



CONCLUSIONS AND RECOMMENDATIONS

International Seminar on the Protection of Children Across Borders: the 1996 HCCH Convention on the Protection of Children

Higher Institute of the Judiciary, Rabat, Morocco
14-15 November 2019

On 14 and 15 November 2019, 92 participants, including governmental experts and judges from Belgium, Burkina Faso, Cameroon, Egypt, France, Germany, Italy, Côte d'Ivoire, Mali, Mauritania, Morocco, Nigeria, Senegal, Spain, Switzerland, Togo, Tunisia and the United Kingdom, representatives from the European Union, UNICEF, the United Nations Committee on the Rights of the Child, the Permanent Bureau of the Hague Conference on Private International Law (HCCH), International Social Service (ISS), representatives from the civil society and observers met in Rabat, Morocco, in the context of the "International Seminar on the Protection of Children Across Borders: the 1996 HCCH Convention on the Protection of Children" organised by the Ministry of Justice of Morocco, with technical support from UNICEF and the HCCH and financial support from the European Union. The aim of the Seminar was to discuss ways to improve the protection of children across borders in West Africa, in North Africa and in Europe, the mechanisms in place to protect unaccompanied and separated children and to share experiences with regard to family-type protection measures, in particular *kafala* as a child protection measure in cross-border context.

A. During the Seminar, the United Nations Committee on the Rights of the Child presented the 1989 United Nations Convention on the Rights of the Child (UNCRC) in the context of the protection of children across borders; the role and value of the HCCH Children's Conventions for addressing cross-border child protection issues was examined, in particular the 1996 HCCH Convention on the Protection of Children in the context of migration (e.g., child trafficking and unaccompanied and separated children) and the institution of *kafala*; some of the practicalities surrounding the implementation of the 1996 Convention were discussed; and, the HCCH presented on the benefits of becoming a Member of the Organisation. Morocco, the only African Contracting Party to the 1996 Convention present at the Seminar, shared its experience in the negotiation of and implementation of the Convention. UNICEF also highlighted to the participants the importance of the 1996 HCCH Convention on the Protection of Children. Significant time was devoted to case studies and the hypothetical cases used highlighted in a concrete way the benefits of the 1996 Convention for the protection of unaccompanied and separated children and children deprived of their family environment and benefiting from alternative care measures.

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

C. Participants were informed by ISS of the existence of advocacy tools and good practices in the implementation of cross-border child protection mechanisms for children affected by family conflicts and children being cared for under *kafala*. ISS shared the experience of the "West Africa Network" concerning children on the move.

D. Participants were invited to work on case studies which provided an opportunity to apply the best interest determination procedures in conformity with the UNCRC. The case studies dealt specifically with the application of the 1996 Convention with regard to the cross-border trafficking of children, the cross-border movement of children due to regional conflicts and political unrest, and child labour across borders as well as *kafala* and other alternative care measures of protection in a cross-border context.

1. The added value of countries from West and North African regions and Cameroon becoming Contracting Parties to the 1996 Convention was recognised in the light of the experience of existing Contracting Parties, especially regarding the cross-border co-operation mechanisms provided for under the Convention based on a system of Central Authorities. It was recognised that the accession of such States could fill an important gap in the regions with regard to the protection of vulnerable children in cross-border situations.

2. Participants acknowledged the unique value of HCCH post-Convention services which include, for example, periodic meetings of Contracting Parties to review the practical operation of specific Conventions, Guides to Good Practice and Practical Handbooks on the operation of specific Conventions, implementation checklists, the Judges' Newsletter on International Child Protection and the International Hague Network of Judges.
3. Participants welcomed the unprecedented opportunity provided by the Seminar to discuss, between Contracting and non-Contracting Parties, the practical operation of the 1996 Convention as it applies in particular in the context of unaccompanied or separated children.
4. Participants acknowledged the need to protect children in cross-border situations, recognising the increased vulnerability of these children.
5. Participants agreed on the need to ensure the protection of all children, without any form of discrimination, including discrimination on the basis of nationality.
6. Participants noted that the 1996 Convention allows for the practical application of certain provisions of the UNCRC and acknowledged the recommendations made by the United Nations Committee on the Rights of the Child to encourage ratification of or accession to the 1996 Convention.
7. Participants welcomed with great interest the presentations made by delegations from West African States and Cameroon on their respective child protection programmes, including programmes set up to provide protection to unaccompanied and separated children, as well as efforts being made to provide care for such children upon their arrival on foreign territory and efforts to seek a durable solution for such children with their best interests in mind.
8. Participants noted that the 1996 Convention provides a legal framework for the conclusion of bilateral or regional agreements aimed at enhancing the effectiveness of its implementation in particular with regard to cooperation between States.
9. Participants welcomed the opportunity to share information and experiences concerning cross-border *kafala* cases; in particular, the participants noted that, in States where it is unknown under domestic law, *kafala* may be recognised or, at the very least and depending on the circumstances, its effects would correspond to the delegation of parental responsibility, guardianship or curatorship, in order to ensure its legal effectiveness across borders. Participants also recognised that *kafala* and adoption are two very different concepts.
10. Participants noted the benefits resulting from a concentration of jurisdiction at the domestic level for the competent authorities under the 1996 Convention.
11. In the context of the protection of unaccompanied and separated children, participants recognised the need to implement the "Guidelines for the Alternative Care of Children" resulting from Resolution 64/142 adopted by the United Nations General Assembly.
12. Participants noted that the ratification by Morocco of the 1996 Convention, the first Contracting Party from Africa and the Arab world, demonstrates the compatibility of the implementation of the Convention in a State whose legal system is based, in whole or in part, on the Sharia.

NEXT STEPS

- 1) Participants from the concerned States committed to raise awareness about the benefits of the 1996 HCCH Convention on the Protection of Children with their respective governments with a view to possibly becoming Party to the Convention and a Member of the HCCH.
- 2) Participants from certain States, both Contracting and non-Contracting Parties, pledged to assess the feasibility of implementing the Convention with a view to improving the protection of children on the move across borders and the development of durable solutions, as well as existing systems and structures for dealing with such cases.
- 3) States, whether or not Contracting Parties to the 1996 Convention, were strongly encouraged to continue sharing information, data and experiences at the regional level on, *inter alia*, good practices, challenges in relation to cross-border child protection issues that they face, including those related to *kafala*, and means of addressing those challenges. In particular, States with

more experience in implementing the 1996 Convention were encouraged to provide assistance to new Contracting Parties or those interested in joining the Convention.