



Francophone seminar relating to the Hague Convention of 29th May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption

CONCLUSIONS AND RECOMMENDATIONS

A seminar relating to the *Hague Convention of 29th May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* (the 1993 Hague Convention) was held from 22nd to 26th June 2009 at the Hague (Netherlands), organised by the Hague Conference on Private International Law, in association with the French Institute of the Netherlands, with support from the Organisation Internationale de la Francophonie (OIF) and the Belgian (Francophone Community), Canadian, Luxembourg and Swiss governments.

The purpose of the seminar was to bring together experts and judges from various countries sharing the French language, in order to promote proper understanding of the 1993 Hague Convention, to review that instrument's implementation in those countries, and to examine the joint-responsibility of the receiving countries and countries of origin for help in resolving any problems encountered. It was also proposed to initiate dialogue between all the professionals from those countries and the Hague Conference on Private International Law in order to better identify the manner in which the 1993 Convention can resolve and be adapted to the specific issues of those countries.

Presiding judges and other judges¹ from the superior courts, professionals, Central Authorities and adoption authorities of States of origin party to the 1993 Hague Convention (Burkina Faso, Burundi, Cambodia, Guinea, Madagascar, Mali, Mauritius and Seychelles) and States of origin having expressed an interest in becoming parties (Haiti, Ivory Coast, Togo and Vietnam) were invited. In addition, francophone experts from Belgium, Canada, France, Luxembourg and Switzerland, and experts from other governmental and non-governmental international organisations, were also invited.

The judges and experts present:

Having regard to the insufficient number of francophone countries of origin having ratified the 1993 Hague Convention, in relation to the efforts made by the Hague Conference on Private International Law with a view to convincing them and owing to the situations of removal of children observed in those countries;

Having regard to the Conventions developed by the Hague Conference on Private International Law, which are multilateral treaties providing support to States, institutions,

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See attached list of participants.

families and especially children;

With appreciation of the many encouraging signals generated by the exchanges among members of the francophone family with respect to intercountry adoption of children;

Reassured by the connection between the 1993 Hague Convention and Articles 20 and 21 of the United Nations Convention on the Rights of the Child (CRC), and Article 24 of the African Charter on the Rights and Welfare of the Child;

Comforted by the support of UNICEF for the 1993 Hague Convention through its declaration of October 2007;

Have unanimously agreed on the following Conclusions and Recommendations:

1. Accession to or ratification of the *Hague Convention of 29th May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*

The importance of the Convention as an international legal framework to regulate intercountry adoptions is recognised. A broader accession or ratification by the countries of the African, Asian and Caribbean regions is to be encouraged, while stressing the need for preparation before accession or ratification, and for adaptation of the domestic legislation to bring it into compliance with the 1993 Hague Convention.

Implementation of the Convention and domestic legislation needs to be secured by granting the necessary means and resources (Article 4 CRC). The Convention also needs to be circulated and made known as widely as possible in the States of origin.

Development and distribution of a handbook for implementation of the Convention is recommended for each country in order to explain the Convention's operation in connection with the domestic rules and procedures.

2. Implementation and operation of the 1993 Convention on intercountry adoption: Guide to good practice

Use of the Hague Conference's Guide to good practice in connection with preparation for accession or ratification, and for the purposes of implementation of the Convention, is recommended.

Encouraging observance of the terms of the Guide to Good Practice, in particular through collaboration between countries of origin and receiving countries, is recommended.

3. Cooperation between the Hague Conference and UNICEF

The development of a cooperation agreement between UNICEF and the Hague Conference to promote the arguments in favour of ratification of the Hague Conventions, cooperation for technical assistance and capacity building and information sharing, is recommended.

4. Cooperation between States

The promotion of cooperation between receiving States and States of origin is recommended, in order for the receiving States better to grasp the scope of the needs of adoptable children in the States of origin.

The States of origin and receiving States should take the necessary action to avoid any competition between the receiving States and their adoption accredited bodies (AABs) in

obtaining children. In particular, the States of origin should inform the receiving States of the number of AABs required having regard to the number of children needing adoptive families, and the receiving States should limit the number of AABs allowed to work in one State of origin.

Institutional cooperation and any form of humanitarian aid should not be offered as a means to influence the processes of intercountry adoption.

5. *The principle of joint responsibility*

The participants accept and support the principle of joint responsibility, *i.e.*, recognition of the fact that the receiving States and States of origin should share responsibility for developing the safeguards and procedures protecting the child's best interests.

In accordance with the principles of the Convention, the receiving States should:

- comply with the conditions required with respect to adoption in the States of origin, and avoid exercising any pressure on the States of origin in order to obtain children;
- restrict the number of applications sent to the States of origin having regard to the actual adoption needs in the States of origin;
- better prepare adoptive families for the specific realities and challenges of intercountry adoption. For this purpose, making the preparation mandatory is recommended;
- ensure that the adoptive parents have the capacity to receive and take care of the child offered to them by the authorities of the State of origin.

In order to better determine the conditions of adoption in their own countries, the States of origin should:

- ascertain the backgrounds of the children offered for adoption;
- establish transparent criteria to determine adoptability;
- better assist the biological parents in dealing with the consequences of relinquishing their child;
- better prepare the children for adoption;
- supervise the activities of intermediaries in their countries;
- provide support for the institutions receiving children in difficult situations, and if necessary supervise the funding of these institutions.

6. *Adoption and the protection of children*

Adoption is recognised as a mechanism for the protection of children and should be managed by child protection professionals.

Compliance with the following principles should be ensured:

- constant reference throughout the procedure to the child's best interests;
- implementation of the subsidiarity principle.

Encouraging States of origin to set up a centralised register of children without families and adoptable children is recommended.

7. *Private and independent adoptions*

Because of a concern for improved protection of the rights of children and families, it is recommended that receiving States and States of origin reinforce the skills of AABs and supervision by the Central authorities, and work towards the elimination of private and independent adoptions not overseen by an AAB or Central Authority.

8. *Non discrimination*

The participants from the States of origin have drawn attention to the situation in their countries of older children, sibling groups and children with special needs, and stress the need to avoid any discrimination against them with respect to adoption. It is also acknowledged, however, that such adoptions are difficult and the receiving States should improve the preparation of families seeking to adopt such children.

9. *Role of parties involved*

It is recommended that each country should:

- clarify the role of all parties involved in the adoption procedure;
- strengthen the involvement of Central Authorities and AABs from the outset of the adoption process;
- organise training seminars for all parties involved in the adoption procedure.

10. *Role of judges*

The participants acknowledge that the specialisation and training of judges with respect to domestic and intercountry adoption could eliminate certain forms of abuse. For such purpose, the specialization of certain courts might be contemplated. Cross-border cooperation between judges should also be encouraged.

It is recommended that training seminars be organised for judges in charge of family litigation relating to issues of child protection, including in particular, intercountry adoption.

11. *Adoption accredited bodies*

It was noted that the quality, professional skills and ethics of AABs vary. The participants recommend that the receiving States ensure that they accredit only those AABs which observe ethical standards for the protection of children which the Convention is designed to promote. It is suggested that States of origin develop criteria for selection of the AABs to operate in their countries whose ethical standards are in close conformity with the spirit of the Convention. For such purpose, criteria should be developed to enable the States of origin to select the AABs.

The professionalism of AABs in receiving countries should be improved.

The participants welcome the work of the Permanent Bureau, with assistance from the Central Authority of Quebec, for the development of a Guide to Good Practice on the issue of accreditation of adoption bodies, including criteria for accreditation and approval.

12. *Post-adoption reports on children*

The participants have noted that the laws of the States of origin frequently require post-adoption reports up to the age of majority. The requirement for post-adoption reports should be reasonable as to the number of reports to be provided and the period of time

for which they are to be provided.

The participants confirm once again Recommendation N° 18 of the Special Commission meeting of 2005 relating to post-adoption reports.²

The establishment of a post-adoption monitoring mechanism involving the State of origin and the receiving State is recommended.

13. Preventing abuses

At all stages of the procedures designed for protection of the child and protection of the integrity of the adoption process, emphasis should be placed on the need to avoid the involvement of money in the negotiations and process.

Irregularities in the procedure should be prevented and remedied, and if necessary, abuses punished.

It is important to stress that child trafficking may also consist of misuse of the rules in order to render adoptable a child who does not necessarily require adoption.

The receiving States and States of origin should identify and review the costs connected with the adoption process both in the receiving State and in the State of origin, and eliminate practices that could lead to an escalation of costs, in order to establish an effective mechanism to prevent improper financial gain.

14. Technical assistance

The Permanent Bureau, the receiving States and the international organisations in particular wish to provide technical assistance and professional support to the Governments of States that would like to receive it in order to improve the situation in their respective countries. The receiving States should analyse their applications for adoption in order to ensure compliance with the law of each State of origin and to take any necessary action to limit the number of such applications having regard to the statutory requirements and to the local situation.

² *The Special Commission recommends to receiving States to encourage compliance with post-adoption reporting requirements of States of origin; a model form might be developed for this purpose. Similarly, the Special Commission recommends to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention.*