

DECREE OF APRIL 4<sup>TH</sup> 1974 ON ADOPTION,  
REINFORCING THE RIGHTS OF THE ADOPTEE IN HIS/HER NEW FAMILY

DECREE

JEAN-CLAUDE DUVALIER

PRESIDENT FOR LIFE OF THE REPUBLIC

According to Articles 68, 90 and 93 of the Constitution;

According to the Decree of March 25, 1966 on adoption;

According to the Decree of December 3, 1973 that regulates the statutes on minors in children's institutions;

According to the Decree of the Legislative Chamber dated September 21, 1973, suspending the guarantees contained in Articles 17, 18, 19, 20, 31, 34, 48, 70, 71, 72, 93 (last paragraph), 95, 112, 113, 122 (second paragraph), 125 (second paragraph), 150, 151, 155, 193 and 198 of the Constitution and giving full powers to the Chief of Executive Power in order to permit Him to take, until the second Monday of April 1974 which Decrees having the force of Law, all measures which he will judge necessary to safeguard the integrity of the National Territory and the Sovereignty of the State, to consolidate Order and Peace, to maintain political, economic and financial stability of the Nation and to improve the well-being of its rural and urban populations and defend the general interests of the Republic.

Considering that the child is the focus of family law;

Considering that there is a place for taking into account the evolution of our positive law and the prescriptions of public orders of our basic laws, claiming that all legal decisions be motivated by filling in the gaps and modifying certain dispositions of the Decree of February 25, 1966, concerning adoption;

Considering that it is urgent that a larger opening be given to this Decree in view of having at the same time more logic and more rationality in its texts and so that, especially, in his new family the adoptee should have the same rights and same obligations as a legitimate or biological child;

Upon the report by the Secretary of State of Justice;

And after the deliberation of the Council of Secretaries of State;

I HEREBY DECREE:

**Article 1.** Adoption is a solemn act that creates, between a person and a child who is not biologically his, a legal tie analogous to that which results from paternity and filiation.

It is authorized for minors of less than 16 years of age, whenever it is based upon just motives and presents actual and certain advantages for the adoptee.

**Article 2.** Adoption is only allowed for people of both sexes who are older than 35. However, it can also be requested by a married couple who are not separated, as long as at least one of them is over age 35, if they have been married more than ten years, and do not have any [biological] children from this marriage.

The adopters should have neither children nor descendants on the day of the adoption.

The adopters should be 19 years older than the people they propose to adopt, unless the latter are the children of their spouse. In this case, the minimum age difference required shall be no more than ten years and may even be less if given a dispensation by the Head of State.

**Article 3.** Without the dispensation of the President for Life of the Republic, adoption is only permitted in the absence of legitimate or biological descendants;

**Article 4.** The existence of adoptive children will not be an obstacle to further adoptions by the same person if that person can establish that he can economically afford these obligations.

**Article 5.** A Haitian can adopt or be adopted by a foreigner. Adoption does not mean the adoptee must change his/her nationality.

However, the foreign person adopted by a Haitian can acquire Haitian nationality by a declaration that involves renouncing his/her foreign nationality, made before the Civil Court where he resides in the year in which s/he becomes a legal adult.

A copy of this declaration shall be sent to the Department of Justice who will issue a Notice stating the individual in question is Haitian from then on, according to law.

**Article 6.** When the minor to be adopted still has a father and mother, these people shall both consent to the adoption. If one of the two is deceased or unable to make his/her will known, the consent of the other shall suffice.

If the father and mother are divorced or separated, the consent of the parent for whose benefit the divorce or separation was granted and who is legal guardian of the child shall suffice; however if the other parent has not given his/her consent the act of adoption should be made known to him/her and ratification shall not occur until at least thirty days after this notice is given. If during the prescribed delay period this parent notifies the clerk of his/her opposition, the court must hear him/her before making its decision.

**Article 7.** When the adoption shall be requested by a couple who are not separated and who have been married at least ten years and of which one of them is over 35 years old, the difference of 19 years of age may be reduced by dispensation of the President of the Republic.

**Article 8.** In the case of the decease of the adopter or of both adopters if they are together, a new adoption may proceed.

**Article 9.** When the minor to be adopted still has a father and mother they must both consent to the adoption.

When one of them is deceased or unable to make his/her will known, the consent of the other shall suffice.

**Article 10.** The magistrate of the Commune or the President of the Communal Commission of the place of residence of the adoptee, legally representing the unknown father and mother of the minor, shall consent to the Adoption of the latter, without prejudice according to the Decree Law of December 3, 1973, regarding the status of minors in children's institutions.

**Article 11.** In the cases discussed in the preceding Articles, consent is given in the Act of Adoption or by a separate bona fide Act before a notary, the Justice of the Peace of the legal district of residence of the adopter or of an ascendant of the adoptee and, in a foreign country, before a diplomatic attaché of the Haitian consulate.

**Article 12.** When the minor has no father or mother or if it is impossible for him or her to make his or her will known, consent shall be given by the Family Council.

**Article 13.** Adoption shall grant the same rights and same obligations as those that derive from legitimate or natural birth.

**Article 14.** The adopted child and his legitimate descendants shall have the same rights of succession in the family of the adopter as a legitimate or biological child.

**Article 15.** Adoption confers the last name of the adopter to the adoptee, adding it to his/her original last name. When the adopter and the adoptee have the same last name, no modifications are made to the name of the adoptee. The Court can, at the demand of the adopter, also modify the first names of the adopted. In a case of adoption by a couple, the adoptee takes the husband's last name.

**Article 16.** The adoptee remains part of his birth family and retains all rights of inheritance.

**Article 17.** Towards the adoptee, the adopter has all the rights and duties prescribed by the Code Civil in its laws regarding paternal powers.

In cases of interdiction, absence legally documented or the decease of the adopter while the adoptee is still a minor, paternal rights are returned fully to the ascendants of the latter.

**Article 18.** Parental relationships resulting from the adoption extend also to children of the adoptee.

**Article 19.** Marriage is prohibited between:

The adopter, the adoptee and his descendants;

The adoptee and the spouse of the adopter and also between the adopter and the spouse of the adoptee;

Any children adopted by the same individual;

The adoptee and any children who may be delivered to the adopter;

Nevertheless, these prohibitions may be lifted for serious reasons, upon dispensation by the Head of State.

**Article 20.** The adoptee and his/her descendants shall not have any right to inherit property of the parents of the adopter. But they have all the same rights attributed to legitimate and biological children or descendants to inherit from the adopter.

**Article 21.** The adoptee owes aliments to the adopter if the latter needs them and reciprocally, the adopter owes aliments to the adoptee.

The obligation to provide aliments continues to exist between the adoptee and his/her father and mother. However, the father and mother of the adoptee are not required to give him aliments if he cannot obtain them from the adopter.

**Article 22.** If the adoptee dies without descendants, the property given him/her by the adopter or gained through inheritance and which still exist, upon the death of the adoptee returns to the adopter or his/her descendants, who have the responsibility of paying any debts and without prejudice towards the rights of third parties. The other property of the adoptee would return to his/her birth parents.

**Article 23.** If, during the lifetime of the adopter and after the death of the adoptee, the children or descendants of the latter die themselves without issue, the adopter shall recover only the property he gave.

**Article 24.** The person proposing to adopt and the legal representative of the minor accompanied by the minor shall appear before the Justice of the Peace for the area in which the adopter resides in order to make a statement, at no charge, of their respective consent. However, if the adopter is a foreigner, this appearance shall be made before a Justice of the Peace for the area in which the adoptee resides.

The adopter shall establish by producing documents the age gap that must exist between him and the adoptee and he must submit, for useful reasons, a Medical Certificate of recent date that states that he has no contagious diseases.

**Article 25.** The certificate of adoption shall be ratified in Haiti by the Civil Court in the jurisdiction of the adopter and, in the case of a foreigner adopting, before the Civil Court in the area in which the adoptee lives.

**Article 26.** The Court convened in the Council Chamber shall verify, in a written conclusion of the Public Prosecutor's office:

- 1) If all the formalities of the Law have been satisfied;
- 2) If the Adoption is based upon just motives and presents real advantages for the adoptee.

**Article 27.** After deliberation, the Court shall pronounce its decision whether the Adoption will or will not take place.

**Article 28.** In case of a refusal to ratify, each party may, in the thirty days following this judgment, appeal it to the Court of Appeals that shall follow the same steps as the Civil Court.

In a justified statement, the Court of Appeals shall confirm or decide whether the Adoption shall take place.

**Article 29.** In the case of ratification, the Prosecutor's office attached to the Civil Court may make an appeal and a decision shall be handed down according to the procedures underlined above.

**Article 30.** The recourse to the Supreme Court to appeal the decision rejecting the demand for ratification must be received within thirty days following the publication of the aforementioned Decision and following the procedures outlined by the Code of Civil Procedure regarding appeals to the Supreme Court.

**Article 31.** Only the judgment or the statement that allows the adoption is pronounced in public session. The purview of this decision shall be transcribed by the Registrar of the region in which the adoption takes place in a Special Register at the request of the government magistrate.

**Article 32.** Adoption shall only take effect after the finalities outlined in article 812 of the Code of Civil Procedures have been followed and finalized.

However, the parties are legally joined upon the act of adoption. A third party may not oppose adoption until after the transcription of the judgment or the document of ratification.

**Article 33.** If the adopter dies after receiving the judgment regarding the adoption and the final request for ratification has been presented to the Civil Court, the investigation continues and the adoption is approved, the heirs of the adopter may, if they think the adoption is inappropriate, give the Prosecutor's office all memos and documents relating to this.

**Article 34.** The Civil Court may for very serious reasons, revoke the adoption, upon demand of the adopter, or that of the adoptee, if he or she is of legal age, or on that of the government magistrate if he/she is a minor more than 13 years old.

The judgment of the Court is, in all cases, subject to appeal.

The revocation shall halt, for the future, all effects of the adoption.

**Article 35.** The present Decree repeals all laws or dispositions of Laws, all Decrees or dispositions of Decrees, all Decree-Laws or dispositions of Decree-Laws that are contrary to it and will be published and enacted diligently by the Secretaries of State of Justice and Social Affairs each as it may involve himself.

Done at the National Palace in Port-au-Prince on April 4, 1974, the 171<sup>st</sup> year of Independence.

JEAN-CLAUDE DUVALIER

By the president:

Adoption made its entry into our society in the law of February 25, 1966, proclaimed in the "Monitor" No. 22-C on Friday, March 18, 1966. Under the impetus of new needs created by experience and contingencies of society, the legislators made a new law, more rational, better in harmony with the status of the adoptee.

Adoptive laws on filial status intend to protect children, the center of the family, protecting the latter and placing the needy ones in an environment to nurture their physical, intellectual and material growth. Adoption laws act upon this human current where survival triumphs as well as the safeguarding of individual and collective rights.

In reference to paragraph 2 of Article 2 of the new law, the arrival of one or more children or descendants in a family in no way bars the family from adopting a child received prior to the birth of the new child(ren); this principle was initiated in Article 2, paragraph 4 of the old law.

The adopter must be 19 years older than the adoptee unless the latter is the child of his/her spouse, and then the minimum is ten years and less upon dispensation of the Head of State.

The foreigner adopted by a Haitian can, in the year they reach legal age, become Haitian citizens.

On purpose, we have grouped in this chapter VII the legal dispositions relating to the State, to the succession rights of children, to marriage, divorce under the title: **RIGHTS OF THE FAMILY**.

In our Civil Code "not in any special law" there does not exist a concrete definition of the family that nevertheless is the base of society and seemingly its very core. In the center of the family are the wife and the child.