

INTERNATIONAL ADOPTION PROTOCOL BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF SPAIN

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The Republic of the Philippines and the Kingdom of Spain, hereinafter the Parties, have agreed to the following in consideration of :

The Convention on the Rights of the Child, adopted by the United Nations' General Assembly on November 20, 1989, establishes that international adoption can be considered as another form of child care, in the event that the child can not be provided with a foster family or that he / she can not get adequate child care in the country of origin;

In agreement with their respective legislation, both Parties have ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague, May 29, 1993), and therefore, both Parties agree in working together for the sake of the child's best interests;

The principle of the child's best interests, that is to say, he / she is raised in stable family conditions, will be the essential basis for the interpretation of this Protocol;

Adoptive placement must take into account the child's cultural identity;

The rights and conditions of and safeguards for the international adoptive child should be equivalent to those of the national adoptive child;

The central and the appropriate bodies of both Parties must be in charge of the child's placement and no undue profit should be obtained by the persons involved in the process; and

Both Parties intent to offer each other maximum cooperation for adoption in their respective countries;

FOR ALL OF THE ABOVE, both Parties in full possession of their legislative powers and exercising their responsibilities, agree to comply with the Protocol.

TITLE I

SUMMARY OF THE APPLICATION

ARTICLE 1

The current Protocol has the following objectives:

- a. To establish a system of cooperation between the Parties to prevent and completely eliminate the abduction, sale and illegal traffic of children.
- b. To agree to mutual acceptance of full adoptions made in the context of this Protocol in agreement with the legislation of both countries.

ARTICLE 2

- a. The Protocol shall be relevant in the adoption of a child whose permanent residence is in the Philippines or in Spain by persons permanently living in the other country.

b. For the purpose of this Protocol, a “child” is a person under the age of eighteen, except in the case of a younger age provided by the government’s law.

TITLE II

CENTRAL AUTHORITIES AND OFFICIALLY APPROVED ORGANIZATIONS

ARTICLE 3

a. Both Parties appoint as “Central Authorities” the following institutions:

For the Philippines: Inter-Country Adoption Board (ICAB)

For Spain : Each of the Spanish institutions authorized for the residents of their respective territories which have fulfilled the requirements provided in Article 6.2.b of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague, May 29, 1993). The aforementioned institutions are listed in Appendix A.

b. The Dirección General de Acción Social del Menor y de la Familia (General Office for Child and Family Welfare), which is part of the Ministry of Labor and Social Affairs, shall be the Central Authority for the transmittal of reports and for communication with the ICAB. However, in the event that any of the approved Spanish Central Authorities included in Appendix A, process the applications directly with the ICAB, the Ministry of Labor and Social Affairs shall inform beforehand the ICAB and the agreement shall take place after the Central Authority has received a letter from the ICAB acknowledging receipt of the communication mentioned above.

c. The Central Authorities may delegate all or part of their responsibilities to officially designated public or private institutions proposed by one of the Parties approved by the other Party.

d. The Central Authorities shall serve as supervisors of the approved organizations and shall impose or require that competent authorities immediately impose sanctions for failure to comply with, or infractions of the laws of this Protocol, the international agreements, and the laws for the defense of children.

ARTICLE 4

a. The Central Authorities shall co-operate and promote the liaison between the respective official authorities to ensure the protection of prospective adopted children and to attain the rest of this Protocol’s objectives; in particular, these authorities, in agreement with their respective legislation, shall comply with and carry out the pre-adoption process which consists in submitting for adoption a prospective adoptive child to the most suitable persons. They shall also supervise the next stage of the process after the legal ruling.

b. The Central Authorities shall inform each other about their national legislation concerning adoption and about any other related matters, and shall maintain in close contact in regard to the application of the Protocol so that any difficulty that might arise can be eliminated.

ARTICLE 5

The Central Authorities shall take the appropriate measures in order to :

a. Keep and exchange information regarding both the child and the prospective adoptive parent’s history and present situation, and concerning the success of the child’s adaptation to them;

b. Facilitate, follow and activate the adoption process;

c. Prevent improper, illegal profits in the adoption process as well as any action against the objectives of this Protocol;

- d. Execute and promote adoption control activities in both countries;
- e. Provide with the respective parties evaluation criteria for the international adoptions carried out under the auspices of this Protocol.

ARTICLE 6

The adoptions envisaged in this Protocol shall be carried out when :

- a. The Central Authority of the country of origin has declared that no legal objections exist for the child's adoption;
- b. The Central Authority has verified that the international adoption is in the child's best interest;
- c. The Central Authority of the country of reception guarantees that the prospective adoptive parents qualify for international adoption according to the requirements of Appendix B;
- d. The Central Authority of the country of origin has assigned the child to the prospective adoptive parents;
- e. The Central Authority of the country of reception gives a guarantee that the child will be authorized to enter and live permanently in that country.

ARTICLE 7

The Central Authority of the country of reception, in agreement with its legislation, shall guarantee the compliance of all necessary requirements for recognizing full adoption, shall inform the Central Authority of the country of origin of the decision, and shall forward the relevant documents.

ARTICLE 8

If during the process of adoption it becomes evident that the adoption is not being carried out in the child's best interest, the Central Authority that upholds such an objection shall contact the Central Authority of the other country so that adequate measures can be taken by mutual consent to protect the child's rights. The Central Authorities of both countries shall completely guarantee the child's safety and coordinate efforts until a final agreement on the child's protection is reached.

TITLE III

REQUIREMENT AND PROCEDURES

ARTICLE 9

In the processing of the petition forms between the Central Authorities of both countries, the requirements shall be fulfilled and additional documents listed in Appendix B, an integral part of this Protocol, shall be requested. Appendix C contains the procedures for filing the petitions.

ARTICLE 10

The conditions listed in Appendix B should be adapted at any given time to the legislation and / or to the criteria and procedures of both countries, and can be modified at any time through an exchange of letters between the Department of Social Welfare and Development and the Ministry of Labor and Social Affairs once it has been approved in writing by the Central Authorities of both parties.

ARTICLE 11

The Central Authorities shall keep safe all the information regarding the child's origin and family history, when available. It will be possible to access this information after permission is granted within the limits established by the laws of both countries.

ARTICLE 12

a. When an official authority has sufficient proof that there is risk of failure to comply with any of the stages of the procedures for international adoption provided in this Protocol, it shall contact its Central Authority immediately so that the Central Authorities of both countries can work together to adopt the measures deemed necessary.

b. Any discrepancy that might arise in the interpretation or application of this Protocol shall be resolved by means of consultation or negotiations.

TITLE IV

FINAL CLAUSES

ARTICLE 13

a. Any change or revision of the text of this Protocol shall be made by mutual consent of both parties. This change or revision shall be consistent with the provisions of the matter. Any changes made to the requirements included in Appendix B shall be made in writing by the Central Authorities as long as these revisions do not fundamentally change the provisions of this Protocol. However, any change to the Protocol or to Appendix B shall not affect the process of filing an application.

b. This Protocol shall continue to be valid until one of the Parties notifies officially, through diplomatic channels, of its decision to postpone for a period of time, or to contest the validity of the Protocol. If such a case exists, this Protocol shall be valid for ninety (90) days after the date of the official notification. Such a suspension shall not affect the adoption applications in process, nor shall it change any of the previous obligations met in regard to the children already given for adoption.

ARTICLE 14

This Protocol shall provisionally be valid for 30 days after the date of its signature and shall take effect from the date of the last written notification through diplomatic channels between the Parties, stating that all of the internal requirements have been fulfilled.

This Protocol was made in Manila on 12 November 2002, both in English and Spanish, and they are both equally valid.

FOR THE REPUBLIC OF

FOR THE KINGDOM OF

THE PHILIPPINES

SPAIN

(Sgd.)

Sgd.)

LOURDES G. BALANON

RAMON GIL-CASARES STRUSTEGUI

Undersecretary for

Secretary of State for

Social Welfare and Development

Foreign Affairs

APPENDIX A

AUTONOMOUS COMMUNITY Dirección General de Infancia y Familia
OF ANDALUCIA Consejería de Asuntos Sociales
Avda. Hytasa, 14
41071 SEVILLA

AUTONOMOUS COMMUNITY Instituto Aragonés de Servicios Sociales
OF ARAGÓN Departamento de Sanidad, Consumo y
Bienestar Social
Cesareo Alierta, 9 – 11
50071 ZARAGOZA

AUTONOMOUS COMMUNITY Instituto Asturiano de Atención Social a
OF PRINCIPADO DE ASTURIAS la Infancia, Familia y Adolescencia
Consejería de Asuntos Sociales
General Elorza, 35
33071 OVIEDO

AUTONOMOUS COMMUNITY Consejería de Bienestar Social, Sanidad
OF BALEARES y Cooperación
Consell Insular de Ibiza y Formentera
Edificio Servicios Sociales
Cosme Vidal Llaser, s/n
07800 IBIZA

Presidencia del Consell Insular de
Menorca
Consell Insular de Menorca
Cintadella, 89

07712 MAHON (MENORCA)

Consejería de Bienes y Servicios

Consell Insular de Mallorca

General Riera, 67, 2[o]

07071 PALMA DE MALLORCA

AUTONOMOUS COMMUNITY Dirección General de Protección del
OF CANARIAS Menor y la Familia

Cosejería de Empleo y Asuntos Sociales

Anselmo J. Benitez, 10 – 12 Edif. Duque

38071 SANA CRUZ DE TENERIFE

AUTONOMOUS COMMUNITY Dirección General de Acción Social

OF CANTABRIA Consejería de Sanidad, Consumo y

Servicios Social

Hernán Cortés, 9, 3[a] Planta

39071 SANTANDER

AUTONOMOUS COMMUNITY Dirección General de Servicios Sociales

OF CASTILLA-LA MANCHA

Consejería de Bienestar Social

Ronda de Buenavista, 47, 2[a] Planta

45071 TOLEDO

AUTONOMOUS COMMUNITY Gerencia de Servicios Sociales

OF CASTILLA-LEON Consejería de Sanidad y Bienestar Social

Padre Francisco Suárez, 2

47071 VALLADOLID

AUTONOMOUS COMMUNITY Instituto Catalán del Acogimiento y la

OF CATALUNA Adopcion

Generalitat de Catalunya

Gran Via de los Corts Catalanes, 604

08071 BARCELONA

AUTONOMOUS COMMUNITY Dirección General de Infancia y Familia

OF EXTRAMADURA Consejería de Bienestar Social

Avda. Reina Sofia, s/n

06800 MERIDA (BADAJOZ)

AUTONOMOUS COMMUNITY Dirección General de la Familia

OF GALICIA Consejería de Familia y Promoción del

Empleo, Mujer y Juventud

Edificio San Caetano, s/n

15771 SANTIAGO DE COMPOSTELA

AUTONOMOUS COMMUNITY Dirección General de Servicios Sociales

OF LA RIOJA Consejería de Salud y Servicios Sociales

Villamediana, 17

26071 LOGROÑO

AUTONOMOUS COMMUNITY Instituto Madrileño del Menor y la Familia

OF MADRID Consejería de Servicios Sociales

Gran Vía, 14

28071 MADRID

AUTONOMOUS COMMUNITY Instituto de Servicios Sociales de la Región

OF MURCIA de Murcia

Avda. De la Fama, 3

30071 MURCIA

AUTONOMOUS COMMUNITY Instituto Navarro de Bienestar Social
OF NAVARRA Departamento de Bienestar Social,
Deporte y Vivienda
Gonzalez Tablas, s/n
31071 PAMPLONA

AUTONOMOUS COMMUNITY Diputación Foral de Bienestar Social
OF PAIS VASCO Diputación, 13, 1[a]
01071 VITORIA

Diputación Foral de Acción Social
Ugasco, 3, 2[a] Planta
48071 BILBAO
Diputación Foral de Servicios Social
Especializados
Paseo Zarategui, 99
20015 SAN SEBASTIAN

AUTONOMOUS COMMUNITY Dirección General de la Familia, Menor y
OF VALENCIA Adopciones
Consejería de Bienestar Social
Paseo de la Alameda, 16
46071 VALENCIA

AUTONOMOUS CITY OF MELILLA Dirección General de Bienestar Social
Consejería de Bienestar Social y Sanidad
Carlos Ramirez de Arellano, 10
52071 MELILLA

AUTONOMOUS CITY OF CEUTA Consejería de Salud Publica, Bienestar
Social y Mercados

Real, 116 Bajo Cy D

51701 CEUTA

CENTRAL AUTHORITY FOR Dirección General de Acción Social, del

TRANSMISSION OF Menor y la Familia

COMMUNICATIONS Ministerio de Trabajo y Asuntos Sociales

José Abascal, 39

28071 MADRID

APPENDIX B

REQUIREMENTS AND ADDITIONAL DOCUMENTS REQUIRED

REQUIREMENTS :

Adoptive Parents :

A. In compliance with Section 9 of Article III of the Philippine Intercountry Adoption Act (RA 8043) and in agreement between the Parties of this Protocol, the person or persons wanting to adopt a Filipino child must satisfy the following requirements:

1. Be at least twenty-seven (27) years old at the time a petition is filed, and must be at least sixteen (16) years older than the adoptive child, except when the applicant is the direct descendant or the spouse of the direct descendant of the child;
2. If married, submit a joint application with the spouse;
3. Be able to assume the parental rights and responsibilities provided by the law; the applicant/s should have received professional legal advice by an accredited advisor in their country;
4. Not have been convicted of a crime for immoral behavior;
5. Satisfy the legal requirements for adoption;
6. Be able to provide adequate assistance and financial support as well as moral values and positive role models for all of their children, including the proposed adoptive child;
7. Be determined to defend children's basic rights as written in the Philippine legislation, in the United Nations Convention and in the Hague Convention, and to comply with rules and regulations of the laws;
8. Must be from a country that maintains diplomatic relations with the Philippines, and that has a public administration with an equivalent accredited and authorized organization, and legislation that allows international adoption;
9. Satisfy all the requirements provided in this document as well as in other Philippine laws that might apply.

B. In compliance with Spanish legislation, the person or persons wanting to adopt a Spanish child must satisfy the following requirements:

1. Must be 25 years old. In case of adoption by spouses, it is sufficient that one of the spouses satisfies the age

requirement.

2. Must be, at least, fourteen (14) years older than the adopted child.

Adoptive Child :

A. In accordance with Section 3 of Article I of the Philippine Intercountry Adoption Board (RA 8043):

Children under the age of fifteen (15) who, according to the official authority of the country of origin, satisfy the requirements to be considered for adoption.

Therefore, only children under 15 may be considered for adoption in the Philippines and only children under 15 may be considered for adoption in Spain by the Inter-country Adoption Board.

An exception can be made for children who are 18 and younger if they are adopted with their siblings.

B. In accordance with the Spanish legislation :

1. Only those who are under eighteen (18) years old can be adopted provided that they have not become legally independent. However, those who are under eighteen but legally independent can be eligible for adoption if, before obtaining their independence, they resided in a foster home for a continuous period of time before the age of fourteen.

2. Legal descendants up to the second degree of consanguinity or affinity cannot adopt each other.

ADDITIONAL DOCUMENTS REQUIRED

Adoptive Parents :

A. Section 28 of the Regulations of RA 8043 states that to qualify to adopt a Philippine child all applications must be accompanied by the following additional documents:

1. Reports about the home and the family of the applicant;
2. Birth certificate of the applicant;
3. Marriage certificate of the applicant or final decree of divorce, if applicable;
4. Written consent of adoption by the applicant's biological or adopted children, if older than ten (10). The document should be attested by, and obtained from a social worker after the prospective parent has received the appropriate advice;
5. Medical examination by a certified doctor and psychological evaluation by a psychiatrist;
6. Last income tax report or any other evidence of the applicant's solvency;
7. Criminal records certified issued by the police or by any other public authority in the applicant's town of residence;
8. Certificate of good conduct issued by either the applicant's church, by an employer or a member of the applicant's close community who is not a family member, and who has known the applicant for at least five years;
9. Certificate issued by the officially accredited organization certifying that the applicant meets all the necessary requirements provided by law to adopt, and authorizing the adopted child to enter the country in provisional custody so that he / she can obtain permanent residency once the adoption process is completed;
10. Recent postcard size photographs of the applicant and his /her close family.

B. The Spanish law states that to qualify for adopting a Spanish child, all applications must submit the following additional documents:

1. Birth certificate of the prospective adoptive parents;
2. Marriage certificates;
3. Criminal records certificate;
4. Medical examination report;
5. Income tax report;
6. Psychological and social report;
7. Certificate of Eligibility for adoption.

Adoptive Child :

A. Section 8 of Article II of RA 8043 states that the following additional documents must be submitted to the Spanish Central Authority:

1. Detailed history of the child's situation;
2. Birth certificate / Certificate of foundling;
3. Written consent for adoption / Legal Statement of Abandonment;
4. Death certificate of the parents, if applicable;
5. Medical examination of the child;
6. Psychological evaluation of the child, if applicable;
7. Recent photograph of the child.

B. The Spanish legislation states that the following additional documents must be submitted to the Central Authority of the country of reception:

1. Social background study of the child;
2. Certificate of eligibility for international adoption issued by the official authority;
3. Birth certificate;
4. Death certificate of the parents, if applicable;
5. Medical examination / Medical records of the child;
6. Recent photograph of the child.

APPENDIX C

PROCEDURE FOR ADOPTION OF A PHILIPPINE CHILD

1. Once the Intercountry Adoption Board (ICAB) has accepted the adoption petition submitted by the Spanish Central Authority, the former shall forward a notification with approval or rejection of the prospective adoptive parents' application (PAP). In addition, the ICAB shall send the Spanish Central Authority a report stating the

reasons for the decision.

2. The ICAB shall forward all the Spanish applications received by separate channels to the Spanish Central Authority so that all applications are processed in compliance with the Protocol.
3. All inquiries related to the Protocol must be addressed to the ICAB and to the Dirección General de Acción Social para los Menores y la Familia (General Office for Child and Family Welfare).
4. Once the child is given for adoption to the PAP, the ICAB shall provide all the available information about the child.
5. The Spanish Central Authority shall notify as soon as possible of the PAP's decision accepting the adoption of the child. In the event that the PAP reject the proposed adoption, the Spanish Central Authority shall return the child's adoption records, and shall inform the ICAB of the reasons for the PAP's decision.
6. The Spanish Central Authority shall finalize plans with the PAP concerning the child's placement.
7. According to the Philippine law, the PAP shall be responsible for all the expenses made in the child's placement in the pre-adoptive stage.
8. The Spanish Central Authority shall notify the ICAB of the child's arrival in Spain.
9. The Spanish Central Authority shall monitor the child's adaptation process under the PAP's custody, and shall be responsible for sibling reports every two months for six months to the ICAB after the date of the child's arrival.
10. In case of any difficulties in the child's adaptation process, the Spanish Central Authority shall immediately notify the ICAB within a period of seventy-two (72) hours. The Spanish Central Authority shall do its utmost to assist the family and the child, including looking for an alternative appropriate family. When the only possible solution for the child's welfare is repatriation, the Spanish Central Authority, in consultation with the ICAB, shall take the necessary measures for the child's repatriation.
11. Once the child is placed under the parent's custody, the Spanish Central Authority shall do its utmost to support court ruling in favor of the parent's rights to adopt the child. The Spanish Central Authority shall support the parents only when the adoption is for the best interest and welfare of the child. In addition, the official Philippine Authority (Department of Social Welfare and Development) shall issue an Affidavit of Consent to Adoption for intercountry adoptions to be processed through the ICAB.
12. The Spanish Central Authority shall notify the ICAB about the finalization of the adoption procedure of the child, sending it one authenticated copy of the judicial resolution of adoption.
13. The Spanish Central Authority shall inform the Philippine Embassy in Spain of any change in the nationality and residence of the child.

Post-adoption Stage :

The ICAB and the Spanish Central Authority shall create and coordinate a post-adoption program.

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