



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 5 | Issue 5 | 2026

Art. 17

Intercountry Adoption in Nepal: An Analysis from International Law and Child Rights Perspectives

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Recommended Citation

Kishor Khadka and Tulasa Karki, *Intercountry Adoption in Nepal: An Analysis from
International Law and Child Rights Perspectives*, 5 IJHRLR 184-196 (2026).

Available at www.ijhrlr.in/current-issues/.

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Intercountry Adoption in Nepal: An Analysis from International Law and Child Rights Perspectives

ABSTRACT

Intercountry adoption falls at the intersection of family law, human rights law and international law. In Nepal, adoption law has shifted from a family centred institution towards a framework centred on the best interests of the child. The National Civil (Code) Act 2017 regulates both domestic and intercountry adoption, while the Act Relating to Children 2018 reinforces principles of non-discrimination, family contact and the best interests of the child. Nepal is a party to the Convention on the Rights of the Child (CRC) and has signed but not ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. This article examines Nepal's adoption framework through these international and child rights standards. It traces the development of intercountry adoption in Nepal, considers the regulatory concerns that led to suspension and reform and analyses the safeguards contained in current legislation. The article argues that Nepalese law incorporates several important child protection principles, particularly best interests, consent and governmental oversight, but important difficulties remain in implementation, institutional coordination and protection against irregular adoption practices. The continuing gap between the detailed statutory framework and the limited operation of intercountry adoption in practice strengthens the case for clearer procedures, stronger monitoring and closer alignment with internationally accepted safeguards.

KEYWORDS

Intercountry Adoption, Child Rights, Nepal, Best Interests of the Child, Hague Adoption Convention

1. INTRODUCTION

The basic concept of adoption is to provide child to parents without child and to provide parents to child without parents forming a legally recognised family relationship. Adoption creates a legal parent-child relationship where no biological parent-child relationship exists. In contemporary child law, its purpose cannot be understood only through the wishes of adults seeking parenthood. The legal inquiry must begin with the child: whether adoption is necessary, whether the proposed placement serves the child's welfare, whether consent has been properly

obtained and whether the new legal relationship protects identity, family ties and long term security. Nepal's current Civil Code reflects this shift by requiring adoption to be carried out in the best interests of the child.

An intercountry adoption occurs where a foreigner adopts a minor who is a Nepali citizen or a foreigner domiciled in Nepal.¹ Intercountry adoption adds another layer of difficulty. The child moves from one legal and social system to another, while decisions made in the country of origin must interact with immigration, family and adoption rules in the receiving country. Weakness at any stage can expose a child to wrongful separation from the birth family, unreliable documentation, financial pressure, trafficking or an adoption that is not recognised or effectively supervised abroad. These risks explain why intercountry adoption is treated as both a private-law arrangement and a child rights issue.

Adoption is not a newly emerged phenomenon; it has existed for centuries. In the epic Mahabharata, the archer Karna was adopted by Adhiratha and Radha and raised as their son. Earlier forms of adoption often focused on the needs of childless couples, lineage and inheritance. Modern child law increasingly focuses on the needs and welfare of a child who may lack a secure family environment. Nepal has a long history of adoption, including cross border adoption. The legal framework has also changed considerably. Earlier rules under the Muluki Ain were shaped by lineage, inheritance and family continuity, whereas later reforms increasingly introduced welfare-based considerations. The National Civil (Code) Act 2017 now contains separate chapters on domestic and intercountry adoption and expressly requires adoption to be effected in a manner that protects the best rights and interests of the child.² The Act Relating to Children 2018 adds a wider rights based framework. Nepal ratified the CRC in 1990; it signed the 1993 Hague Adoption Convention in 2009 but has not ratified that Convention.

This article looks whether Nepal's present framework adequately protects children in intercountry adoption when assessed against international law and child rights standards. It uses a doctrinal method examining Nepalese legislation, the CRC, the Hague Adoption Convention and relevant institutional and scholarly materials. The discussion first outlines the development of adoption law in Nepal, then examines the specific rules on intercountry adoption, before assessing those rules against the principles of best interests, subsidiarity, informed consent, protection of identity and safeguards against trafficking and

¹ National Civil (Code) Act 2017 (Nepal) ('Civil Code') s 188.

² Civil Code, s 170.

improper financial gain.

2. ADOPTION AND THE NEPALESE LEGAL FRAMEWORK

2.1 Meaning and Concept of Adoption

At its simplest, adoption means accepting a child as one's own³ and the process through which that relationship is created.⁴ In legal usage, adoption brings a child into a family other than the child's biological family and gives the adopter parental rights and responsibilities.⁵ It therefore creates a legally recognised parent-child relationship through which the adopter assumes responsibility for the child's care and upbringing.

Adoption may also be described as the legal process that establishes a parent-child relationship between a child and a person who is not the child's biological parent.⁶ Through that process, the adoptee becomes a legal member of the adoptive family.

Under the Civil Code, a son or daughter of another person whom an adopter legally accepts as his or her own is treated as an adopted son or daughter.⁷

In family law, adoption generally transfers parental rights and responsibilities to the adoptive parents and places the child within the adoptive family for legal purposes. The precise effects on the child's relationship with biological parents depend on the governing statute, including rules on contact, identity, inheritance and property.

2.2 Evolution of Adoption Law in Nepal

The first legislation dealing with adoption in Nepal was the National Code (Muluki Ain), 1854 AD (1910 BS). The Muluki Ain of 1854 and its later replacement contained rules on adoption that were closely tied to family structure and inheritance. Earlier law was also unequal in important respects. The rules concerning who could adopt and who could be adopted reflected gendered assumptions and did not initially permit adoption of daughters in the same way as sons. Restrictions also

³ Oxford Learner's Dictionaries, 'Adoption'

<https://www.oxfordlearnersdictionaries.com/definition/american_english/adoption> accessed 21 August 2026.

⁴ Merriam-Webster, 'Adoption' <<https://www.merriam-webster.com/dictionary/adoption>> accessed 21 August 2026.

⁵ The Law Dictionary, 'Adoption' <<https://thelawdictionary.org/adoption/>> accessed 21 August 2026.

⁶ Dictionary.com, 'Adoption' <<https://www.dictionary.com/browse/adoption>> accessed 21 August 2026.

⁷ Civil Code, s 169.

applied to certain women. These rules were gradually modified through amendment.⁸ A significant change came in the 1970s, when the law opened greater space for adoption of daughters and formalised the possibility of foreign nationals adopting Nepali children.⁹

In 1976, intercountry adoption was formalised in Nepal when the National Code of 1964 was amended to enable foreigners to adopt Nepali children. The amendment allowed foreign nationals to adopt Nepali children subject to governmental scrutiny of matters such as the prospective adopter's economic position and moral character.¹⁰ From 1976 to 2000, the Nepal Children's Organization, commonly known as Bal Mandir and established in 1964, was the principal institution authorised to arrange adoptions in Nepal.¹¹ Later policy changes allowed other child-care homes to participate. New terms and conditions introduced in 2000 reduced Bal Mandir's exclusive role and increased the number of institutions involved in child care and adoption, a development that some commentators described as contributing to an 'adoption industry' in Nepal.¹²

The present legal position is substantially different. The Civil Code treats adoption as a legal institution governed by the child's interests rather than merely by the adopter's wishes. It defines an adopted son or daughter by reference to the acceptance of another person's child as one's own and expressly requires that the child's best rights and interests be protected.¹³

2.3 Domestic Adoption and the Rights of the Adopted Child

Chapter 8 of the Family Law part of the National Civil (Code) Act 2017 deals with domestic adoption. The Civil Code regulates eligibility, consent, procedure and the legal consequences of adoption. It sets conditions concerning the adopter, the child and the age difference between them. Ordinarily, the age difference between adopter and adoptee must be at least twenty-five years.¹⁴ The Code also requires written consent from the child's parents where they are alive, and where a child has crossed the specified age threshold, the child's own consent is

⁸ Bala Raju Nikku and Gopal Khadkha, 'Adoption in Nepal: Mythologized, Misunderstood and Mobilized' (2011) 7-9 <<https://ssrn.com/abstract=1736064>> accessed 21 August 2026.

⁹ Nikku and Khadkha (n 8) 8.

¹⁰ Nikku and Khadkha (n 8) 8.

¹¹ Nikku and Khadkha (n 8) 8.

¹² Nepal Children's Organization, 'About Us' <<https://nconeal.org.np/about-us/>> accessed 21 August 2026.

¹³ Civil Code, ss 169–170.

¹⁴ Civil Code, s 174.

also relevant. Importantly, consent must be informed, voluntary and free from financial inducement.¹⁵

Adoption is supervised through a judicial process. A person seeking to adopt must apply to the competent district court with the required deed and supporting material. If the legal conditions are satisfied, the court may authorise the adoption.¹⁶ Once validly adopted, the child acquires rights, obligations and responsibilities equivalent to those of a biological child of the adopter. The Code also deals with surname, inheritance consequences and the duties of adoptive parents.¹⁷

The Act Relating to Children 2018 strengthens this framework from a rights perspective. It prohibits discrimination between biological and adopted children and recognises the importance of maintaining contact with biological parents where appropriate.¹⁸ More generally, it requires public and private bodies dealing with children to give priority to the child's best interests.¹⁹ Taken together, these provisions show that adoption in Nepal is no longer merely a mechanism for creating a family relationship. It is also a regulated child-protection decision in which the State, courts and caregivers have defined responsibilities.

2.4 Judicial Interpretation of Adoption by the Supreme Court of Nepal

The Supreme Court of Nepal has also clarified the legal nature of adoption and the rights and obligations arising from it. In *Nepal Bal Sangathan v Government of Nepal*, the Court explained that the relationship between an adoptive parent and an adopted child is not biological or natural, but one created by law.²⁰ The rights and duties attached to adoption arise only after the statutory requirements have been satisfied and a legally valid adoption relationship has been established. The Court therefore treated adoption as a protected legal status, while at the same time making clear that the rights arising from it remain subject to the conditions and obligations prescribed by law.

This approach was reaffirmed in a later case concerning the cancellation of an adoption deed. In *Ratna Kapali Shrestha v Arjun Tandukar*, the Supreme Court observed that adoption does not create an absolute relationship identical in every respect to natural parentage. An adopted child who fulfils the responsibilities attached to the relationship is entitled to rights comparable to those of a biological child, but the

¹⁵ Civil Code, s 175.

¹⁶ Civil Code, s 177.

¹⁷ Civil Code, ss 178-183.

¹⁸ Act Relating to Children 2018 (Nepal) ('Children Act') ss 5(3), 6(4).

¹⁹ Children Act, s 16.

²⁰ *Nepal Bal Sangathan and others v Government of Nepal*, Office of the Prime Minister and Council of Ministers and others, NKP 2072, Issue 10, Decision No 9475.

adoption may be cancelled where the statutory grounds for cancellation are established.²¹ In that case, the Court placed particular importance on the duty of the adopted child to care for and support the adoptive parent and recognised that the legal consequences of adoption must be assessed together with the obligations arising from the relationship.

These decisions are significant because they show that Nepalese adoption law is not concerned only with the formal creation of a parent-child relationship. This judicial approach complements the present Civil Code framework, under which adoption remains a legally regulated family relationship rather than a purely private arrangement.

3. INTERCOUNTRY ADOPTION IN NEPAL

3.1 Development of Intercountry Adoption

Nepal formally opened intercountry adoption to foreign nationals through a 1976 amendment to the National Code of 1964.²² Over time, the practice became closely connected with child-care institutions in Kathmandu and with foreign adoption agencies and receiving States. The 2008 UNICEF-Terre des hommes study recorded serious concerns about the reliability of children's status, the operation of child care homes and the adequacy of safeguards surrounding international placements.²³

Nepal hosted the first International Conference on Intercountry Adoption in Kathmandu in March 2007, bringing together government bodies, child-rights organisations and international participants to discuss reform.²⁴ Soon afterwards, intercountry adoption was suspended amid concerns about irregularities and the accuracy of information used to establish that children were genuinely eligible for adoption. The suspension formed part of a wider period of contestation over adoption policy and the role of institutions involved in sending children abroad.²⁵

The Government subsequently introduced new terms and conditions in 2008. These reforms attempted to replace the earlier regulatory framework with more structured procedures. Yet concerns about

²¹ Ratna Kapali Shrestha v Arjun Tandukar, NKP 2080, Issue 6, Decision No 11111.

²² Nikku and Khadkha (n 8) 8.

²³ Joseph Aguetant, *Adopting the Rights of the Child: A Study on Intercountry Adoption and its Influence on Child Protection in Nepal* (UNICEF and Terre des hommes 2008) 8-12 <<https://resourcecentre.savethechildren.net/document/adopting-rights-child-study-intercountry-adoption-and-its-influence-child-protection-nepal/>> accessed 21 August 2026.

²⁴ Child NGO Federation-Nepal, 'ICA First Conference'

<<https://childfederation.org.np/index.php?page=ica-first-conference>> accessed 21 August 2026.

²⁵ Nikku and Khadkha (n 8) 9-10.

documentation and adoptability continued. For instance, in 2010, the United States suspended processing of new cases involving Nepali children presented as abandoned because supporting documents were considered unreliable and the circumstances of abandonment could not be adequately verified.²⁶ The history is important because it explains why present law places repeated emphasis on government permission, verification of eligibility, the child's best interests and protection against sale, trafficking and abuse.

3.2 Statutory Framework for Intercountry Adoption

Chapter 9 of the National Civil Code separately regulates intercountry adoption. An adoption is treated as intercountry adoption where a foreigner adopts a minor who is a Nepali citizen or a foreign minor domiciled in Nepal.²⁷ A foreigner cannot adopt such a child without permission from the Government of Nepal and the Government may limit intercountry adoption to nationals or couples from countries opened for that purpose through official notification.²⁸

A particularly important child-rights safeguard appears in section 190. Before allowing a child to be adopted by a foreigner, the Government must consider the child's best interests, protection of the child's human rights and the risk that the child may be abducted, sold, trafficked or otherwise abused.²⁹ The Code also identifies the children who may be considered for intercountry adoption and the foreigners who may qualify to adopt, and provides for applications, institutional scrutiny and recommendations through the bodies established under the statutory scheme.³⁰

The intercountry provisions do not operate in isolation. Several domestic adoption safeguards also apply to children adopted by foreigners, including rules on prohibited adoptions, age difference, consent, the legal status of the adopted child, surname, property consequences, duties of adoptive parents and contact with biological parents.³¹ The result is a relatively detailed statutory framework on paper. The central question is whether those rules correspond to the international principles designed

²⁶ US Department of State, 'Joint Statement on Suspension of Processing for New Adoption Cases Based on Abandonment in Nepal' (6 August 2010) <<https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/adoption-notice--joint-statement-on-suspension-of-processing-for.html>> accessed 21 August 2026.

²⁷ Civil Code, s 188.

²⁸ Civil Code, s 189.

²⁹ Civil Code, s 190.

³⁰ Civil Code, ss 191-197.

³¹ Civil Code, s 203.

to protect children when adoption crosses national borders.

4. INTERNATIONAL LAW AND CHILD RIGHTS FRAMEWORK

4.1 Convention on the Rights of the Child, 1989 (CRC)

The CRC provides the most important binding international standard for Nepal. Article 21 requires States that recognise adoption to make the best interests of the child the paramount consideration.³² It also requires adoption to be authorized by competent authorities on the basis of reliable information and necessary consent. Intercountry adoption is recognised as an alternative form of care where suitable care cannot be found in the child's country of origin, and the child must receive safeguards equivalent to those applicable in domestic adoption. It further requires measures to prevent improper financial gain from intercountry adoption.³³

These requirements place intercountry adoption within a broader child rights framework. The CRC does not treat overseas placement as a first response to poverty, institutionalization or family difficulty. The child's family environment, identity and protection from exploitation remain central. This approach is also reflected in UNICEF's position that intercountry adoption must take place through transparent, lawful and non-exploitative procedures and that inadequate safeguards may create risks such as sale, abduction, coercion of birth parents and falsification of documents.³⁴

4.2 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (Hague Adoption Convention)

The 1993 Hague Adoption Convention establishes a formal international framework for intercountry adoption. Its objectives are to ensure that intercountry adoptions take place in the child's best interests and with respect for fundamental rights, to establish safeguards against abduction, sale or trafficking, and to create a framework for cooperation and recognition of Convention adoptions.³⁵

The Convention requires the State of origin to determine that the child is

³² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC') art 21.

³³ CRC, art 21(a)-(d).

³⁴ UNICEF, 'Intercountry Adoption' (26 June 2015)

<<https://www.unicef.org/media/intercountry-adoption>> accessed 21 August 2026.

³⁵ Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (concluded 29 May 1993, entered into force 1 May 1995) 1870 UNTS 167 ('Hague Adoption Convention') art 1.

adoptable and that possibilities for placement within the country of origin have been given due consideration. It requires informed and freely given consent and it prohibits obtaining consent through payment or compensation.³⁶ The receiving State must determine that prospective adoptive parents are eligible and suitable and that the child will be authorised to enter and reside permanently there.³⁷ Contracting States must designate Central Authorities to cooperate, exchange information, prevent improper practices and facilitate the adoption process.³⁸ The Convention also restricts improper financial or other gain connected with intercountry adoption.³⁹

Nepal signed the Hague Adoption Convention on 28 April 2009 but has not ratified it. It is therefore not bound by the Convention as a Contracting Party.⁴⁰ Even so, the Convention remains a useful benchmark for assessing the design of Nepal's domestic safeguards. Several ideas found in the Civil Code such as governmental oversight, best interests, protection against trafficking, eligibility requirements and scrutiny of the adoption process are broadly consistent with the protective framework of the Hague system.

5. ASSESSING NEPAL'S FRAMEWORK FROM INTERNATIONAL LAW AND CHILD RIGHTS PERSPECTIVES

Nepal's legislation contains several features that correspond closely with international child rights principles. The best-interests requirement appears in both domestic and intercountry adoption rules and is reinforced by the Children Act.⁴¹ The Civil Code also addresses consent, including the child's participation in appropriate cases, and requires attention to the risk of abduction, sale, trafficking and other abuse before permission for intercountry adoption is granted.⁴² These are not merely procedural details but they are legal safeguards intended to ensure that adoption responds to the child's needs rather than to adult demand.

There are areas where the framework would benefit from stronger implementation and clearer institutional practice. First, the principle that intercountry adoption should operate as a subsidiary option requires more than a formal statement of best interests. Authorities must be able

³⁶ Hague Adoption Convention, art 4.

³⁷ Hague Adoption Convention, art 5.

³⁸ Hague Adoption Convention, arts 6–9.

³⁹ Hague Adoption Convention, art 32.

⁴⁰ Hague Conference on Private International Law (HCCH), 'Status Table: Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption' <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>> accessed 21 August 2026.

⁴¹ Civil Code, ss 170, 190; Children Act, s 16.

⁴² Civil Code, ss 175, 190.

to establish that a child is genuinely adoptable, that reasonable family-preservation and domestic care options have been considered, and that poverty alone has not been converted into a ground for permanent separation. Past studies in Nepal found that children living in institutions were not always orphans and that the legal and factual basis for adoptability could be uncertain.⁴³

Second, consent must be treated as a continuing safeguard rather than a signature on a document. Nepalese law has important provisions requiring consent to be informed and free from financial inducement.⁴⁴ In practice, this requires independent counselling, reliable records and a process capable of detecting pressure on parents or guardians. The same concern applies to the child's identity and family links. Adoption may create a new family relationship, but child rights law does not support unnecessary erasure of a child's origins.

Third, intercountry adoption must be insulated from financial incentives that can influence decisions about whether a child is available for adoption. Smolin's work has highlighted how intercountry adoption systems can become entangled with child buying or trafficking when demand, money and weak oversight interact.⁴⁵ That argument should not be read as equating every intercountry adoption with trafficking. Rather, it underlines why transparent fees, independent verification of adoptability and effective monitoring of intermediaries are essential.

Nepal's own experience gives this concern practical significance. A 2020 investigation reported a substantial discrepancy between Nepalese government records and figures reported abroad for children adopted internationally between 2010 and 2019.⁴⁶ Such discrepancies do not by themselves establish the legal circumstances of every individual adoption, but they demonstrate why reliable national records, case tracking and cross-border information sharing matter.

Finally, there is a notable gap between the statutory scheme and current practice. The United States Department of State reports that no intercountry adoption has been completed from Nepal since 2019, that Nepal currently lacks procedures for processing such cases, and that its former central adoption authority is no longer functioning.⁴⁷ This

⁴³ Aguetant (n 21); Nikku and Khadka (n 8).

⁴⁴ Civil Code, s 175(6)-(7).

⁴⁵ David M Smolin, 'Intercountry Adoption as Child Trafficking' (2004) 39 *Valparaiso University Law Review* 281, 283-90.

⁴⁶ Akash Chhetri, 'Nepal's Baby Export' (Inter Press Service, 21 February 2020) <<https://www.globalissues.org/news/2020/02/21/26126>> accessed 21 August 2026.

⁴⁷ US Department of State, 'Nepal Intercountry Adoption Information' (last updated 14 January 2025) <<https://travel.state.gov/content/travel/en/Intercountry->

information concerns adoption involving the United States and should not be treated as a complete account of every possible cross border case but it illustrates the institutional uncertainty surrounding the system. Detailed legislation is not sufficient if the responsible authorities, procedures and monitoring arrangements are not functioning clearly and consistently.

Ratification of the Hague Adoption Convention alone would not solve these problems. Effective implementation would require a competent Central Authority, reliable systems for determining adoptability, transparent accreditation and supervision of intermediaries, cooperation with receiving States, preservation of records and post-adoption safeguards. Nevertheless, ratification accompanied by institutional reform could place Nepal within a structured system of international cooperation and provide a clearer framework for preventing irregular adoption practices.

6. CONCLUSION AND RECOMMENDATIONS

Nepal's adoption law has moved towards a child centred model. The Civil Code and the Act Relating to Children recognise best interests, regulate consent, provide legal status for adopted children and place intercountry adoption under government supervision. Nepal's obligations under the CRC reinforce these duties. Although not yet ratified by Nepal, the Hague Adoption Convention offers a more detailed international framework for turning those principles into coordinated procedures between countries.

The principal weakness is therefore not the complete absence of legal safeguards. It is the continuing difficulty of ensuring that safeguards operate reliably in practice. Nepal's earlier experience with disputed adoptability, institutional care and unreliable documentation shows the consequences of weak verification. The present uncertainty surrounding the practical processing of intercountry adoption further demonstrates the need for a functioning and publicly accountable institutional framework.

Nepal should strengthen procedures for determining whether a child is genuinely adoptable and should treat family preservation and suitable domestic care as prior considerations. Second, consent, record keeping, financial transparency and monitoring of institutions involved with children should be subject to effective and independent oversight. Third, Nepal should reconsider ratification of the Hague Adoption Convention alongside the institutional measures needed for genuine

Adoption/Intercountry-Adoption-Country-Information/Nepal.html> accessed 21 August 2026.

implementation, rather than treating ratification as a symbolic legal reform.

Intercountry adoption can provide a permanent family for a child when appropriate care cannot be secured in the country of origin, but it is precisely because the consequences are permanent and cross border that the process must be governed by more than good intentions. The legitimacy of the system depends on whether each adoption can be shown to protect the child's rights, identity, safety and long-term interests.