on the move:** South Africa is a major destination for children on the move from countries throughout Eastern and Southern Africa ([UNICEF 2020](#)). Due to South Africa's requirement for formal



identification unaccompanied and separated migrant children face difficulties in accessing basic services including child protection, care, education and health. As per latest state report to the CRC Committee ([CRC/C/ZAF/3-6](#), 2023), migrant children found to be in need of care and protection in terms of Section 150 of the Children's Act 38 are placed in CYCCs. An audit of unaccompanied and separated children in alternative care was conducted to determine the extent of challenges faced by these children and to recommend measures for adequate services to respond to their needs effectively. Social services personnel were also trained in tracing, reunification and alternative care of unaccompanied and separated migrant children.

## Comments of the ISS/IRC

### Progress

ISS/IRC welcomes the South African government's efforts to establish progressively evolving legislative, policy framework and initiatives for the protection and care of children in South Africa, such as the intervention to increase the value of the [Child Support Grant](#) to orphans in the care of their relatives, a specifically defined accessible cash transfer aiming at strengthening and supporting the safety-net for vulnerable orphaned children. It is to welcome the anticipated Child Care Amendment Bill 2022. Also, the ISS/IRC welcome the *Developmental Assessment Tool for children in alternative care* and *Guidelines for Independent Living Programme*, developed to strengthen formal alternative care structures as well as the relative on-going capacity building to social service practitioners on these documents ([CRC/C/ZAF/3-6](#), 2023, para. 169).

### Remaining challenges to be addressed

Implementation gaps remain between progressive legal framework, policies and actual practice of support and care of children.

*DI process:* the ISS/IRC notes with concern that the country does not present a clear and explicit deinstitutionalisation strategy yet, as confirmed by the [Alternative Report of the South African National Child Rights Coalition](#) (SANCR) submitted in 2020, according to which policy makers and practitioners continue to adopt institutional- centric thinking and practices. Also it seems that so there are still a number of social workers who still think that it is better for the children to be in care in an institution . Hence, the Government should promote deinstitutionalization strategies, including reunification services, to ensure that children having biological parents reunify with their parents.

*Monitoring:* Whilst informal care may be a positive option for many children as these appear to remain with their extended family and community, some form of monitoring and/or assessment should be considered in order to ensure that all their rights are being protected but also can benefit from all the services available. Moreover, with regard to residential centres, there is concern about weak enforcement of minimum norms and standards aimed at the protection of children from violence, neglect and abuse in child and youth care centres. Registering of residential institutions is also important to ensure matching and monitoring, children should be placed as a result of an informed decision based on their needs and subject to periodic reviews. ISS/IRC recognises that there is a need to determine how many care centres there are in the country and the need to carry out quality audit to ensure such centres comply with minimum standard to ensure children's rights are protected. The [Guide for the registration of Child and Youth Care Centres](#) published by the Centre for Child Law, at the University of Pretoria is a useful tool to support efforts at governmental level to promote the registration of all centres.



**Workforce development:** It is also necessary to continue developing social services workforce to ensure effective family support, gatekeeping, good quality alternative care, family reunification and positive transition out of care.

**Family Support:** Whilst the South African government provides for a number of supportive services, these are often not provided in the appropriate combinations to meet the needs of families and children in different contexts. Especially, there is a lack of specialised family support programmes tailored to meet the needs of families caring for children with disabilities, children with substance abuse problems, children with behavioural problems, and children of teen parents. Besides, the adequate identification of families and children at risk is another problem highlighted in the [Alternative care report](#) submitted in 2020 by the South African National Child Rights Coalition (SANCRIC).

Finally, the ISS/IRC has noted a lack of comprehensive data on different aspects of children's lives and care services.

## ADOPTION

**Accession to/Ratification of the 1993 Hague:** Accession took place on 21 August 2003 and the convention entered into force on 01 December 2003. South Africa has not made any declarations.

**National laws:** the principal piece of legislation dealing with adoption is the [Children's Act 38 of 2005](#). Additional relevant laws are the Social Services Professions Act 1978; the Practice Guidelines on National Adoption, and the [Practice Guidelines on Intercountry Adoption](#), and the the Adoption Policy Framework and Strategy (DSD, 2010a).

### CENTRAL AUTHORITY

#### Department of Social Development (SACA)

c/o Dr T Mabe

Director: Adoptions and International Social Services HSRC

Building - Pretorius Street - PRETORIA

Tel: +27 (12) 312 7143/4

e-mail: [Tebogoma@dsd.gov.za](mailto:Tebogoma@dsd.gov.za)

*Sources: Sections 257-258 of the Children's Act of 2005; [HCCH Authorities](#).*

### FULL/SIMPLE ADOPTION

Except as stated in the court order or in a post-adoption agreement, all adoptions in South Africa are considered to be **full adoptions**. For the effects, see below.

*Sources: Section 242 of the Children's Act 2005; [HCCH Questionnaire on the Practical operation of the 1993 Adoption Convention](#) (2020).*

### SUBSIDIARITY PRINCIPLE

Before a child is available for an intercountry adoption, the court must be satisfied that the name of the child has been in the Register of Adoptable Children and Prospective Adoptive Parents (RACAP) for **at least 60 days** and no fit and proper adoptive parent for the child is available in South Africa. Further, South Africa does not





encourage intercountry adoption where South Africa is the receiving country as the country has many children in need of permanent and stable homes.

Sources: Sections 261 and 262 of the Children's Act 2005; [MAI](#).

## CHILD ADOPTABILITY

**Adoptable children** are those who are:

- an orphan and have no guardian or caregiver willing to adopt him or her;
- for whom the whereabouts of the child's parent or guardian cannot be established;
- have been abandoned;
- whose parent or guardian has abused or deliberately neglected the child or has allowed the child to be abused or deliberately neglected and who are in need of a permanent alternative placement.

In practice, most adoptable children are those who have suffered some form of neglect or abuse prior to coming into care and therefore have health, emotional, or behavioural legacies as a result; are usually of Black heritage, with a smaller number of mixed heritage; and are children living with HIV. The latter are a high priority group and are likely to be placed at a younger age.

**Twins and siblings** should not be separated except if it is in their best interests. In practice, children are usually placed individually. Sibling groups are placed only very rarely.

An adoption social worker must make an assessment to determine whether a child is adoptable.

Sources: Section 230 (2)-(3) of the Children's Act 2005; Practice Guidelines on Intercountry Adoption; [IJK Coram IAC](#).

## PROSPECTIVE ADOPTIVE PARENTS (PAPs)

### Age limits

PAPs must be over the age of 18 years. Legally there is no set upper age limit or restriction. According to the Australian CA, preference is given to persons who are aged less than 45 years old. Also, PAPs under the age of 45 are eligible to adopt a child under 2 years of age, between 45 and 50 years a child of 2-3 years and between 50 and 55 years a child over the age of 3.

### Status

- Married couples;
- De facto couples;
- Same sex couples;
- Single persons;
- A married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child;
- The biological father of a child born out of wedlock;
- The foster parent of the child.

### Residence or any other criteria indicated in the law

The Children's Act stipulates that an adoptive parent must be a South Africa citizen and or a permanent resident in South Africa. For a foreign resident in South Africa, they are also able to adopt a child if they have resided in South African for five years.



### Other criteria established by law

A PAP must be fit and proper to be entrusted with full parental responsibilities and rights in respect of the child; willing and able to undertake, exercise and maintain those responsibilities and rights.

If the biological father does not have guardianship in respect of the child, he can make an application to be considered a PAP. In this case, he has 30 days to make an application from the date that he finds out the child is available for adoption.

A family member of a child who, prior to the adoption, has given notice to the clerk of the children's court that he or she is interested in adopting the child has the right to be considered as a PAP when the child becomes available for adoption.

Sources: Section 231 of the Children's Act 2005; Practice Guidelines on Intercountry Adoption; [Australian CA](#); [UK CoramIAC](#).

## CONSENTS

### Consent of the child

A child who is 10 years of age or older must give his/her consent to the adoption. The consent of a child under the age of 10 years is required provided that the latter has the maturity to understand the implications of such a consent.

### Consent of biological parents

A child may be adopted only if consent for the adoption has been given by:

- each parent of the child, regardless of whether the parents are married or not;
- if the parent is a child (under 18 years), that parent is assisted by his or her guardian;
- any other person who holds guardianship in respect of the child.

Before consent is given, all the above persons **must be counselled** by a social worker of the full implications of relinquishing their child for adoption. Biological parent(s) or caregiver(s) must also be adequately prepared and counselled regarding the needs of adult adoptees to be connected to their roots after the age of 18 years. If the parent of a child wishes the child to be adopted by a particular person, the parent must state the name of that person in the consent.

The consent of both biological parents and children must be **given in writing** and signed in the presence of a presiding officer of the children's court.

According to the South African legislation, the consent of biological parents is also not required if the child is an orphan and has no guardian or caregiver willing and able to adopt the child. In such circumstances, the court is provided with certified copies of child's parent's or guardian's death certificate or such other documentation as may be required.

Also, the consent of the biological father is not required in the following cases: 1) if he was not married to the mother and he has not acknowledged in any way that he is the father; 2) if the child was conceived from an incestuous relationship; and 3) if the court finds on the balance of probabilities that the mother was raped by him.

### Withdrawal of Consent



A person who has consented to the adoption of the child may withdraw the consent **within 60 days** after having signed the consent and after which the consent is final.

### **Unreasonable withholding of consent**

If a parent or person referred to in Section 233 (1) unreasonably withholds consent for the adoption of a child, a children's court may despite the absence of such consent and grant an order for the adoption of the child if the court find that adoption is in the best interest for the child. In determining whether consent is being withheld unreasonably the court must take into account all relevant factors (i.e nature of relationship during last two years between child and the person withholding consent, prospects of a sound relationship developing between child and person withholding consent in the immediate future, ect. ).

### **Freeing order**

The Department, a provincial department of social development, a child protection organisation accredited for adoptions or an adoption social worker can make an application to the court for a freeing order so that the parent or person whose consent to the adoption of the child is required does not have any parental responsibilities and rights pending the adoption of the child (eg: maintenance). A freeing order authorises a child protection organisation accredited in terms of adoptions to undertake such responsibilities. A freeing order will lapse if: 1) the child has not been adopted within a period of 12 months and there is no reasonable prospects that the child will be adopted; 2) the order is terminated by the court on the ground that it is no longer in the best interests of the child; and 3) the child, parent or person who consented to the adoption withdraws their consent.

*Sources:* Children's Act of 2005 (Sections 233 and 235-236 , 241), Practice Guidelines on National Adoption, Practice Guidelines on Intercountry Adoption.

## **ADOPTION REGISTER**

South Africa legislation set up an register called **Register of Adoptable children and Prospective Adoptive Parents** kept by the which states Director General the purpose of which is to keep a record of all adoptable children as well as a record of fit and proper PAPs. The name and other identifying information of the child and PAP must be entered in this register. Such information will be removed once the child is adopted. According to the French Cnetral Authority (MAI), such information can be comminucated to the adopted family and/or the adoptees when the latter reaches the age of 18.

Registration of a PAP in the Adoption Register is valid for 3 years.

*Sources:* Children's Act 38 of 2005 (section 232 (1), Practice Guidelines on National Adoption, Practice Guidelines Guidelines on Intercountry Adoption; MAI.

## **PROCEDURE**

### **Domestic adoption**

PAPs who want to adopt a child in South Africa should register their interest with an accredited adoption agency by completing necessary forms. [Each adoption agency has its own set of requirement and application forms.](#)

Initial screening is done by expereinced accredited social workers to help PAPs decide whether adoption is the best option for them after being made to understand that adoptive parenthood can involve tasks beyond biological parenthood. This is followed by a **mandatory preparatory PAPs' course** also provided by



accredited and experienced social workers, where the PAPs' abilities to satisfy the needs of the adoptable child/ren (including the acceptance of the siblings, children with special needs, ect) are assessed and .

PAPs participate in a **home study** with a social worker who makes an assessment of the PAP's potential and suitability to adopt a child. The assessment is considered by an adoption committee and if approved, the PAP(s) is/are included on the register for PAPs available for matching with children.

### **Intercountry adoption**

PAPs must register their interest as willing to adopt a child from South Africa through an authorised person or accredited body in their country of origin that has a working agreement with an accredited child protection organisation in South Africa.

Necessary documentation is submitted to the South African Central Authority to register PAPs interest to adopt from South Africa. A decision is made by the South African Central Authority. If the decision is positive, PAPs are included on the register of prospective parents in South Africa to be matched with children available for adoption.

*Sources:* Sections 231, 232, 247 and 239-240, 260-261 and 263 of the Children's Act 2005; Practice Guidelines on Intercountry Adoption; [MAI](#); [Australian CA](#); [South African government](#).

## **MATCHING**

Children are matched with PAPs considered the best match for that individual child's needs rather than in order of waiting time. Waiting time for matching with a child is average between 18 months to two years.

### **Domestic adoption**

The competent authority to undertake the matching process is the accredited social worker and child protection agency under the supervision of the department of Social Development.

### **Intercountry adoption**

The SACA, or the South African adoption accredited body (AAB) under the supervision of the SACA, will undertake the matching process. If a child is available for adoption for whom foreign PAPs are considered to be a potentially good match, the competent body S will prepare a report on the child and send it to receiving country for the foreign PAP to make a decision on the match. A proposal for a child is usually made 3 to 6 months after the file is sent to the South African AAB.

Once the PAPs agree to be matched with a child, SACA will refer the application for adoption together with all relevant documents and the reports contemplated to the children's court. South African legislation expressly forbids foreigners "to visit Child and Youth Care Centres for the purpose of linking and adopting a child."

The Provincial Departments of Social Development issue a letter by the provincial head that accompany an application for adoption of a child recommending the adoption of the child. In doing so they monitor the matching and placement of children by ensuring that national adoption options are considered before intercountry adoption. The National Department of Social Development/the Central Authority and accredited child protection organisation 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).

Sources: Children's Act 38 of 2005 (Section 261 and 262); Practice Guidelines on National Adoption, Practice Guidelines on Intercountry Adoption; [MAI](#); [UK CoramIAC](#); [South African government](#).

## PROBATIONARY PERIOD

### Domestic adoption

Once matched with a child, introductions to the child are initiated. It is not clear if there is a set probationary period or how it is.

### Intercountry adoption

After the acceptance of the matching proposal, the social worker will negotiate with the PAPs to travel to South Africa once the 60 days provided for the withdrawal of consents have lapsed and also arrange for a court date. According to the French CA, PAPs are required to travel to South Africa in the following 3-8 weeks. The length of the stay can vary **from 4 to 8 weeks**. There will be a minimum two weeks during which contacts and introduction with the child will be organised under the scrutiny of a social worker of the South African AAB who will make a report to the judge.

Adoption social workers offer preadoption placement services and support to finalise the adoption. Social workers offer support including counselling and/or referral to other services if a decision is taken that a child should not be placed with PAP.

Source: Practice Guidelines on National Adoption, Practice Guidelines on International Adoption; [HCCH Costs of Adoption in South Africa](#) (2014); [MAI](#).

## ADOPTION DECISION

An application for the child's adoption in South Africa must be made to a **Children's Court** by the South African AAB. It must be accompanied by among others:

- a report of an adoption social worker containing information on the child's adoptability in particular: identifying particulars; historical background; medical history; family relations; police report; affidavit; information on whether the adoption is in the best interests of the child.
- an assessment about the PAPs;
- a letter of recommendation by the provincial head of social development.
- A detailed list of the documents to be considered by the Presiding Officer is available in the [Practice Guidelines on Intercountry](#)

When considering an application for the adoption of a child, the court will take into account all relevant factors, including the religious and cultural background of the adoption triangle, all reasonable preferences expressed by a parent as stated in the consent and the social worker report; whether appropriate consents have been given and not withdrawn; all other potential PAPs such as biological father, foster parent and extended family have been considered. The **PAPs must be present** in front of the court for the adoption order and be assisted by a lawyer.

In addition, for **intercountry adoption** the court must satisfy that the child is in South Africa, the child is not prevented from leaving South Africa under a law or due to a court order, the arrangements for the adoption of the child are in accordance with the prescribed requirements, the central authority or the convention country or competent authority of the non-convention country concerned has agreed to the adoption of the child, the



South African Central Authority has agreed to the adoption of the child, the name of the child has been in the Adoption Register for at least 60 days and no fit and proper adoptive parent for the child is available in South Africa.

For post-adoption agreements, see below.

### **Appeal**

A High Court or Children's Court may rescind an adoption order on application by the adopted child; a parent of the adopted child or the guardian of the child before the adoption; the adoptive parent of the child. The application must be lodged within a reasonable time but not exceeding two years from the date of the adoption.

The Central Authority may withdraw its consent to the intercountry adoption of the child within a period of 140 days from the date on which it has consented to the adoption, if it is in the best interests of the child to do so. In this event, the child must be returned to South Africa.

### **Dissolution**

An adoption order may be rescinded only if rescission of the order is in the best interests of the child; and the applicant is a parent of the child whose consent was required but not obtained; or at the time of making the adoption order the adoptive parent did not qualify as such. When rescinding an adoption order, the Court may make an appropriate placement order in respect of the child concerned; or order that the child be kept in temporary safe care until an appropriate placement order can be made.

*Sources:* Children's Act 2005 (Section 239-244); [MAI](#).

## **REGISTRATION**

For both domestic and intercountry adoptions, once the Children's Court has issued an adoption order, the relevant documentation will be forwarded to SACA for registration of adoption. There is no specified timeframe given for this action.

*Sources:* Children's Act 2005, Sections 245-246; Practice Guidelines on Intercountry Adoption.

## **ADOPTION EFFECTS**

### **Rights**

An adoption order confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent. Except when provided otherwise in the order or in a post-adoption agreement confirmed by the court, an adoption order terminates: all parental responsibilities and rights any person had in respect of the child immediately before the adoption; all claims to contact with the child by any family members of a person; all rights and responsibilities the child had in respect of a person before the adoption; any previous order made in respect of the placement of the child.

### **Name**

An adoption order confers the surname of the adoptive parent on the adopted child – except when otherwise provided in the order.

### **Nationality**

Adopted children automatically acquire the nationality of the foreign adoptive families.



Sources: Children's Act 2005, Sections 234, 242-244 and 261(6); Guidelines on National Adoption.

## POST-ADOPTION FOLLOW-UP

The competent authority or accredited body in the receiving country shall accept responsibility for supervising the adoption placement and provide progress report to the SACA or the competent authority and accredited body in South Africa **for a period of 5 years**, not determined by child's age.

Sources: Practice Guidelines on Intercountry Adoption, [HCCH Questionnaire on the Practical operation of the 1993 Adoption Convention](#); [HCCH Country Profile](#) (2010).

## ADOPTION BREAKDOWN

According to the information provided, the main cause of adoption breakdowns is the rejection of the adopted child by the adoptive family. . In such cases, the SACA State liaised with the receiving State where the child was removed and declared in need of care and protection. The SACA is always informed before determining a new placement for the child in the Receiving State.

In order to prevent adoption breakdowns, South African authorities have been working with adoptive families in order to inform them to seek request assistance from the adoption agency if they experience challenges. For this reason, Practice guidelines were developed to emphasise that appropriate evaluations, preparation, reports, matching and post adoption support will reduce the risk of breakdown on intercountry adoption.

Sources: [HCCH Questionnaire on the Practical operation of the 1993 Adoption Convention](#) (2020); Practice Guidelines on Intercountry Adoption.

## SEARCH FOR ORIGINS

See dedicated factsheet.

## OPEN ADOPTION

The practice of open adoptions does exist in South Africa, and it is regulated and promoted. This practice is framed around the "**post-adoption agreements**" that may be concluded between the parent or guardian of a child and a PAP before an application for the adoption is made.

As part of the adoption decision, the Children's Court may indeed confirm a **post-adoption agreement** that may be concluded between the parent or guardian of a child and a PAP before an application for the adoption is made. Such agreement provides for: communication, including visitation between the child and the parent/guardian or another person stipulated in the agreement; the provision of information, including medical information about the child after the application for adoption is granted. An agreement may not be entered into without the consent of the child if the child is of an age, maturity and stage of development to understand the implications of such an agreement. The adoption social worker facilitating the adoption of the child must assist the parties in preparing a post-adoption agreement and counsel them on the implications of such an agreement.

Source: [HCCH Questionnaire on the Practical operation of the 1993 Adoption Convention](#) (2020).

## ADOPTION ACCREDITED BODIES (AABs)

Adoption services can be provided only by a child protection organisation accredited to provide domestic or intercountry adoption services. Accreditation is based on section 251 and 259 Children's Act, 2005.



There is no prohibition on the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of any other profession.

A child protection organisation accredited in terms of section 259 to provide inter-country adoption services may enter into an adoption working agreement with an accredited adoption agency in another country. Without this working agreement foreign AAB's are not permitted to operate in South Africa. Foreign AABs must be first accredited in their country before they can enter a working agreement with a child protection organisation in South Africa.

Sources: Children's Act 2005, sections 250-251 and 259-260; Practice Guidelines on Intercountry Adoption.

## SANCTIONS

No person may give or receive, or agree to give or receive any consideration, in cash or in kind, for the adoption of a child. No person may publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a specific child.

The Protection of Personal Information Act, 2020 (POPIA/POPI Act) gives sanctions for breach of data protection in regards to personal information including adoption records.

Sources: Children's Act of 2005, sections 249 (1) and 252(1); Data Protection Act (2020).

## COSTS

Costs are controlled by the Regulations of the Childre's Act 38 of 2005. 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. Also, audited financial statements of the accredited child protection organizations pertaining to adoptions must be submitted on an annual basis to the CA.

According to the Australian CA, the estimated cost for adoptin in South Africa is R35,000, depending on where your child is located.

For a breakdown of the costs, see the [HCCH table of costs related to intercountry adoption](#) (latested updated in 2014).

Sources: Children's Act 2005 (section 249 (1) (a), 252 (2); HCCH Costs of Adoption in South Africa (2014); Practice Guidelines on Intercountry Adoption, , [South African government](#).

## STATISTICS

Domestic and intercountry adoption statistics for South Africa from April 2010 to March 2021 show a decrease in adoptions.

According to the HCCH statistics, in 2021 a total of 973 adoptions were completed including 834 domestic adoptions and 139 intercountry adoptions. The figures below are those presented by South Africa to the CRC Committee (2023) confirming this decreasing trend although figures are slightly different:

TYPE OF ADOPTION	2016/17	2017/18	2018/19	2019/20	2020/2021
Domestic adoption	1 200	1033	1039	977	806





International adoption	149	153	151	146	50
<b>Total</b>	<b>1 349</b>	<b>1186</b>	<b>1190</b>	<b>1123</b>	<b>856</b>

Moreover, it is worth mentioning that adoption numbers remain relatively low when compared to other forms of alternative care and the numbers show a consistent decline. During the 2010/11 financial year there were 2436 adoptions registered in South Africa, compared to only 1186 registered during the 2017/18 financial year. These numbers are inclusive of the number of related or family adoptions.

Sources: [HCCH statistics](#) as country of origins; [Annex n. 1](#) to the latest periodic report to the CRC Committee (2023); [Alternative care report](#) submitted in 2020 by the South African National Child Rights Coalition (SANCRIC); [3rd periodic report to the ACERWC](#), para 358.

## Comments of the ISS/IRC

### Progress

South Africa's legislation on both domestic and intercountry adoption provides a number of safeguards, which must be acknowledged. The right to identity is also a constitutional right that is justiciable in South Africa when adoptees experience rights violations in regards to search for origins. The Children's Amendment Act (B18-2020) is expected to bring some changes. Also, the Bill seeks to provide for children's rights to privacy and protection of information, the designation of Registrar of the National Child Protection Register, the care of abandoned children and medical testing of children in need of care and protection or adoption, amongst others (source: [3rd periodic report to the ACERWC](#), page 2). Data protection laws also protect adopted children's data and allow for complaints, investigations and penalties for violations.

The ISS/IRC also welcome the efforts made by the South Africa's government to promote domestic adoption and making it more accessible. Indeed, in 2016, the Children's Second Amendment Act. 2016 (Act No. 18 of 2016), was promulgated to provide for Department of Social Development' (DSD) social workers to render adoption services for free. By March 2021, DSD registered 310 social workers in its employment with the South African Council for Social Service Professions Council to allow them to render adoption services (source: [3rd periodic report to the ACERWC](#), para 359).

### Remaining challenges to be addressed

Despite the above, some specific aspects of the adoption procedure remain to be strengthened.

*PAPs:* Requirements for PAPs could be increased by setting up a maximum age to avoid extreme situation of very young children being cared for by much older adults.

*Probationary period* The length and the procedure of the probationary period does not seem to be prescribed when this is a crucial period for the development of bonds between prospective adoptive parent/s and the adopted child. A detailed procedure should be in place to frame this crucial period.

*Post-adoption reports:* There is also no statutory provision for post-adoption follow-up by South Africa as this is left exclusively at the discretion of the receiving country. South Africa's legislation should detail more precisely the reporting time period, the content of the follow-up (pictures, school report, psychological report, home study, etc.), and the professionals who are in charge of the drafting of the report (social workers, psychologists, etc).



*Search for origins:* With growing international and domestic calls and advocacy for adoptees to have access to their origins, birth and adoption records, South Africa would benefit from establishing robust search for origins as an important post adoption service with clear processes, procedures and practices. The law could also be more specific in regards to the support offered for search of origins e.g. is this a free statutory provision, available for access by all adoptees, biological and adoptive parents or biological relatives (including descendants of adoptees); when can it be accessed; is there a time limit to this and which professionals are responsible for providing this post adoption support service.

*Potential illicit practice:* It would be prudent for South Africa to consider possible past irregular and illicit intercountry adoption practices, considering that there was no appropriate legislative framework in place in South Africa from 2000 to 2003 to regulate intercountry adoption until the 1993 Adoption Hague Convention in December 2003. Also the Adoption Hague Convention were domestically incorporated only with the Children’s Act of 2005. Thus, it is likely that possible gaps or irregularities took place in this specific period.

*Access to justice and remedies:* Whilst there are avenues for adoptees to seek justice and domestic remedies within South Africa, the country has not yet ratified the CRC Optional Protocol 3 to allow communications to the CRC Committee. The government is therefore encouraged to continue on its course to ratify the Optional Protocol for adoptees to be able to access justice via the Committee on the Rights of the Child.

## LEGISLATION

### International instruments

	<b>Signature (S) / Ratification (R) / Accession (A) / In Force (F)</b>
<a href="#">United Nations Convention on the Rights of the Child (1989)</a>	29 January 1993 (S) 16 June 1995 (R)
<a href="#">Optional Protocol</a> to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	30 June 2003 (A)
<a href="#">Hague Convention</a> on Protection of Children and Co-operation in respect of Intercountry Adoption (1993)	21 August 2003 (A) 01 December 2003 (F)
<a href="#">Hague Convention</a> on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996)	-
<a href="#">United Nations Convention on the Rights of Persons with Disabilities</a> (2006)	9 May 2008 (S) 1 February 2010 (R)
<a href="#">Apostille Convention</a> (1961)	

### Regional instruments

	<b>Signature (S) / Ratification (R) / Accession (A) / In</b>



	<b>Force (F)</b>
<a href="#">African Charter on the Rights and Welfare of the Child (1990)</a>	10 October 1997 (S) 7 January 2000 (R)
<a href="#">African Charter on Human and Peoples' Rights (1981)</a>	09 July 1996
<a href="#">Multilateral Regional Cooperation Agreement against the trafficking of persons (especially women and children) in West and Central Africa (2006)</a>	-
<a href="#">African Youth Charter (2006)</a>	07/05/2009 (S) 28/05/2009 (R)
African Union Convention for the protection and assistance of internally displaced persons in Africa ( <a href="#">Kampala Convention</a> ), 2009	-

### Domestic legislation/regulation

Constitution of the Republic of South Africa (Act 108 of 1996)	In English
Children's Act 38 of 2005	In English
Children's Amendment Act 2022	In English
<a href="#">Social Assistance Act</a> 13 of 2004	In English
The Protection of Personal Information Act 2020	In English

## PARTICULARLY RELEVANT SOURCES OF INFORMATION

### Periodic review by the CRC Committee

- Combined 3<sup>rd</sup> to 6<sup>th</sup> Periodic Reports: South Africa, [CRC/C/ZAF/3-6](#), submitted 19 June 2023
- Concluding observations of the Committee on the Rights of the Child: [CRC/C/ZAF/CO/2](#), submitted 7 October 2016.

### Periodic Review of the African Committee of Experts on the Rights and Welfare of the Child

- Concluding Observations and Recommendations to the 2nd Periodic Reports: [South Africa](#), submitted September 2023.
- 3<sup>rd</sup> Periodic report: [South Africa](#), reporting period: June 2016 – March 2021.
- Concluding Observations and Recommendations to the 1st Periodic Reports: [South Africa](#), submitted March 2019.

### Other organisations

- [UNICEF South Africa](#) – General Information about children and adolescents .
- [Hague Conference on Private International Law](#) – Information on the intercountry adoption process .
- [MAI](#) – Information on the intercountry adoption process.

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