



Government of the Netherlands

**FRANCOPHONE WORKSHOP
ON THE HAGUE CONVENTION OF 29 MAY 1993 ON
PROTECTION OF CHILDREN AND
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**

Dakar (Senegal) – 27-30 November 2012

CONCLUSIONS AND RECOMMENDATIONS

PRESENTATION OF THE WORKSHOP

The Permanent Bureau of the Hague Conference on Private International Law organised a Francophone Workshop on the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereafter, “the 1993 Hague Convention” or “the Convention”) in Dakar (Senegal) from 27 to 30 November 2012. This meeting gathered over 60 experts from the Central Authorities in adoption and / or child protection matters, as well as the judicial authorities of 15 States of origin of Francophone Sub-Saharan Africa (Benin, Burkina Faso, Burundi, Congo, Democratic Republic of Congo, Guinea, Ivory Coast, Madagascar, Mali, Mauritius, Niger, Rwanda, Senegal and Togo) and the Caribbean (Haiti) that are Parties to the Convention or have undertaken steps to become a Party. Francophone experts from the Central Authorities of seven receiving States (Belgium, Canada, France, Italy, Switzerland, the Netherlands and the United States of America), as well as from four international organisations (EurAdopt, Save the Children, International Social Service and UNICEF) were also present.

This Workshop was organised by the Hague Conference with the generous financial support of the Governments of Belgium (French Community), France, Italy, the Netherlands and Switzerland. It follows the first Francophone Seminar on intercountry adoption held in The Hague in June 2009.

Based on a programme promoting the sharing of experiences and practices on a wide range of issues linked to the operation and implementation of the 1993 Hague Convention, this Workshop aimed to further a good understanding of the Convention, to review the implementation of this instrument in the States that were invited, to help ensure that intercountry adoptions are undertaken in compliance with the child’s best interests and fundamental rights, as well as to contribute to preventing the abduction, sale or trafficking of children for adoption purposes.

THE PARTICIPATING EXPERTS AND JUDGES:

Having regard for the value and relevance of the multilateral Conventions developed by the Hague Conference, in particular in relation to child protection;

Appreciating the numerous encouraging signs generated by the discussions among members of the Francophone family in relation to child protection and, in particular, adoption;

Considering the importance of the 1993 Hague Convention as an international legal framework aimed at protecting children in intercountry adoption and promoting the principle of subsidiarity;

Considering the increase in the number of intercountry adoptions of children from non-Contracting States to the Convention, in particular from Sub-Saharan Africa;

Considering the important number of Francophone States of origin having acceded to or ratified the 1993 Hague Convention, and with the aim of encouraging those States which have not yet done so to accede to or ratify the Convention;

Considering the link between the 1993 Hague Convention and Articles 20 and 21 of the 1989 *United Nations Convention on the Rights of the Child* on the one hand, and Article 24 of the 1990 *African Charter on the Rights and Welfare of the Child* on the other;

Reiterating the value of the 2009 *United Nations Guidelines for the Alternative Care of Children*;

Drawing particular attention to the *Guidelines for Action on Intercountry Adoption of Children in Africa*, adopted in 2012 at the Fifth International Policy Conference on the African Child in Addis Ababa (Ethiopia);

Recognising UNICEF's support for the 1993 Hague Convention through "*UNICEF's position on intercountry adoption*" of 22 July 2010 and the close collaboration between UNICEF and the Hague Conference on technical assistance, capacity-strengthening and the sharing of information;

HAVE UNANIMOUSLY AGREED ON THE FOLLOWING CONCLUSIONS AND RECOMMENDATIONS:

1. THE POSITION OF ADOPTION IN THE CHILD PROTECTION SYSTEM

For a better implementation of the principle of subsidiarity, Contracting States should commit further resources and strengthen their advocacy actions for the consolidation of their child protection systems and the promotion of prevention and family reunification measures. Solutions ensuring that children are cared for in a permanent family environment in their country, including domestic adoption, should be encouraged.

The child should be involved in any decision affecting him / her, in accordance with his / her maturity and level of understanding.

Any undue delay in the decision-making process regarding a child in need of protection should be avoided.

2. RATIFICATION OF / ACCESSION TO THE 1993 CONVENTION

The 1993 Hague Convention is the international legal framework of reference in intercountry adoption. Those States of origin that are not yet Parties to this Convention are encouraged to examine the benefits of ratification of, or accession to, the Convention in order to protect the rights of children in the context of intercountry adoption, bearing in mind the need for adequate preparation prior to any accession or ratification.

Existing methodological tools, including Annexes 1, 2 and 3 of the Guide to Good Practice No 1 on the 1993 Hague Convention, as well as the sharing of experiences with other Contracting States, are highly recommended in order to adequately prepare a State for change.

At all times, a dialogue and synergy among all actors are necessary for their effective commitment to, and involvement in, the implementation of the 1993 Hague Convention and the efficient application of its procedures and safeguards.

Given that the implementation of the 1993 Hague Convention is an ongoing process, it is also advisable to establish assessments and supervision systems aimed at improving its operation in each Contracting State.

3. GUIDES TO GOOD PRACTICE DEVELOPED BY THE PERMANENT BUREAU

The value of Guides to Good Practice Nos 1 and 2 relating to the 1993 Hague Convention, developed by the Permanent Bureau, is recognised, and their wide dissemination is desirable with a view to strengthening the knowledge of all actors that are involved in the intercountry adoption process.

4. CO-OPERATION AMONG STATES: MUTUAL SUPPORT AND ASSISTANCE

The participants accept and support the principle of co-responsibility, *i.e.*, the recognition of the fact that receiving States and States of origin should share the responsibilities to develop safeguards and procedures that protect the best interests of the child who is the subject of an intercountry adoption.

A clear definition of the responsibilities of each actor and the recognition of a moral, legal and political responsibility shared among partner States allows for the effective implementation of the principle of co-operation that is promoted by the 1993 Hague Convention.

Based on Recommendation No 5 of the 2009 Francophone Seminar, the participants reaffirm and add that:

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

- respect the conditions required in relation to adoption in States of origin;
- refrain from placing any pressure on States of origin aimed at obtaining children by taking specific measures such as controlling the number of accredited bodies and the number of files of prospective adoptive parents sent to States of origin, in accordance with the actual adoption needs in these States;
- ensure that adoptive parents have the ability to receive and care for the child that is being matched to them by the authorities of the State of origin.

In order to further regulate the requirements for adoption in their own State, States of origin should better:

- ascertain the background of children presented for adoption;
- assist biological families faced with a risk of separation, and provide biological parents wishing to proceed with a formal voluntary relinquishment of their child with the necessary advice and information on the implications of their decision;

- prepare the children for their adoption;
- supervise the activities of accredited adoption bodies and of other intermediaries in their State.

5. SCOPE OF APPLICATION OF THE CONVENTION

The participants reiterate Recommendation No 11 of the 2010 meeting of the Special Commission, according to which:

“The Special Commission emphasised that all intercountry adoptions falling within the scope of the Convention under Article 2(1), including in-family adoptions and adoptions by nationals of the State of origin, are subject to Convention procedures and safeguards.”

Should there be doubts in relation to the habitual residence of the prospective adoptive parents, in particular in the case of foreign temporary workers or foreign residents in a State of origin, the Central Authorities of both States, or in their absence, the involved competent authorities, should confer regarding the legal classification of that residence and provide the prospective adoptive parents with advice on their particular situation before they submit an adoption request.

6. ROLE AND FUNCTIONS OF CENTRAL AUTHORITIES

The participants reiterate the importance of clearly defining the role of each authority, for a better understanding of the system and a better co-ordination of the actors involved in the intercountry adoption process.

In order for the Central Authorities to be able to effectively undertake all the responsibilities that are placed upon them by the Convention, it is appropriate for the respective State to provide them with the material and human resources needed for the implementation of their functions, including adequately trained multidisciplinary staff.

7. ACCREDITATION AND AUTHORISATION OF ACCREDITED ADOPTION BODIES

Private and independent adoptions are not compatible with the Convention. Thus, receiving States and States of origin should take measures to prohibit them.

It is strongly recommended to use ethical and professional accredited bodies which are strictly selected by the receiving State and which are authorised to act in a State of origin in accordance with the actual needs of adoptable children and on the basis of authorisation criteria.

The supervision and monitoring of these accredited bodies remain the responsibility of the receiving State, in close collaboration with States of origin.

The beginning of new partnerships with foreign accredited bodies in a State of origin should be undertaken under the auspices of both countries' Central Authorities.

8. ADOPTABILITY OF THE CHILD

States of origin should ensure the legal and psychosocial adoptability of the child on the basis of clear, defined and transparent criteria, as well as on the basis of the detailed information gathered on each child's specific situation, including his medical situation.

9. RESPECT FOR THE NEEDS OF ADOPTABLE CHILDREN IN STATES OF ORIGIN – REVERSAL OF THE FLOW OF THE FILES

Receiving States should ensure, in co-operation with States of origin, that the number and the quality of the files of prospective adoptive parents submitted do comply with the characteristics and the needs of adoptable children in these States of origin.

Thus, receiving States and States of origin could, in close collaboration, initiate a reflection on the possibility of expanding and implementing the practice known as the “reversal of the flow of the files”, according to which the files of prospective adoptive parents are only sent upon a specific request of the State of origin, in accordance with the characteristics and the needs of adoptable children.

10. SELECTION AND PREPARATION OF PROSPECTIVE ADOPTIVE PARENTS

The information received from States of origin in relation to the characteristics and the needs of adoptable children contributes to the development of tools for the preparation of prospective adoptive parents for intercountry adoption, as well as for the management of their expectations.

The participants highlight the need for a general preparation of prospective adoptive parents in relation to intercountry adoption, and for specific preparation in relation to each country in which they may adopt. The preparation of prospective adoptive parents should be in line with a perspective of prevention of bad practices; awareness should also be raised as to the specific features and the challenges of adoption as a form of particular parenthood and should lead to the accountability of prospective adoptive parents.

11. CHILDREN WITH SPECIAL NEEDS

Particular attention should be drawn to the cases of children with special needs, for whom intercountry adoption could be a solution, in compliance with the principle of subsidiarity and the best interests of the child.

A specific selection and preparation of prospective adoptive parents, as well as a particular preparation of the child, is necessary for this type of adoption.

12. TRAINING OF THE ACTORS

The participants recognise that the specialisation and the adequate training of competent authorities, Central Authorities, and other actors involved in the adoption procedure, contribute to a better application of the Convention and to the elimination of abuses and bad practices.

13. FINANCIAL ASPECTS OF INTERCOUNTRY ADOPTION

States should take effective measures to ensure the transparency and the reasonableness of the costs linked to the adoption process – as much in the receiving State as in the State of origin – in order to prevent and eliminate practices that may lead to abuses and improper financial gain.

The participants recognise the work undertaken by the [Expert Group on the Financial Aspects of Intercountry Adoption](#), and recommend the use of the tools presented by the Permanent Bureau during its first meeting in October 2012, *i.e.*, the definitions aimed at contributing to the harmonisation of terms used in this field (adopted at the meeting), as well as an “Information Note on the Financial Aspects of Intercountry Adoption” and the tables detailing the costs and expenses incurred in the adoption procedure in different countries (the completion of both these tools is pending).

14. PREVENTION OF ABUSES

It is fundamental to prevent the adoption of children occurring without their rights being respected or without minimum guarantees being applied to the adoption.

The participants highlight, with concern, a certain number of illicit or unethical practices, such as the forgery of documents, corruption and fraud, against which it is desirable to fight with great rigour.

The participants welcome the work of the Expert Group on the prevention of abuses and illicit practices as well as the Discussion Paper drafted by the Expert Group entitled "[Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases.](#)"

15. STATISTICS

The participants reiterate Recommendation No 30 of the 2010 meeting of the Special Commission, which states:

"The Special Commission underlined the importance for States Parties of submitting general statistics on an annual basis to the Permanent Bureau using the forms contained in Preliminary Document No 5 of April 2010."

16. TECHNICAL ASSISTANCE

The participants underline the proven value of the technical assistance offered to States of origin by the Permanent Bureau within the framework of its Intercountry Adoption Technical Assistance Programme (ICATAP), in order to support the beneficiary States towards a proper implementation of the Convention, and reiterate the need to allocate sufficient resources to these activities in order to complete them successfully.

17. POST-ADOPTION FOLLOW-UP

The participants recognise the importance of post-adoption follow-up services as support to the adoptee and his / her adoptive family. The link between the preparation of the adoptive family and the child and post-adoption follow-up demonstrates the need to promote and to commit sufficient resources to the preparation of all the parties to the adoption from the beginning of the procedure.

The participants reiterate the importance of Article 30 of the Convention on the preservation of information relating to the child's background by the competent authorities and accredited bodies. The effective access to this information by the child and any other authorised person, insofar as it is allowed by the law of their State, must be supported by the provision of necessary advice.

The participants confirm Recommendation No 18 of the 2005 meeting of the Special Commission on post-adoption reporting in order, on the one hand, for receiving States to encourage compliance with the requirements of States of origin in relation to follow-up reports and, on the other hand, for States of origin to establish reasonable requirements concerning the number of reports required and the time period during which these reports are to be submitted, in order to further the optimal integration of the adopted child into his adoptive family and new environment. The participants reiterate the benefits linked to the development of a model form for this purpose.

18. OTHER HAGUE CONVENTIONS

The participants reassert Recommendations Nos 41 and 42 of the 2010 meeting of the Special Commission which:

“Reiterated the value of the 1996 Convention on the International Protection of Children in the context of cross-border placement of children as well as other international child protection situations.

Stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention). In the light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States Parties to the Adoption Convention but not to the Apostille Convention consider the possibility of becoming a party to the latter.”

19. WORKSHOPS

The participants unanimously recognise that this type of workshop is of great value to the proper understanding and effective implementation of the principles and safeguards of the 1993 Hague Convention, and hope that such meetings will take place again in the future.

Dakar, 30 November 2012