

Intercountry Adoption  
Technical Assistance Program

July 2011



**REPORT OF MISSION TO KAZAKHSTAN  
9 – 12 MAY 2011**

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## **1. BACKGROUND TO THE MISSION**

Kazakhstan acceded on the 9 of July 2010 to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Hague Adoption Convention). The Convention entered into force on 1 November 2011. The Children Rights Protection Committee of the Ministry of Education and Science (MOES) was designated as the Central Authority.

At the Special Commission on the practical operation of the 1993 Hague Adoption Convention, which took place in the Hague from the 17 to 25 June 2010, the Government of Kazakhstan was represented by an official of the Ministry of Foreign Affairs. However, the Central Authority did not attend as they were not officially appointed as the Central Authority at that time. As the Special Commission was conducted in English, the country decided to send an official of the Ministry of Foreign Affairs.

Kazakhstan has had a system of independent adoptions in the past where foreign adoptive parents used private facilitators to find a child to adopt. As a consequence, there have been serious problems with intercountry adoption and the process was judged by a Report of the International Social Service in 2007 as quite unsafe. This report also identified a number of problems, in particular, the amount of money required by different intermediaries in Kazakhstan, and the categorisation of children as special needs (when in reality they were not) in order to get them into the intercountry adoption stream.<sup>1</sup>

Intercountry adoption is on hold pending completion of the amendments to the Code of the Republic of Kazakhstan about Marriage and Family (Family Code) and the regulations to implement the 1993 Hague Adoption Convention. When intercountry adoptions were temporarily stopped, we were informed that there were about 900 pending cases and that these had all been resolved (adoptions completed or files returned to receiving States).

## **2. PURPOSE OF MISSION**

The Government of Kazakhstan requested UNICEF for some help to achieve compliance with the international norms and standards while setting up a new system to implement the 1993 Hague Convention, and UNICEF then sent a request for technical assistance to the Permanent Bureau. This request was supported by the Government of Kazakhstan. The main objective of the mission was to provide technical assistance to the Government of Kazakhstan (in particular to the Children Rights Protection Committee) by sharing the international experience from the States who are parties to the 1993 Hague Adoption Convention and advising on development of policies, structures and capacities for the implementation of the Convention.

The visit included an in-depth working discussion with the Child Rights Protection Committee and the Inter-ministerial working group on inter-country adoption composed of representatives of the Ministries of Education and Science, the Ministry of Health, the Ministry of Labour and Social Protection on Population, the Ministry of Justice and the Ministry of Foreign Affairs. We were advised by Unicef that accreditation and accredited bodies were a major concern to the Government, and we gave a detailed presentation on this subject. The need for future training and the main challenges that countries face during the implementation of the 1993 Hague Adoption Convention was also discussed.

A larger seminar was held on the last day involving some representatives from regional authorities around Astana, as well as representatives from Embassies. The French

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<sup>1</sup> H. Boéchat and N. Cantwell, "Assessment of the adoption system in Kazakhstan", International Social Service (ISS), December 2007 (hereinafter 2007 ISS Report), pp. 11 to 15.

Embassy and Unicef co-hosted the meeting and the French Central Authority made a presentation on their system. We focussed our presentations and comments on the protection of the interests of the child and families, and the safeguards and the challenges in implementing the 1993 Hague Adoption Convention.

The mission also included a very interesting meeting with the Spanish Ambassador and the person in charge of Consular Affairs at the Spanish Embassy. Spain is the second receiving State for children adopted in Kazakhstan after the USA. In 2009, 163 children were adopted by Spanish habitual residents and 268 by USA. The meeting allowed us to learn about the point of view of a receiving State and the abuses that prospective adoptive parents report to the Embassy in relation to adoption procedures in Kazakhstan.

In the original agenda, a meeting was also scheduled with the Parliament. Regrettably this meeting was cancelled at the last minute. This meeting could have been very interesting as Kazakhstan was discussing at that moment the amendments to the provisions on adoption of the Family Code.

### **3. CENTRAL AUTHORITY AND OTHER AUTHORITIES**

The Chairperson of the Central Authority (the Children Rights Protection Committee - the Committee) is Mrs Raisa Sher. The Committee is also responsible for other child protection matters and works closely with Unicef.

The Ministries involved and their connection to domestic and intercountry adoptions are:

- Ministry of Education and Science: it is responsible for alternative care of children aged 4-18 and special needs children; it registers adoptable children and adoptive parents; and will do matching for all intercountry adoption in the future. Some help is provided to children with special education needs by the local education departments for their access to education services.
- Ministry of Health: it is responsible for babies from 0 to 3.
- Ministry of Labour and Social Protection: it is responsible for disabled children.
- Ministry of Justice: it is responsible for developing the amendments to the Family Code to implement the 1993 Hague Adoption Convention.
- Ministry of the Interior: it issues passports.
- Ministry of Foreign Affairs: it is responsible for treaty matters.

### **4. ACHIEVEMENTS OF THE GOVERNMENT OF KAZAKHSTAN**

The Government of Kazakhstan is making genuine efforts to improve the system of intercountry adoption. A number of achievements in recent years may be noted:

- Amendments to the Family Code have been drafted, including the chapter on adoption. It is commendable to see this type of amendment, as well as the establishment of some children's rights in relation to family and other alternative care possibilities for children. However, the relationship with the Child Protection System as a whole is not clear, in particular the responsibilities of the State to safeguard the

welfare of children.<sup>2</sup> The modifications to the Code have passed the Lower Chamber of Parliament (Majilis) and are now with the Senate. They could be passed this year.

- Regulations regarding adoption are being developed by the Children Rights Protection Committee, and will be agreed during the specially formed Inter-ministerial working group.
- The Central Authority has been appointed; it has resources and is functioning. There is an Intercountry Adoption Unit in the Children Rights Protection Committee to perform the Central Authority functions.
- Workshops and seminars at national and regional level have been held with various actors to explain the new system.
- Regional child protection offices (Departments of the MOES) are already involved in identifying vulnerable children and working with families.
- Meetings and visits with receiving States have been held.
- A Booklet was produced to explain the transition to the Hague system.
- A plan of action to implement the 1993 Hague Adoption Convention was approved by the MOES.
- The Committee has a website with information in Kazakh and Russian about the 1993 Hague Adoption Convention.
- We visited a baby home which had a pilot program "Hope Baby-Mother" where first time single mothers, who might otherwise abandon or relinquish this child, could live together with their baby in the institution for a certain period while they receive support.

## **5. GENERAL OBSERVATIONS**

We were very pleased to see that the Central Authority leaders have good knowledge and understanding of 1993 Hague Adoption Convention and its requirements and have been using the *Guide to Good Practice No 1 on the Implementation and Operation of the 1993 Hague Adoption Convention* (Guide to Good Practice No 1)<sup>3</sup> which has been translated into Russian. The Government seems committed to preparing for the effective implementation of the 1993 Hague Adoption Convention.

In addition they have a good understanding of the subsidiarity principle. This is reflected in the practice, as national adoptions are very developed and are reported as very high *i.e.* almost 80% of all adoptions.

However, there seems to be fragmented approach to child protection. The responsibilities are spread over a number of ministries and it seems that there is a lack of effective

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<sup>2</sup> See C. Hamilton, "Commentary on the Code of the Republic of Kazakhstan on Marriage and Family", Children's Legal Centre, University of Essex, 2011, para. 3: "The major concern that I would have is the failure of the Code to cover in sufficient detail what would generally be regarded as 'child protection'. While the Code places a duty on parents and other legal representatives not to abuse the child (see Article 66.2 and Article 71), it appears not to place a clear duty on the State to safeguard the welfare of children. The Code covers fostering and adoption and deprivation of parental rights, as well as guardianship for children without parental care, but these do not appear to be seen as part of a total protection system, but rather separate services for children".

<sup>3</sup> The Guide to Good Practice No 1 is available on the website of the Hague Conference [www.hcch.nl](http://www.hcch.nl) under the Russian section of the website and under "Intercountry Adoption Section" and then "Guides to Good Practice".

co-ordination as ministries are protecting their own territory and may not wish to be directed by a body at the level of the Committee.

It has to be noted that it was not possible to get any view of how things are working in the regions, and Astana is not representative of the rest of the country.

## **6. RECOMMENDATIONS**

### **a. Elements of a safe system: Recommendation No 1 of 2010 Special Commission on the practical operation of the 1993 Hague Adoption Convention**

We would like to draw the attention of the Government of Kazakhstan to the recommendations made during the 2010 Special Commission regarding the elements of a safe system of adoption. The following are essential features of a well regulated system:

- a) effective application of Hague Convention procedures and safeguards including, as far as practicable, in relation to non-Convention adoptions;
- b) independent and transparent procedures for determining adoptability and for making decisions on the placement of a child for adoption;
- c) strict adherence to the requirements of free and informed consent to adoption;
- d) strict accreditation and authorisation of agencies, and in accordance with criteria focussing on child protection;
- e) adequate penalties and effective prosecution, through the appropriate public authorities, to suppress illegal activities;
- f) properly trained judges, officials and other relevant actors;
- g) prohibition on private and independent adoptions;
- h) clear separation of intercountry adoption from contributions, donations and development aid;
- i) regulated, reasonable and transparent fees and charges;
- j) effective co-operation and communication between relevant authorities both nationally and internationally;
- k) implementation of other relevant international instruments to which States are parties;
- l) public awareness of the issues.

### **b. Revisions to the chapters on adoption of the Family Code**

The Permanent Bureau recalls its offer of assistance to revise the amended version of the chapters related to adoption of the Family Code if it is translated into English.

### **c. Address the issue of fragmentation of functions and responsibilities**

It is not easy to understand who is responsible for what in the child protection system. This fragmentation of functions and responsibilities can be very problematic. It is therefore recommended to address this issue and to try to concentrate functions and responsibilities more effectively.

### **d. Ensure effective co-ordination between national authorities and bodies – a Central Authority responsibility under Art.7**

The Central Authority has to promote co-operation amongst the competent authorities in Kazakhstan to protect children and to achieve the objectives of the 1993 Hague Adoption

Convention (art. 7). According to the 2007 ISS Report, regional authorities may have different approaches and the rate of intercountry adoptions may vary tremendously from region to region. As mentioned in the report, a co-ordinated national policy and assurance of good co-operation is needed.<sup>4</sup>

**e. Ensure all authorities and bodies are aware of the obligation of the protection of the best interests of child as the guiding principle in decision making**

The protection of the best interest of the child should always be the primary consideration in all matters related to adoption. An adoption should only be made when it is in the child's best interests to do so. This has to be clear for all authorities and bodies involved.

**f. Matching must be done by professionals**

We understood that the modifications to the Family Code include a major and very important change: prospective adoptive parents will no longer be allowed to choose a child personally.

As it is said in the Guide to Good Practice No 1<sup>5</sup>, the matching should not be done by the prospective adoptive parents, for example, parents should not visit an institution to pick out an appealing child or choose a child from photo lists. The matching should be assigned to a team and not be left to the responsibility of an individual; the team should be composed of child protection professionals trained in adoption policies and practices. They should preferably be specialists in psycho-social fields. Matching should not be done by computer alone even if an initial screening is made on criteria such as age, gender or special needs of the child. The final match should always be made by professionals and take into account the child's wishes and best interest.<sup>6</sup>

**g. Training and supervision for regional authorities and persons involved in child homes**

All regional authorities and bodies involved in the adoption procedure should be trained on how to properly implement the 1993 Hague Adoption Convention and on the new legal framework when it will be approved. This should also include the personnel of children's homes.

New responsibilities should be explained properly and procedural manuals to implement the new legal framework properly should be written for staff of the Central Authority and others.

**h. Proper regulation for the authorisation of foreign adoption bodies and limits on the number of foreign adoption accredited bodies in Kazakhstan**

Kazakhstan should include in its new legislation proper regulation for the authorisation of foreign adoption bodies to work in the country.<sup>7</sup> We understood that this is the intention and therefore some of our presentations during the mission focussed on this aspect.

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<sup>4</sup> 2007 ISS Report, *supra* note 1, p. 6.

<sup>5</sup> Guide to Good Practice No 1, *supra* note 3, para. 357.

<sup>6</sup> See as well 2007 ISS Report, *supra* note 1, p. 22 and R. Amzeeva, "Assessment of the National Adoption System in the Atyrau Oblast", UNICEF, July 2010, final recommendations 1 and 2.

<sup>7</sup> See as well 2007 ISS Report, *supra* note 1, pp. 9 to 11.

It is also recommended that Kazakhstan limits the number of foreign adoption accredited bodies that it authorises to work in the country. This will help to prevent pressure. The number of adoption accredited bodies should be proportionate to the number of intercountry adoptions. In addition special attention should be given to selecting the best ones using ethical criteria (see *Draft Guide to Good Practice No 2 on Accreditation and Adoption Accredited Bodies*).<sup>8</sup>

#### **i. Foreign adoption accredited bodies' representatives in Kazakhstan**

It is recommended that foreign adoption accredited bodies have their own representatives in Kazakhstan who they will support, train, monitor and for whom they will be responsible. Therefore, it will no longer be needed to have "independent facilitators", as this task should be assumed by the adoption accredited bodies and their respective representatives. This will make it easier to ensure that adoption accredited bodies and their representatives follow the same standards (see *Draft Guide to Good Practice No 2*, chapter 7).

#### **j. Financial issues**

The ISS Report makes quite worrying statements regarding financial issues surrounding intercountry adoption in Kazakhstan, in particular the costs associated with agencies and facilitators. This issue was not raised in our public meetings. However, some interlocutors were also very concerned and told us that it was a widespread problem.

Contracting States and their respective Central Authority have a particular responsibility to regulate the cost of intercountry adoption by taking measures to prevent improper financial gain. It is reasonable to expect that payments will be necessary for both government and non-government services connected with intercountry adoptions. Both receiving States and States of origin are permitted to charge reasonable fees for services provided. The 1993 Hague Adoption Convention is concerned with achieving transparency in costs and fees as a means of preventing improper financial gain.

Regarding this point we recommend following all the recommendations set out in Chapter 5 of the Guide to Good Practice No 1. The modifications to the Family Code should include regulation of adoption financial issues. Costs and fees should be very transparent, accountable and clear. We also recommend that as a requirement for authorisation to work in Kazakhstan, all adoption accredited bodies publish their costs and charges on their website and on the website of the Central Authority of Kazakhstan.

#### **k. Special Needs Children**

Special needs children are usually not adopted domestically. Therefore, special campaigns should be carried out in order to promote their adoption in Kazakhstan. For instance, good campaigns have improved the rate of adoption of siblings and older children in States of origin.

The problem of categorising children as special needs children when they are not special needs, in order to put them in the intercountry adoptable stream more quickly, should be addressed. It is recommended that authorities ensure that medical reports are accurate.

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<sup>8</sup> This Draft Guide only exists for the moment in English, French and Spanish. It is available on the website of the Hague Conference [www.hcch.nl](http://www.hcch.nl) under "Intercountry Adoption Section", "Special Commissions", "2010 Special Commission" and then "Prel. Doc No 2".

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