

## CONCLUSIONS AND RECOMMENDATIONS

### Workshop

#### *"Role of The Hague Conventions in Cross-Border Child Protection in South Asia"*

Annapurna Hotel, Kathmandu, Nepal

29–31 May 2018

From 29 to 31 May 2018, 31 governmental experts from Afghanistan, Bangladesh, India, Maldives, Nepal and Sri Lanka, UNICEF representatives from these countries as well as from the Regional Office for South Asia (ROSA), representatives from the Permanent Bureau of the Hague Conference on Private International Law (HCCH), the International Social Services (ISS) and three independent consultants met in Kathmandu, Nepal, in the context of a Workshop entitled the "Role of the Hague Conventions in Cross-Border Child Protection in South Asia" co-organised by UNICEF ROSA and the HCCH.

The aim of the Workshop was to discuss the cross-border movement of children from South Asia, and mechanisms to support safe migration. During the workshop, the country teams presented existing mechanisms children use to migrate and to return; the HCCH presented the benefits of becoming a Member of the organisation; the role and value of the Hague Children's Conventions for addressing cross-border child protection issues in South Asia was examined, in particular in the context of irregular migration (e.g., trafficking, unaccompanied children); and some of the practicalities surrounding implementation of these Conventions was discussed. Significant time was devoted to case studies.

During the Workshop, the government experts shared their experiences in relation to existing mechanisms and initiatives addressing and assisting with the cross-border protection of children by highlighting their good practices and identifying, in the current system, possible gaps, which consist mainly of the lack of adequate cross-border co-operation mechanisms.

Participants were informed about the global situation of children on the move, including the Global Compacts on Migration and on Refugees. In addition, a background paper was drafted by UNICEF ROSA on the situation in the region. Participants were also provided with good practices of migration programmes collected over the years by the ISS.

Participants were trained on the following Hague Conventions, projects and Protocols which implement key provisions of the United Nations Convention on the Rights of the Child for the purposes of establishing proper Cross-border Child Protection Systems:

- 1) the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of **Parental Responsibility and Measures for the Protection of Children*** (the 1996 Convention);
- 2) the *Hague Convention of 29 May 1993 on **Protection of Children and Co-operation in Respect of Intercountry Adoption*** (the 1993 Convention);
- 3) the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child **Abduction*** (the 1980 Convention);
- 4) the *Hague Convention of 23 November 2007 on the International Recovery of **Child Support and Other Forms of Family Maintenance*** (the 2007 Convention) and the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (the 2007 Protocol);
- 5) the United Nations Protocol to Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- 6) the International Labour Organisation 1973 Convention concerning Minimum Age for Admission to Employment and 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- 7) the **Malta Process** on Cross-Frontier Child Protection and Family Law;
- 8) the HCCH Parentage/**Surrogacy** Project and the draft ISS Principles on Surrogacy.

During the Workshop, participants spent significant time working on case studies, which provided an opportunity to apply the best interest determination procedures as devised by UNICEF and UNHCR. The case studies dealt specifically with the application of the 1996 Convention to the cross-border trafficking of children, the cross-border movement of children due to regional conflict and political unrest, and child labour across borders and the implementation of the 1993 Convention in general as well as in relation to financial issues and illicit practices in intercountry adoption.

The value of all countries in the region becoming Contracting States to the 1996 Convention was recognised, especially regarding the cross-border co-operation mechanisms provided therein, based on a Central Authority system. This could fill an important gap in the region with regard to the cross-border movement of children.

The values of the 1993 Convention to protect children who are adopted, and to prevent and address illicit practices and other abuses, were also recognised. Countries permitting adoption in their system were encouraged to become a Party to this Convention and properly apply its rules and standards.

The values of the 1980 Convention to combat the wrongful removal or retention of children in a civil context and of the 2007 Convention for the cross-border recovery of child support based on procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair were also recognised.

The Workshop also provided an opportunity to develop a better understanding of the issues surrounding surrogacy and the need to protect all vulnerable parties in this area, prevent problems and address them when they occur.

Participants acknowledged the unique value of HCCH post-Convention services which include, for example, periodic meetings of Contracting States to review the practical operation of specific Conventions, Guides to Good Practice and Practical Handbooks on the operation of specific Conventions, implementation checklists, Country Profiles, case law databases, electronic case management and secure communication systems, the Judges' Newsletter on International Child Protection, the International Hague Network of Judges and the Intercountry Adoption Technical Assistance Programme (ICATAP).

#### **NEXT STEPS:**

- 1) Participants committed to raise awareness about the Hague Conventions with their respective governments with the objective, if found suitable, to become Members of the HCCH and Contracting States to the Hague Children's Conventions.
- 2) Participants of some countries committed to assess the cross-border migration situation that may be addressed by the 1996 Convention; to reflect on the extent of the migration to which the 1996 Convention could apply; to assess existing systems and structures to address these cases; and to examine previous discussions on the 1996 Convention in the countries, with the intention to determine if the 1996 Convention is useful, and what would be required if useful, to become a Party to the Convention. Some countries have existing legislation in this area that they propose could be reviewed to determine alignment with the 1996 Convention.
- 3) Participants of some countries permitting adoptions offered to share their good practices implementing the 1993 Convention, in particular the principle of subsidiarity. Some countries permitting adoptions that are not Party to the 1993 Convention expressed their intention to further promote the 1993 Convention and to undertake the necessary work with a view to becoming a Party.
- 4) Countries are encouraged to continue sharing information and experiences at the regional level on, *inter alia*, good practices, challenges in relation to cross-border child protection issues that they face, and means of addressing those challenges. In particular, countries with more experience implementing the Hague Conventions are encouraged to provide assistance to new States Parties or those interested in joining the Hague Conventions.