

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

Research Response Number: GHA34547
Country: Ghana
Date: 27 March 2009

Keywords: Ghana – Formal adoption – Legal requirements – Customary adoption

Questions

- 1. Please advise whether formal adoption available in Ghana?**
- 2. What form does it take and what are the legal requirements? Do both biological parents have to consent to the adoption?**
- 3. Please provide any information available as to why it may not be reasonably practicable to formally adopt in Ghana?**
- 4. Is there any practice in Ghana of customary adoption and if so, what form does it take?**
- 5. In relation to customary adoption - is it usual that it only takes place if the child's biological parents are deceased? Is it usual that customary adoption would only take place among relatives? Please advise whether the child's biological father would have to consent to the adoption?**

RESPONSE

- 1. Please advise whether formal adoption available in Ghana?**
- 2. What form does it take and what are the legal requirements? Do both biological parents have to consent to the adoption?**

A MRT research response dated 5 August 2008 includes information on the legal regulations governing official adoption in Ghana. The research response refers to 'The Children's Act 1998' as the relevant legislation on adoption in Ghana (MRT Research & Information 2008, *Research Response GHA33612*, 5 August (Questions 4 & 5) – Attachment 1).

An RRT research response dated 9 November 2006 provides information on the national law on adoption in Ghana and sets out the sections of 'The Children's Act 1998' covering adoption (RRT Country Research 2006, *Research Response GHA30944*, 9 November (Question 2) – Attachment 2).

A copy of 'The Children's Act 1998', accessed from the Ministry of Women and Children's Affairs Ghana website, is attached. Part IV of the Act covers fosterage and adoption, and Sections 65 to 86 are the relevant sections for adoption. In relation to the legal requirements for formal adoption in Ghana, the Act includes the following provisions:

65. Jurisdiction and procedure for adoption –

An application for an adoption order may be made to the High Court, Circuit Court or to any Family Tribunal within the jurisdiction where the applicant or the child resides at the date of the application.

66. Application for adoption –

- (1) An application for an adoption order may be made jointly by a husband and his wife to adopt a child.
- (2) An application for an adoption order may be made by the mother or father of the child alone or by either of them jointly with a spouse.
- (3) An application for an adoption order may be made by a single person subject to the provisions of this Sub-Part except that this shall only apply to a citizen of Ghana and with due regard to the best interest of the child.

67. Restrictions on making adoption orders –

- (1) An adoption order shall not be made unless the applicant or, in the case of a joint application, one of the applicants –
 - (a) is twenty-five years of age and is at least twenty-one years older than the child; or
 - (b) is a relative of the child and is twenty-one years of age.
- (2) A male applicant shall only be granted an adoption order if the application is in respect of his son or the court is satisfied that special circumstances warrant the order.
- (3) An adoption order shall not be made for a child unless –
 - (a) the applicant and the child reside in Ghana but this shall not apply if the applicant is a citizen of Ghana resident abroad;
 - (b) the child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and
 - (c) the applicant has notified the Department of his intention to apply for an adoption order for the child at least three months before the date of the order.
- (4) Except as provided under section 66 an adoption order shall not be made to authorise more than one person to adopt a child.

... Conditions for adoption order

- 70.** (1) Before a court makes an adoption order it shall be satisfied that –
- (a) the consent required under this Sub-Part for the adoption order has been obtained and that the parent or guardian of the child understands that the effects of the adoption order will mean permanent deprivation of parental rights;
 - (b) it is in the best interest of the child and that the wishes of the child have been considered if the child is capable of forming an opinion;
 - (c) if the child is at least fourteen years of age, his consent to the adoption has been obtained unless it is impossible for the child to express an opinion; and
 - (d) the applicant has not received or agreed to receive any payment and that no person has made or agreed to make any payment or given or agreed to give any reward to the applicant for the adoption except such as the court may order.
- (2) The court may impose conditions when granting an adoption order and may require the applicant to enter a bond to make such provision in respect of the child as the court considers necessary.
- (3) The adoption order shall include the following particulars the –
- (a) date and place of birth of the child;
 - (b) name, gender and surname of the child before and after adoption;

- (c) name, surname, address, citizenship and occupation of the adopter; and
 - (d) date of the adoption order,
- unless the court directs otherwise.

In relation to whether both biological parents have to consent to the adoption, the consent of parents and guardians is covered in Sections 68 and 69 of the Act. Section 68(1) of the Act indicates that “[a]n adoption order shall only be made with the consent of the parents or guardian of the child.” Pursuant to Section 68(2) of the Act, “[t]he court may dispense with the consent of any parent or guardian of the child if satisfied that the parent or guardian has neglected or persistently illtreated the child, or that the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.” Sections 68 and 69 of the Act are set out below:

Consent of parents and guardians

68. (1) An adoption order shall only be made with the consent of the parents or guardian of the child.

(2) The court may dispense with the consent of any parent or guardian of the child if satisfied that the parent or guardian has neglected or persistently illtreated the child, or that the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

(3) Any consent under this section may be given without the knowledge of the identity of the applicant for the order and where the consent is subsequently withdrawn only because the identity of the applicant was not known, the consent shall be considered to have been unreasonably withheld.

(4) Any parent or guardian of a child the subject of an application for adoption who has given consent for the adoption order shall not be entitled to remove the child from the care and possession of the applicant except with the permission of the court and in the best interest of the child.

Other consent

69. (1) The court may require the consent of any person for an adoption order if it considers that the person has any rights or obligations in respect of the child such as under an agreement, court order or under customary law.

(2) Subject to subsection (2) of section 66, where a married person is the sole applicant, the court may require the consent of the spouse of that person before the adoption order is made.

Section 75 of the Act sets out the effect of the adoption on parental rights:

75. Effect of adoption on parental rights –

(1) When an adoption order is made-

(a) the rights, duties, obligations and liabilities including those under customary law of the parents of the child or of any other person connected with the child of any nature whatsoever shall cease; and

(b) the adopter of the child shall assume the parental rights, duties, obligations and liabilities of the child with respect to custody, maintenance and education as if the child were born to the adopter.

(2) Where an adoption order is made jointly to a husband and wife, they shall assume the parental responsibilities jointly and the child shall relate to them as parents as if born naturally by them as husband and wife (Parliament of the Republic of Ghana 1998, 'The Children's Act, 1998', Act 560, Ministry of Women and Children's Affairs Ghana website, 30 December http://www.mowacghana.net/files/childrens_act.pdf - Accessed 20 March 2009 – Attachment 3).

An article from the August 2007 issue of *Children and Youth Services Review* provides information on adoption procedures in Ghana. It is stated in the article that:

4.2.1. *The adoption procedures*

These entail the following; 1) the purchase of an application form together with a medical form by an applicant at the cost of US \$5.5; 2) these forms are filled and submitted to the DSW [Department of Social Welfare]; 3) the applicant is interviewed and a home visit of the applicant is conducted by a social worker; 4) a report is then written and submitted to the Adoption Placement Committee (APC) for approval or otherwise; 5) the home visit report together with the application and medical forms are discussed by the APC; and 6) if the application is approved, a baby or child is placed with the applicant for 3 months prior to formal adoption in court (e.g., high court of the family tribunal). This is to enable the ascertainment of the fact of whether or not both the child and adoptive parent are compatible.

The cost of the application form for adoption is quite expensive. This may imply that it makes it impossible for prospective adopters who cannot afford it, thus denying them the opportunity of adopting children. Secondly, the fact that the adoption procedures require medical examination may be indicative of the fact that only barren prospective adopters can adopt children from the Home, even though the stipulated category of people eligible to adopt children indicates otherwise (e.g., prospective adopters who already have children and desire to cater for abandoned and neglected children can equally adopt).

4.2.2. *Legal procedures involved in the adoption process*

The legal procedures in adoption include 1) when the child and adoptive parents are observed to be compatible, then after the 3 month period, a lawyer or counsel who is conversant with the adoption procedure is contacted to get documents ready for filing at the court; 2) at this time, the social worker must have written the Director's report regarding the personal history and accommodation facilities of the applicant, as well as the history of the child. The report then concludes with his/her observations and recommendations. This report is also filed at the court; and 3) finally, in order to regularize the adoption process in court, on an agreed date, the lawyer, social worker, child and applicant appear before a judge or magistrate for an adoption order to be made.

After the adoption procedures have taken place, the court issues an order that confers the status of parenthood on the adoptive parents. However, whereas some countries e.g., United States stipulate that the adopted child receives a new birth certificate that bears the child's new name in accordance with that of the adoptive parents, in Ghana, as this paper indicates a new birth certificate is not issued to the adopters. This is in keeping with Kramarae and Spender's (2000) argument that in other countries adoption does not necessarily lead to the issuance of a new birth certificate (Akpalu, D. 2007, 'Adoption of children and the contribution of the Osu Children's Home in Ghana', *Children and Youth Services Review*, Volume 29, Issue 8, August, pp. 1075-1076 – Attachment 4).

A States parties report by Ghana submitted under Article 44 of the UN Convention on the Rights of the Child, set out in a report dated 14 July 2005, includes the following information on adoption in Ghana:

G. Children deprived of their family environment

150. The DSW is the state agency responsible for providing homes or family for children deprived of their family environment. Some of the measures taken to provide conducive family environment to children include adoption, care, placement and fosterage.

H. Adoption

151. The DSW places such children with interested persons and processes reports to the courts for the legalisation of the adoption, to ensure that the children are not thrown out of the family, even after the death of the adoptive parent. During this period, if DSW finds out that the adoptor (s) and the placed child are incompatible, the child will be returned to the DSW.

152. The applicable law and procedures on the basis of which adoption is determined is in the Children's Act, sections 65-86 and the Adoption Rules. The Act outlines the following: jurisdiction and procedure for adoption; application for adoption; restrictions on making adoption orders; consent of parents and guardians; other consent; conditions for adoption order; interim order; knowledge of adoption by child; application by non-citizen; children previously adopted; effect of adoption on parental rights.

153. Section 70 (1) (b) of the Children's Act states that before a court grants an adoption order, it will be satisfied that the adoption "is in the best interests of the child and that the wishes of the child have been considered if the child is capable of forming an opinion." The application to adopt a child may be made to the High Court, Circuit Court or to any Family Tribunal with jurisdiction where the applicant or the child resides at the date of application (section 65).

154. By contrast to local adoption, the procedure for inter country adoption has become more stringent under the Children's Act to reflect international standards, than it was under the previous law. Under the Children's Act an order of adoption may be not be granted to a non citizen who is single. In addition to this, an adoption order cannot be granted to a foreigner unless the foreign applicant and the child are both resident in Ghana. Adoption orders for non citizens are also affected by the restrictions and interim orders that can be imposed on citizens. The relevant portions may be found from sections 65-78.

155. The DSW does the following before a court grants an adoption order:

(a) Investigates the background of the couples who want to adopt, to see their financial and social status and their living conditions before placing children with them. Within the first-three months of placement, the DSW visits the adoptor placed with children to ascertain the compatibility of the child and the adopted parent (s);

(b) The principle of the best interest of the child is always ensured even in the case of relative adoption. The child is interviewed and the process is explained to him/her in the language within the capacity of his/her understanding (UN Committee on the Rights of the Child 2005, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Second periodic reports of States parties due in 1997: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/65/Add.34, 14 July, Paragraphs 150-155 <http://tb.ohchr.org/default.aspx> - Accessed 27 March 2009 – Attachment 5).

3. Please provide any information available as to why it may not be reasonably practicable to formally adopt in Ghana?

The previously mentioned article from the August 2007 issue of *Children and Youth Services Review* indicates that in relation to adoption procedures in Ghana:

The cost of the application form for adoption is quite expensive. This may imply that it makes it impossible for prospective adopters who cannot afford it, thus denying them the opportunity of adopting children. Secondly, the fact that the adoption procedures require medical examination may be indicative of the fact that only barren prospective adopters can adopt children from the Home, even though the stipulated category of people eligible to adopt children indicates otherwise (e.g., prospective adopters who already have children and desire to cater for abandoned and neglected children can equally adopt).

The article also indicates that:

The Department [DSW] and especially the OCH [Osu Children's Home] have achieved a lot, in that they have cared for and protected many children exposed to both moral and physical dangers and in need of care and protection. Some of whom are now responsible and respectable citizens of Ghana today. Furthermore, both the Department and the Home have solidified marriages and families at large through their roles in adoption.

However, several constraints are encountered in the midst of these achievements. Some of the main difficulties encountered by the officials include the non-availability of babies and/or children to be adopted. Two main factors may explain this. Although adoption may be increasingly recognized for single persons who want to be parents, the number of children available for adoption has been decreasing as more pregnant women are choosing to either to keep their infants or to have abortion. Secondly, the fact that sometimes doctors and nurses encourage couples or adults who have a particular sex and thus need the other sex and/or childless adults to take abandoned and orphaned children in the clinics and hospitals without consulting the Director of the DSW constitutes another explanation. This is contrary to the postulations of other studies (e.g., May, 1999) that in certain societies e.g., Sweden the rate of adoptions is deliberately reduced.

In relation to the length of time it takes to adopt a child, the study referred to in the article indicates that "(42%), that is nearly half wait for more than 2 years" to adopt a child. According to the article:

4.3. Pace of the adoption procedure and the number of times a child is adopted

In order to ensure that available children are found new parents and/or homes as soon as practicable, the pace of the procedures of adoption need to enable this. On the basis of this, the study revealed that most of the social workers indicated that the pace of the process is moderate (69.2%), fast (7.7%) and slow (23.1%) (Fig. 2). Further, in most cases as (Fig. 3 below) indicates, it takes 6 months to adopt a child, in other cases it takes 3 months (8%), 12 months (18%) and 24 months (8%). The 'other' in Fig. 2 refers to more than 24 months, the largest group by far (42%), that is nearly half wait for more than 2 years. However, it depends on the availability of babies/children, the sex preferred and the number of applicants who are already on the waiting list.

Further, the number of times a child is adopted ranges from once a month (8.3%), twice a month (16.7%), thrice a month (8.3%), four times a five times (16.7%), six times (8.3%) twenty times (33.3%) a month respectively (Fig. 3) (Akpalu, D. 2007, 'Adoption of children and the contribution of the Osu Children's Home in Ghana', *Children and Youth Services Review*, Volume 29, Issue 8, August, pp. 1076-1077 & 1081 – Attachment 4).

A document dated 23 January 2006 regarding the UN Committee on the Rights of the Child's consideration of the second periodic States parties report by Ghana, notes that a representative of Ghana had indicated that "[t]he adoption procedure in Ghana was cumbersome because the Government took numerous precautionary measures in order to ensure that the adoptive parents had the child's best interests in mind." It is stated in the document that:

18. The Government agreed with the Committee that orphans should be placed in children's institutions as a last resort; it relied on the extended family system to care for such children wherever possible. The adoption procedure in Ghana was cumbersome because the Government took numerous precautionary measures in order to ensure that the adoptive parents had the child's best interests in mind. While stringent regulations governing the operation of orphanages had been adopted, they had not yet been distributed to all government agencies. An inspectorate made regular visits to orphanages to monitor their operation and compliance with the law. If an institution did not meet the requisite conditions, it would not be allowed to operate (UN Committee on the Rights of the Child 2006, 'Summary Record of the 1093rd Meeting (Chamber A) – Consideration of reports of States parties (continued), Second periodic report of Ghana (continued)', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/SR.1093, 23 January, Paragraph 18 <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009 – Attachment 6).

The UN Committee on the Rights of the Child's concluding observations on Ghana dated 17 March 2006 indicates that in relation to adoption, "[t]he Committee, while noting that the Children's Act covers national adoption, remains concerned about the lack of adequate mechanisms for intercountry adoption" (UN Committee on the Rights of the Child 2006, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Concluding observations: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/GHA/CO/2, 17 March, Paragraph 42 <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009 – Attachment 7).

4. Is there any practice in Ghana of customary adoption and if so, what form does it take?

5. In relation to customary adoption - is it usual that it only takes place if the child's biological parents are deceased? Is it usual that customary adoption would only take place among relatives? Please advise whether the child's biological father would have to consent to the adoption?

The MRT research response dated 5 August 2008 refers to documents that provide information on customary adoption in Ghana, including the procedures involved in customary adoption, customary adoption within the extended family or tribal group, and whether customary adoption is legally recognized in Ghana (MRT Research & Information 2008, *Research Response GHA33612*, 5 August – Attachment 1). The research response refers to the article from the August 2007 issue of *Children and Youth Services Review* which indicates that:

Customary adoptions and adoptions through the courts are the two main avenues for the adoption of children in Ghana. Customary forms of adoption have been a part of the traditional society and are still practiced in all Ghanaian communities today, though there are no records to determine their extent. The practice has evolved into rules to govern customary adoption. A child who is not born of a person may still be able to grow up as such, if certain events occur to transfer that particular child from its original parentage to another person. This is a transaction that is known to our customary law and recognized by the courts. Thus a person may seek to make a child his/her own and introduce another person of foreign blood into the family. Its effects on matters such as succession to property and office are of great significance and therefore are matters of great contention.

The major area of difficulty for the courts is the absence of documented evidence within the customary set up. Although, there is evidence that adoption was not unknown to our customary law, the question is when the process is deemed to have taken place. It has been observed that adoption in this country amount to transplanting a child from one family to the other. Merely living with the child is not enough. There must be an occasion when a formal ceremony is performed for this process to be complete. From the prescription of the courts, it would be improper for the transaction to be a secret one since the absence of documentation requires that witnesses to the adoption be sought for evidentiary purposes. However, the issue of who the witnesses should be and their status within the family has not been addressed (Mensa-Bonsu & Dowuona-Hammond, 1996) (Akpalu, D. 2007, 'Adoption of children and the contribution of the Osu Children's Home in Ghana', *Children and Youth Services Review*, Volume 29, Issue 8, August, p. 1073 – Attachment 4).

The RRT research response dated 9 November 2006 also includes information on customary adoption in Ghana (RRT Country Research 2006, *Research Response GHA30944*, 9 November – Attachment 2).

In relation to whether it is usual that customary adoption would only take place among relatives, a States parties report by Ghana to the UN Committee on the Rights of the Child set out in a report dated 19 December 1995 indicates that “[c]ustomary adoption also takes place in the country when an orphaned child is given to a relative to raise and maintain. There are also situations where a child is also given to another relative to be educated or trained in a trade” (UN Committee on the Rights of the Child 1995, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Initial reports of States parties due in 1992 – Addendum: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/3/Add.39, 19 December, Paragraph 74 <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009 – Attachment 8).

Although dated, an earlier legal advice dated 25 February 1986 on the website of the US Social Security Administration states that “[c]ustomary adoption is recognized in Ghana. 1/ The adoption must be conducted in public. The adoptive parent and child have to belong to the same tribe” ('PR 86-007 Grace N~ – Recognition Of Customary Adoption In Ghana' 1986, Social Security Online, 25 February <https://s044a90.ssa.gov/apps10/poms.nsf/lx/1501325138!opendocument> – Accessed 9 November 2006 – Attachment 9).

In relation to whether the child's biological father would have to consent to the adoption, the legal advice dated 25 February 1986 on the website of the US Social Security Administration indicates that "[i]t is necessary for the adoptive parent to declare his/her intention to adopt in the presence of witnesses and to obtain the consent of the family unit, as well as the parents of the adoptee" ('PR 86-007 Grace N~ – Recognition Of Customary Adoption In Ghana' 1986, Social Security Online, 25 February <https://s044a90.ssa.gov/apps10/poms.nsf/lxx/1501325138!opendocument> – Accessed 9 November 2006 – Attachment 9).

Sections of 'The Children's Act, 1998' which refer to customary law include Section 69(1) of the Act, which states that "[t]he court may require the consent of any person for an adoption order if it considers that the person has any rights or obligations in respect of the child such as under an agreement, court order or under customary law." Section 75(1) (a) of the Act indicates that upon the making of an adoption order, "the rights, duties, obligations and liabilities including those under customary law of the parents of the child or of any other person connected with the child of any nature whatsoever shall cease". Also, pursuant to Section 79(1) of the Act, "[a]n adopted child shall be subject to customary law as if he were the natural child of the adopter only if the adopter is subject to customary law" (Parliament of the Republic of Ghana 1998, 'The Children's Act, 1998', Act 560, Ministry of Women and Children's Affairs Ghana website, 30 December http://www.mowacghana.net/files/childrens_act.pdf - Accessed 20 March 2009 – Attachment 3).

List of Sources Consulted

Internet Sources:

Government Information & Reports

Immigration & Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

Ministry of Women and Children's Affairs Ghana website <http://www.mowacghana.net/>

United Nations (UN)

UN High Commissioner for Refugees (UNHCR) Refworld website

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

UN Office of the High Commissioner for Human Rights Treaty Body Database website

<http://tb.ohchr.org/default.aspx>

Non-Government Organisations

International News & Politics

BBC News <http://news.bbc.co.uk>

Region Specific Links

allAfrica.com <http://allafrica.com/>

Search Engines

Copernic <http://www.copernic.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. MRT Research & Information 2008, *Research Response GHA33612*, 5 August.
2. RRT Country Research 2006, *Research Response GHA30944*, 9 November.
3. Parliament of the Republic of Ghana 1998, 'The Children's Act, 1998', Act 560, Ministry of Women and Children's Affairs Ghana website, 30 December
http://www.mowacghana.net/files/childrens_act.pdf - Accessed 20 March 2009.
4. Akpalu, D. 2007, 'Adoption of children and the contribution of the Osu Children's Home in Ghana', *Children and Youth Services Review*, Volume 29, Issue 8, August.
5. UN Committee on the Rights of the Child 2005, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Second periodic reports of States parties due in 1997: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/65/Add.34, 14 July <http://tb.ohchr.org/default.aspx> - Accessed 27 March 2009.
6. UN Committee on the Rights of the Child 2006, 'Summary Record of the 1093rd Meeting (Chamber A) – Consideration of reports of States parties (continued), Second periodic report of Ghana (continued)', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/SR.1093, 23 January <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009.
7. UN Committee on the Rights of the Child 2006, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Concluding observations: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/GHA/CO/2, 17 March <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009.
8. UN Committee on the Rights of the Child 1995, 'Consideration of reports submitted by States parties under Article 44 of the Convention – Initial reports of States parties due in 1992 – Addendum: Ghana', UN Office of the High Commissioner for Human Rights Treaty Body Database website, CRC/C/3/Add.39, 19 December <http://tb.ohchr.org/default.aspx> - Accessed 24 March 2009.
9. 'PR 86-007 Grace N~ – Recognition Of Customary Adoption In Ghana' 1986, Social Security Online, 25 February
<https://s044a90.ssa.gov/apps10/poms.nsf/lnx/1501325138!opendocument> – Accessed 9 November 2006.