

LAW REFORMING ADOPTION



REPUBLIC OF HAITI

Ministry of Social Affairs and Labor (MAST)

Institute for Social Welfare and Research (IBESR)

The *Law Reforming Adoption* was enacted on October 28, 2013, and published in the official gazette *Le Moniteur* (no. 213) on November 15 of the same year.

THIS PUBLICATION REPRODUCES THE CONTENTS OF THE OFFICIAL DOCUMENT.

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BACKGROUND

In the past five years the legal framework of the fight for child protection has improved considerably in Haiti, thanks largely to the efforts of stakeholders, led by the Institute for Social Welfare and Research (IBESR) and its international cooperation partners.

The IBESR, an entity of the Ministry of Social Affairs and Labor (MAST), is guided by its dedication to the interests of children. Thus, since 2009, a series of reform proposals have been made to strengthen the legal and institutional framework for child protection.

Conventions were therefore submitted to the Parliament for ratification, and votes were called on a set of laws. Among the conventions was the Palermo Protocol, which seeks to combat and punish trafficking in persons, especially women and children.

This additional protocol to the United Nations Convention against Transnational Organized Crime, which had been under discussion in the country since 2003, was finally ratified in March 2009. Other conventions include the Hague Convention on Intercountry Adoption, as well as ILO Conventions 138 on the minimum age for employment and 182 on child labor. As this booklet was being drafted, two other protocols to the Convention on the Rights of the Child were published.

- The Optional Protocol to the Convention on the Rights of the Child relating to the involvement of children in armed conflict
- The Optional Protocol to the Convention on the Rights of the Child relating to the sale of children, child prostitution, and child pornography

Examples of domestic legislation include the Antitrafficking Law published in *Le Moniteur* (the official gazette), no. 103 (June 2, 2014); and the Law on Paternity, Maternity, and Filiation, commonly referred to as the Responsible Paternity Act, voted on in 2012 and recently enacted and published in *Le Moniteur*, no. 105 (June 4, 2014).

A final example is the Law Reforming Adoption of August 29, 2013, the subject of this publication.

WHY A NEW ADOPTION LAW?

There are six main reasons for the new law:

- The 1974 decree on adoption did not conform to international standards, especially the principles of the Hague Convention.
- The 1974 decree did not define the criteria for adoptability.
- There was no provision for follow-up after adoption.
- The Haitian government had no central authority responsible for adoption.
- There was no provision for full adoption.
- Adoptability was determined by a child's poverty and not his or her best interests.

TABLE OF CONTENTS

Background	iii
Why a New Adoption Law?	iv
Chapter I. Purpose and Definitions	2
Chapter II. Domestic and Intercountry Adoption	3
Section 1. General Principles	3
Section 2. Prospective Adoptive Parents	4
Section 3. Adoptees	5
Section 4. The Legal Form of Adoption	6
Section 5. The Effects of Full Adoption	7
Chapter III. The Central Authority	8
Chapter IV. The Adoptability Process and the Adoption Process	9
Section 1. The Adoptability Process	9
Section 2. The Adoption Process	10
Section 3. Postplacement Follow-up	12
Chapter V. Licensed Adoption Agencies	12
Chapter VI. Penal Provisions	14
Chapter VII. Transitional and Final Provisions	14
Chapter VIII. Abrogation Clause	15

In consideration of Convention 138 on the Minimum Age for Employment ratified by the decree of May 14, 2007;

In consideration of the Convention on the Worst Forms of Child Labor (ILO Convention 182) ratified by the decree of May 14, 2007;

In consideration of the additional protocol to the Convention against Transnational Organized Crime to prevent, combat, and punish trafficking in persons, especially women and children, ratified by the decree of November 26, 2003;

In consideration of the Haitian Civil Code;

In consideration of the Haitian Civil Procedure Code;

In consideration of the Haitian Penal Code;

In consideration of the law of May 7, 2003, on the prohibition and elimination of all forms of violence against or abuse or inhuman treatment of children;

In consideration of the decree-law of December 22, 1971, regulating social services;

In consideration of the decree of December 3, 1973, regulating the status of minors in children's homes;

In consideration of the decree of April 4, 1974, on adoption reinforcing the provisions of the decree of March 25, 1966;

In consideration of the decree of November 4, 1983, reorganizing the Ministry of Social Affairs and Labor in its provisions regarding the Institute for Social Welfare and Research (IBESR);

Considering that the examination of the practice of intercountry adoption per the Hague Convention has identified deficiencies in current legislation on adoption, especially the decree of April 4, 1974. Today, intercountry adoption has expanded rapidly; this requires that the Haitian government enact new laws and procedures to strengthen child protection;

Considering that in adoption matters, national legislation must adapt to advances in international law, specifically with respect to human rights and child protection, in the light of the International Convention on the Rights of the Child dated November 20, 1989, and The Hague Convention dated May 29, 1993, on the protection of children and cooperation in intercountry adoption;

Considering that certain fundamental principles now govern intercountry adoption, namely, the principle of the best interests of the child, the subsidiarity principle that considers intercountry adoption to be a last resort, the principle of nondiscrimination prohibiting any distinction of race; gender; religion; birth; disability; ethnic, national, or social origin; or any other situation, giving adoptees the same rights as biological children;

Considering that the state has the duty to promote and facilitate the implementation of policies, programs, and services and the creation of structures to improve the living conditions of families, to preserve the family unit, and to protect children;

It is therefore appropriate for the Haitian government to modernize its national system of child protection, taking into account the child's best interests and right to a permanent family environment in which he or she can thrive, for which reason it is necessary to amend the provisions of the decree of April 4, 1974, on adoption.

Based on the report of the Ministry of Social Affairs and Labor and the Ministry of Justice and Public Security, and after deliberation by the Council of Ministers, the Executive Branch has presented and the Parliament has voted on the following law:

CHAPTER I. PURPOSE AND DEFINITIONS

Article 1. The present law is intended to govern domestic and intercountry adoption.

Article 2. Under the present law, the following concepts should be understood as follows:

Adoption: a formal decree pronounced by a court that establishes, between a heterosexual couple or a single person and a child not biologically theirs, family relationships similar to those resulting from a filiation through blood. This decree is a protective measure established in the best interests of the child, offering the child a permanent family environment that will favor his or her development and respect his or her fundamental rights.

Private/direct adoption: adoption where adoption provisions have been agreed directly between (one of the) biological parents, or by individuals or organizations to whom the child has been entrusted, and future adoptive parents.

Independent/individual adoption: situation where future adoptive parents considered qualified and able to adopt by their central authority or by their adoption agency travel independently to a country of origin to seek a child to adopt without the assistance of a central authority or an organization authorized in the state of origin.

Intercountry adoption: action by which a child residing in Haiti is adopted by a person habitually residing in a foreign country according to the rules established by law.

Intrafamilial adoption: action by which an individual adopts a child with whom he or she has family relationships, either by blood or by marriage.

Domestic adoption: action by which an individual residing in Haiti for at least five years, without any intention of leaving the country, and who has his or her business and personal and professional interests there, adopts a Haitian child habitually residing in Haiti according to the rules established by this act.

Full adoption: action by which the adopted child benefits from all the filiation rights in his or her adoptive family and breaks definitively and irrevocably the filiation relationship with his or her biological family.

Simple adoption: action by which the adoptee benefits in his or her adoptive family from some filiation rights, such as those of name or inheritance, but remains related to his or her biological family. Simple adoption does not terminate the parent/child relationship existing prior to adoption but creates a new family relationship between the child and his or her adoptive parent(s), who are granted parental authority over the child.

Approval: official license delivered by the central authority to an adoption agency, allowing the latter to undertake some aspects of the adoption process.

Matching process [apparentement]: process to identify, among kin deemed qualified and suited to adopt, those relatives who meet the needs of the child in light of reports on the child and prospective adoptive parents.

Authorization: official license by which an organization licensed in a hosting country is granted permission to operate in another country.

Central authority: public organization appointed by a country and exclusively charged with preparing domestic or intercountry adoption files, overseeing adoptions, and meeting the requirements of the Hague Convention on Intercountry Adoption.

Capacity of discernment: children are considered to have sufficient capacity of discernment if they can understand what happens to them and can express their opinion on this.

Special-needs children: children who have behavior problems (such as those caused by trauma), who have physical or mental disability, are more than six years old, or are members of a sibling group.

Licensed adoption agency (LAA): foreign or domestic organization specializing in adoption that has been granted approval in its country to work in Haiti and that, according to the Hague Convention, performs certain functions under the convention in place of the central authority or jointly with it. The LAA performs tasks entrusted to it by the IBESR.

CHAPTER II. DOMESTIC AND INTERCOUNTRY ADOPTION

SECTION 1. GENERAL PRINCIPLES

Article 3. Adoption is a protective measure based on the child's best interests that seeks to give the child a permanent family environment enabling him or her to thrive.

The parents' poverty or extreme poverty cannot under any circumstances be sufficient grounds for adoption. The state has the duty to promote and facilitate the implementation of policies, programs, and services and the creation of structures to enhance the living conditions of families and to protect the family unit.

Article 4. Based on the principle of subsidiarity in intercountry adoption, it will be resorted to only when all other forms of permanent family custody in Haiti have been duly evaluated and found wanting or nonexistent.

Article 5. In each adoption case, administrative and legal authorities must take all necessary provisions to avoid improper financial gain.

Article 6. The following are prohibited:

- Private and independent adoption.
- Decision by the child's biological parents or legal guardians as to which person(s) will adopt their child, except in cases of adoption of a spouse's children or intrafamilial adoption. The case of a foster-care family that previously hosted the child and wants to adopt him or her constitutes the other exception.

- Contact, before conclusion of the matching process, between the child's future adoptive parents, biological parents, or any other person who can influence the consent of the authorized person or with institution involved in the adoption process, except if the adoption takes place between members of the same family.
- Consent by biological parents to the adoption before the child is three months old.
- Improper material gain by people, organizations, and authorities involved in the adoption process.

Procedures compromised by one of the prohibitions described above will be immediately suspended and the adoption petition will be rejected, with possible legal actions. The relevant authority shall automatically take necessary steps to protect the child.

SECTION 2. PROSPECTIVE ADOPTIVE PARENTS

Article 7. Any person who has never been convicted of a crime punishable by the loss of civil or political rights [*peine afflictive et infamante*], who has never been stripped of parental authority, and who meets the requirements of the present law and of the central authority is eligible to adopt.

In the case of a domestic adoption, candidates must be considered qualified and able to adopt by the central authority.

In the case of an intercountry adoption, candidates must be considered qualified and able to adopt by the relevant authorities of their country of habitual residence.

Article 8. Adoption can be requested jointly by a heterosexual couple married (and not separated) after five years of marriage and when one spouse is at least 30 years old.

The set age condition is not required in cases of adoption of the spouse's or partner's child.

Article 9. Adoption can be requested by two people of different sexes living together for at least five years and when one partner is at least 30 years old. Cohabitation must be established by a certificate delivered by the relevant authorities, and the consent of both cohabitants is required, except if one of them cannot express his or her will.

Article 10. Applications of single individuals over 35 years old are accepted. A single adopting individual cannot be more than 50 years old.

Article 11. Neither of the adopting parents (spouses or partners) can be more than 50 years old. This age limit does not apply when adopting a spouse's child or in intrafamilial adoptions.

Article 12. The adopting parents must be 14 years older than the child that they want to adopt. If the child is of the spouse or a close relative, the age difference must be at least nine years.

Article 12.1. In the adoption of a biological child of one of the spouses, the other spouse adopts alone.

Article 13. The birth in the household of one or several biological children is not an obstacle to adoption by two spouses of one or several children whom they previously took care of and who are still in their care.

Article 14. If the adopting parent already has biological or adopted children, these children must give their opinion if they are more than eight years old.

Article 15. An individual residing in Haiti can adopt a child residing in another country according to the laws of the child's habitual country of residence.

However, the prospective adopting parent must be previously declared qualified and able to adopt and receive the necessary guidance prior to approval from the IBESR.

Article 16. A simple or full adoption duly ordered in a state not a party to the Hague Convention is recognized in Haiti, provided a petition for the validation [*exequatur*] of the foreign adoption ruling is sent by the adopter to the government commissioner for registration of said ruling in the vital records office of the requester's hometown.

In the conversion of a simple adoption into a full adoption, a petition should be addressed to the senior judge of the Court of First Instance of the requester's hometown in order to obtain a reasoned ruling. This petition will be accepted only if the child's biological parents or guardians freely consent and are informed of the consequences arising from conversion of a simple adoption into a full adoption.

In the event that the biological parents or family council are prevented from expressing their will, the senior judge of the competent Court of First Instance will decide on the petition after deliberation with the public prosecutor.

SECTION 3. ADOPTÉES

Article 17. Only children under 16 years old when the file is submitted to the central authority can be adopted. However, if a child over 16 has lived before that age with people who did not meet the legal requirements to adopt, or if he or she was the subject of a simple adoption prior to reaching that age, plenary adoption can be requested until the child reaches the age of majority if the necessary conditions are met.

Article 18. The central authority must ensure that the opinion of any child aged eight years or older is taken into account.

The central authority must ensure that any child aged 12 years or older has given free consent to his or her adoption.

The central authority must ensure that the child is informed about the consequences of adoption.

Article 19. A child can be adopted when his or her adoptability is decided by the central authority. The following may be adopted in accordance with the provisions of Article 43:

1. Children who have lost both father and mother.
2. Children whose parentage is not established.
3. Children whose biological parents lost their parental rights through a court decision.
4. Children whose biological parents gave their consent for adoption. In this case, both biological parents must give their consent.

Article 20. The central authority makes sure that adoptable brothers and sisters are not separated at any time during the adoption process and are adopted by the same family, except for reasons justified by their best interest, as determined by the relevant authority.

Article 21. The possibility of adoption by relatives identified through a matching process must be considered by the central authority for all children declared adoptable. Particular attention shall be paid to children with special needs.

SECTION 4. THE LEGAL FORM OF ADOPTION

Article 22. Domestic adoption can be simple or full. Intercountry adoption is always full.

1 – The effects of simple adoption

Article 23. In simple adoption, adoptees are placed under the parental authority of their adoptive family. They nevertheless maintain all the rights that they enjoy in their family of origin, including their inheritance rights.

Article 24. Simple adoption confers the adopter's name to the adoptee by adding it to the adoptee's original surname. No changes are made when both the adopter and adoptee have the same surname.

In the case of adoption by a couple, the adoptee takes the husband or male partner's surname.

Article 25. In the petition for an adoption order, if the adopter deems it necessary, he or she can request to change the given name(s) of the child being adopted.

The judge will review the petition according to specific criteria, taking care to seek the child's opinion if the judge deems that the child has adequate capacity for discernment.

Article 26. The adoptee and his or her descendants have the same inheritance rights as a biological child in the adopter's family, without, however, acquiring the quality of a forced heir with regard to the adopter's ascendants.

Article 27. If the adoptee dies without issue, property in kind given by the adopter or acquired through inheritance returns to the adopter or to the adopter's heirs, on the condition of contribution to the debts and prejudiced rights of third parties.

Similarly, the properties the adoptee had received as gifts from his or her biological parents are also returned to them or to their descendants.

Article 28. The family link resulting from adoption is extended to include the adoptee's children.

Marriage is forbidden between

- a. The adopter, the adoptee, and his or her descendants;
- b. The adoptee and the adopter's spouse, and vice versa, the adopter and the adoptee's spouse;
- c. The adopted children of the same person;
- d. The adoptee and the adopter's biological children; and
- e. The adoptee and the members of his or her family of origin.

2- The revocation of simple adoption

Article 29. Simple adoption can be revoked. The revocation terminates, for the future, all effects of simple adoption.

The request for revocation can be made by the adoptee on serious grounds such as

- False statements made in the application for adoption;
- Ill-treatment perpetrated on the adoptee;
- Sexual contact with the adoptee; and
- All other acts detrimental to the adoptee's physical and psychological integrity.

Adopters can request revocation of the adoption only if it is proved that the adoptee has made an attempt on their life or on that of their spouse or other children.

Article 30. Adoptees who have reached an age where they have sufficient understanding can ask the central authority to start the procedure for revoking the adoption. If this is not the case, the government commissioner can, if requested by the central authority, ask the Court of First Instance to revoke the adoption.

Article 31. In order for an adopter's request to be admissible, the adoptee must be more than 16 years old. When the adoptee is a minor, revocation can be requested by his or her birth parents or, in their absence, by a member of the adoptee's family of origin up to the degree of first cousin.

Article 32. The ruling revoking the adoption must be reasoned. Its operative provisions are entered in the margin of the birth certificate or the transcription of the adoption ruling.

SECTION 5. THE EFFECTS OF FULL ADOPTION

Article 33. Full adoption breaks definitively every filial relationship between the adoptee and his or her family of origin. However, the adoption of a spouse's child sustains that child's filiation of origin toward that spouse and his or her family.

Full adoptees lose their surnames of origin and their right to inheritance in their biological family.

Full adoption is irrevocable and not subject to cancellation, revision, or revocation.

Article 34. The adoptee has, in the family of the adoptive parent, the same rights and obligations as a biological child.

Article 35. Full adoption grants to the child the surname of the adoptive parent and, when the adoption is done by a couple, the surname of the husband or male partner.

Upon request of the adoptive parent(s), the court can modify the first name(s) of the child and will ask the child's opinion if he or she has the sufficient capacity of discernment.

Full adoption gives the child the right to Haitian citizenship if one of the adopting parents has Haitian citizenship.

Article 36. Full adoption of a spouse's child is allowed only with the consent of the other biological parent (when the identity of both biological parents is known).

In this case, the effects of full adoption only affect the rights and obligations of the child's other biological parent, without affecting those of the spouse.

The consent of one biological parent is sufficient when the other is unknown, deceased, or legally declared missing or stripped of parental rights.

CHAPTER III. THE CENTRAL AUTHORITY

Article 37. Until the new organic law for the IBESR is adopted, this technical and administrative department of the Ministry of Social Affairs and Labor will serve as the central authority in adoption matters, by delegation of the Ministry of Social Affairs and Labor.

The central authority is responsible for reviewing all adoption requests, preparing files, and authorizing adoption according to the standards and administrative process adopted by the IBESR prior to submitting the cases to the relevant court. The central authority is charged with promoting partnership among competent authorities to ensure the children's protection and to take all necessary measures to avoid illegal practices and improper material gain upon a child's placement in an institution or during the adoption process.

Furthermore, the central authority is responsible for cooperation with foreign central authorities to disseminate information regarding national adoption law and to remove barriers to application of the Hague Convention and for taking all necessary measures to prevent illegal practices, including improper financial gain.

Article 38. The central authority has the duty to

1. Investigate the family and social situation of children proposed for adoption;
2. Prepare the child's file and determine his or her adoptability;
3. Centralize all adoptive candidates' files, as well as those of the children in process of adoption, and to maintain records relating thereto;
4. Match families and children;
5. Rule on the placement of the future adoptee during the adoption process;
6. Guide and evaluate the socialization period between future adoptive parents and future adoptees;
7. Grant adoption approval to adoptive parents residing in Haiti and ensure relevant training;
8. Monitor child postplacement services;
9. Maintain the files and data relative to the adoption process according to the conditions provided by law;
10. Ensure that the adoption law and the principles of the child's best interest, of adoptability, and of subsidiarity are respected;
11. Provide and disseminate information about domestic and intercountry adoption;

12. Authorize and supervise operations of LAAs (adoption agencies) in Haiti, provided that they respect the provisions of the present law; and revoke or decline to renew licenses in cases of noncompliance with the present law or for any other relevant reason; and
13. Establish all procedures and regulations in conformity with the present law.

Article 39. The central authority has a multidisciplinary staff (lawyers, doctors, sociologists, psychologists, social workers, etc.), who work under the supervision of the director.

Article 40. Public officers directly or indirectly involved in the adoption process cannot own, manage, or be members of the board of directors of children's homes or LAAs or have conflicts of interest resulting from relationships with people or private organizations caring for or in contact with children who may be adopted. These agents must treat adoption files impartially and never use their position to facilitate the adoption process.

CHAPTER IV. THE ADOPTABILITY PROCESS AND THE ADOPTION PROCESS

SECTION 1. THE ADOPTABILITY PROCESS

Article 41. The biological parents or the family counsel, residing in Haiti, must address their petition to the central authority, which will register it and inform those responsible for the child of the consequences of the decision taken prior to proceeding with a social evaluation of the child's guardians.

Maintaining the child within his or her biological family must be encouraged throughout the evaluation period. During that time, the central authority must guide the family with the goal of preserving the family unit.

Article 42. Intercountry adoption is considered only after all other forms of family and permanent care of the child in Haiti have been duly evaluated.

Forms of care include social welfare support for families, placement in a foster family, intrafamilial adoption, domestic adoption, or any other solution addressing the child's specific needs and best interests.

Article 43. Adoption consent must be given by the biological parents or by the legal representative and must be stated in writing before the family court judge. It cannot be given before the child reaches the age of three months.

When it has been proved that one of the biological parents is deceased, unable to express his or her will, legally stripped of parental rights, or unknown, the other parent's consent is sufficient.

In the case of a child who has lost both father and mother or whose parents cannot express their will, the family council gives its consent to adoption.

In the case of adoption of a spouse's child, the consent of the other biological parent is required, except when the other biological parent is unknown, legally declared missing, deceased, missing, or legally deprived of parental rights.

A person under 18 years old can consent to the adoption of his or her child with the approval of a family court judge.

When a child has been abandoned, the mayor of the municipality where the child was found declares the birth of the child and gives his or her consent to the adoption before the family court judge.

Article 44. Consent to adoption is valid only if the child's biological parents or legal representative have been the objects of a social evaluation by the central authority. The central authority provides the necessary guidance and support to reunite the family and simultaneously ensures that the consent of the people responsible for the child has not been induced by payment.

Consent to adoption becomes final after a one-month period, which begins with the written consent to adoption before a family court judge. However, the judge cannot accept the consent of the biological parents or the family council prior to receiving the central authority's report.

Article 45. Adoptability must be established by the central authority to ensure that the adoption is the appropriate measure for the child, considering his or her best interest. This evaluation is composed of the following steps:

1. An evaluation that includes
 - a) Information about the child's identity;
 - b) The child's social environment;
 - c) The child's personal and family background;
 - d) The child's legal status;
 - e) The medical status of the child and of his or her family;
 - f) The child's particular needs; and
 - g) The child's expressed willingness to be adopted, according to his or her discernment capacity from the age of 12.
2. The identification of special-needs children upon conclusion of the evaluation and their inclusion on a specific list prepared by the central authority to facilitate the search for an adoptive family.
3. The social evaluation of the child's parents or legal representative by the central authority.
4. A report including the above information upon completion of the study by the central authority.

Article 46. The central authority has parental authority after the consent to adoption has been duly signed and the withdrawal period has elapsed, as stipulated in Article 44.

SECTION 2. THE ADOPTION PROCESS

Article 47. Persons desiring to adopt a child in Haiti must submit their request to the Haitian central authority for domestic adoptions, or to the central authority or an accredited adoption agency in their country of habitual residence for intercountry adoptions.

If the Haitian central authority (for domestic adoption cases) or authority of the receiving country (for intercountry adoptions) considers the petitioners to be qualified and eligible to adopt, it shall prepare a report including information about their identity; their legal capacity to adopt; their personal, family, and medical situation; their social environment; their motivation for adopting; their ability to undertake an adoption; and the children that they could care for. The central authority must prepare files of adoptive parents residing in Haiti.

The files of adoptive parents residing abroad must be transmitted to the Haitian central authority by the central authority or by an adoption agency of the hosting country.

Article 48. Adoption files of prospective adoptive parents must include documents as established by the internal regulations of the central authority.

Said regulations will be published in the official journal of the Republic by the Ministry of Social Affairs and Labor.

Article 49. The central authority shall undertake a matching process for adoptable children following the authority's established procedures and always considering the best interest of the child.

For domestic adoption, the Haitian central authority shall transmit the result of the matching process directly to the candidates. For intercountry adoption, the central authority shall transmit the decision to the central authority of the hosting country or to the adoption agency involved.

Article 50. Future adoptive parents must give their approval, in writing, to the matching of the child proposed for adoption within 15 working days of the matching process notification. This approval must be communicated to the Haitian central authority directly for domestic adoptions or through the adoption agency or central authority of the receiving country for intercountry adoptions.

Article 51. For intercountry adoptions, the Haitian central authority and the central authority of the hosting country must agree to the result of the matching and agree to continue the adoption process.

Article 52. Once the approval of the adoptive parents has been received, the Haitian central authority authorizes a period for the adoptive parents and the child to get to know each other. This socialization period is mandatory; it cannot be less than two weeks, whether for domestic or intercountry adoption.

Article 53. The central authority, within 10 days after the socialization period, authorizes or refuses to authorize the adoption based on an evaluation report.

Article 54. All documents included in the file are submitted for certification to the responsible clerk of the court of first instance, through the attorney chosen by the adoptive parents.

Article 55. After deliberation, the court of first instance, by reasoned decision, grants or refuses the adoption. In case of refusal on procedural grounds, the file shall be transmitted to the central authority for necessary action.

In case of refusal on substantial grounds, adoptive parents can appeal within 30 days of the judgment. The decision of the appeals court may be appealed to the Supreme Court.

Article 56. The appeal to the Supreme Court against the judgment of the appeals court is filed by the appellant in accordance with the form and schedule prescribed by the Code of Civil Procedure.

Article 57. The clerk of vital records of the adoptee's hometown shall register the adoption decision and issue an adoption certificate within five days.

Article 58. Adoption takes effect on the date the final decision of adoption is pronounced.

Article 59. In the case of intercountry adoptions realized with countries that have signed the Hague

Convention, the central authority delivers a certificate within 10 business days after the issuance of the act of adoption.

Article 60. The chargeable and payable costs and expenses, including reasonable professional fees, of persons involved in the adoption are fixed by a table prepared by the central authority.

Directors, administrators, and employees of organizations involved in an adoption shall not receive remuneration disproportionate with their rendered services.

SECTION 3. POSTPLACEMENT FOLLOW-UP

Article 61. The central authority must provide, for each domestic or intercountry adoption, postplacement supervision through reports submitted regularly by the adoptive parents. The reports are the responsibility of the adoption agency that assisted the adoptive parents in the adoption process and serve to monitor the child's development and integration into the adoptive family and environment. The reports are submitted during an eight-year period.

All reports will be included in the file of the adopted child.

Article 62. The central authority shall maintain in its archives, on paper and electronically, all documents included in the file of each domestic and intercountry adoption.

Article 63. The central authority is required to maintain information on the child's origins, including data relating to the identity of the child's mother and father, as well as to the medical history of the child and his or her family.

When permitted by law, such information will only be accessible to the child or to his or her legal representative, with the appropriate guidance.

Article 64. Personal data cannot be used for purposes other than those for which it was gathered or transmitted. This data includes, notably, the report on information gathered about the future adoptive parents' identity; their legal capacity and aptitude to adopt; their personal, familial, and medical situation; their social environment; their reasons for adopting; their ability to undertake an intercountry adoption; and background information on the children they are able to care for.

The same applies to the adoptability report on the social background of the child.

CHAPTER V. LICENSED ADOPTION AGENCIES

Article 65. Foreign licensed adoption agencies (LAAs) are authorized to operate in Haiti by the Haitian central authority, in accordance with adoption needs, which the central authority evaluates annually.

The central authority, depending on the evolution of domestic adoption and number of adoptable children, has the right to license domestic adoption agencies to facilitate the promotion of domestic adoptions.

Article 66. The central authority shall regulate the issuance, renewal, and revocation of the LAAs' authorization. The agencies' activities and obligations, as well as those of their representatives, are determined by the present law.

Article 67. To receive authorization to operate in Haiti, a domestic or foreign adoption agency must

1. Be officially licensed by the authorities in its country of origin and authorized by these authorities to work in Haiti;
2. Demonstrate competency, professionalism, and ethics in its work;
3. Respect the laws, regulations, and policies of Haiti and those of the country where it has its headquarters;
4. Have sufficient resources and qualified personnel to perform its mission;
5. Work only on a nonprofit basis;
6. Derive no improper financial gain or disproportionate remuneration for services rendered;
7. Exert no pressure to find children in order to satisfy adoptive parents' demands;
8. Adopt guidelines or internal policies organizing the management of its professional functions and its internal management;
9. Submit to the Haitian central authority an annual report on its activities in Haiti, including its financial situation; and
10. Avoid any contact with biological parents or the person in charge of the future adoptee prior to completion of the matching process.

Documents required to obtain the agreement or its renewal, as well as the duration of it, are established by the central authority.

Article 68. The responsibilities and duties of foreign adoption agencies working in Haiti include

1. Representing prospective adoptive parents in the adoption process;
2. Informing prospective adoptive parents who want to adopt children from Haiti regarding the technical and legal aspects of the adoption process and of the regulations of the Republic of Haiti;
3. Assisting prospective adoptive parents in preparation of their planned adoption and guiding them in file preparation;
4. Verifying the legal capability of prospective adoptive parents;
5. Verifying that prospective adoptive parents are completely prepared to adopt;
6. Routing the prospective adoptive parents' files to the Haitian central authority for the adoption process;
7. Directing prospective parents who wish to adopt special-needs children to specialized professionals who can guide them; and
8. Supporting future adoptive parents after the child's arrival, including assisting with the preparation of postadoption reports.

Article 69. The responsibilities and duties of domestic adoption agencies include

1. Informing future adoptive parents wishing to adopt children in Haiti or abroad of the technical and legal aspects of the adoption procedure and the legislation in force in Haiti or in the country of origin;
2. Assisting prospective adoptive parents in preparation of their planned adoption and guiding them in file preparation;

3. Preparing prospective adoptive parents for the implications of adoption;
4. Routing prospective adoptive parents' files to the Haitian central authority; and
5. Supporting future adoptive parents after the child's arrival, including assisting with the preparation of postadoption reports.

Article 70. Adoption agencies authorized to operate in Haiti are supervised by the central authority. By no later than the beginning of each fiscal year, they must send the central authority an annual report, including a financial report.

Article 71. The central authority can suspend or revoke the operating license of a foreign or domestic adoption agency if the agency sends false information or does not comply with the provisions of the present law, including those stipulated in Article 61.

These measures do not preclude any civil or criminal prosecution by the authorities.

CHAPTER VI. PENAL PROVISIONS

Article 72. Anyone who intentionally provides money, material goods, or any other benefit—or promises improper material gain—to the biological parents, family council, guardian, legal representative, other person taking care of the child, or authority or individuals involved in the adoption process in order to facilitate or complete the adoption will be sentenced to a prison term of 5 to 10 years or a fine of 100,000 to 500,000 gourdes.

Any biological parent, family council, guardian, legal representative, or other individual involved in the adoption process who receives money, material goods, or other benefit in order to facilitate or complete the adoption is subject to the same penalties.

Article 73. Any individual who kidnaps or sells children or traffics children for adoption purposes will be sentenced to 15 years to life in prison.

Article 74. The harvesting of organs or tissues and the adoption of a child for exploitation purposes will be punishable by hard labor for life.

Article 75. Any individual, employee, or representative of an institution who facilitates adoptions without going through the central authority will either pay a fine of 100,000 to 500,000 gourdes or serve a prison sentence.

CHAPTER VII. TRANSITIONAL AND FINAL PROVISIONS

Article 76. The present law applies to all files in progress for which the biological parents' consent to adoption has not yet been given before the family court judge.

For files in process where the consent has been given before the justice of the peace, the court of first instance will order the biological parents to appear in person at a given time and date, either to confirm their informed consent to simple adoption or to give their informed consent to full adoption.

Article 77. In case of natural disaster or other emergency, the central authority shall suspend all adoptions for a specific period in order to allow the family reunification of separated children.

All adoptions can also be suspended when there are serious irregularities in the adoption process or weaknesses in adoption policies and practices preventing the central authority from accomplishing its mission in accordance with the provisions of the present law.

CHAPTER VIII ABROGATION CLAUSE

Article 78. The present law repeals all adoption laws, decrees, and provisions thereof, in particular the decree of April 4, 1974, and shall be published and enforced at the behest of the ministers of Social Affairs and Labor, Justice and Public Safety, Interior and Territorial Communities, and Foreign Affairs, as concerns each.

Signed at the Senate of the Republic, on May 10, 2013, the 210th year of Independence.

Steven Irvenson BENOIT
Premier Secrétaire
Steven Irvenson BENOIT
First Secretary

Simon Dieuseul DESRAS
Président du Sénat

Simon Dieuseul DESRAS
President of the Senate



Joseph Joël JOHN
Deuxième Secrétaire

Joseph Joël JOHN
Second Secretary

Signed at the Chamber of Deputies, on August 29, 2013, the 210th year of Independence.

Gluck THEOPHILE
Premier Secrétaire
Gluck THEOPHILE
First Secretary

Jean Tholbert ALEXIS
Président de la Chambre des Députés

Jean Tholbert ALEXIS
President of the Chamber of Deputies



Oglène PIERRE
Deuxième Secrétaire
Oglène PIERRE
Second Secretary

ON BEHALF OF THE REPUBLIC

The President of the Republic hereby orders that the Law Reforming Adoption, voted on by the Senate on May 10, 2013, and by the Chamber of Deputies on August 29, 2013, be stamped with the seal of the Republic, printed, published, and enforced.

Signed at the National Palace, Port-au-Prince, on October 28, 2013, the 210th year of the Independence.

Michel Joseph MARTELLY



Institute for Social Welfare and Research (IBESR)

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