



CONCLUSIONS AND RECOMMENDATIONS

Workshop "Implementation of the 1993 Hague Adoption Convention in Asia: state of play and experience sharing"

Hanoi, Viet Nam, 11-13 December 2017

The Permanent Bureau of the Hague Conference on Private International Law (HCCH), together with the Department of Adoption of the Ministry of Justice of Vietnam (Central Authority designated under the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereafter, "the 1993 Hague Adoption Convention" or "the Convention")), with the financial support of the *Mission de l'adoption internationale* (MAI - French Central Authority designated under the Convention), held a Workshop on the "*Implementation of the 1993 Hague Adoption Convention in Asia: state of play and experience sharing*" in Hanoi from Monday 11 to Wednesday 13 December 2017.

The meeting gathered 40 experts from Cambodia, China (Hong Kong SAR), the Republic of Korea, Laos, the Philippines, Thailand and Viet Nam, as well as representatives of UNICEF and members of the Permanent Bureau of the HCCH, including staff from its Asia Pacific Regional Office. Cambodia, China, the Philippines, Thailand and Viet Nam are already Parties to the 1993 Hague Adoption Convention. The Republic of Korea has signed the Convention but not yet ratified it.

The aim of the Workshop was to examine the implementation of the 1993 Hague Adoption Convention in the region, to share good practices and ways to overcome challenges between States Parties to the Convention and States interested in becoming a Party, and to promote and build good working relationships between all actors. Significant time was devoted to discussions and active participation took place.

The programme promoted the sharing of experiences and practices related to the following topics: principle of subsidiarity, habitual residence, in-family adoptions, adoption procedure, financial aspects and preventing and addressing illicit practices. In addition, States not yet Parties to the Convention were encouraged to further consider the benefits of ratification of, or accession to, the Convention.

THE PARTICIPANTS:

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

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

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

Considering the close inter-relationship between the 1993 Hague Adoption Convention and the 1989 *United Nations Convention on the Rights of the Child* (the "UNCRC"), in particular, Articles 20 and 21 of the UNCRC;

Noting that the UN Committee on the Rights of the Child and UNICEF support the 1993 Hague Adoption Convention as the appropriate legal framework for intercountry adoption and regularly recommend that States join the Convention, and acknowledging the close collaboration between UNICEF and the HCCH on technical assistance, capacity building and the sharing of information;

Recalling the value of the Conclusions and Recommendations of the meetings of the Special Commission on the practical operation of the 1993 Hague Adoption Convention which took place in 1995, 2000, 2005, 2010 and 2015;

CONCLUDE AND RECOMMEND:

Regional co-operation

1. States are encouraged to share information and experiences at the regional level on, *inter alia*, good practices, challenges that they face and means of addressing those challenges. In particular, States with a longer experience in implementing the 1993 Hague Adoption Convention are encouraged to provide assistance to new States Parties or those interested in joining the Convention.

2. The participants recognised the importance of this type of regional workshop that enriches and enhances the practical application of the Convention in the region, and appreciated the efforts of the organisers, including the Regional Office of the Asia Pacific Region of the HCCH.

Principle of subsidiarity

3. States recalled that subsidiarity means that a child should be raised by his or her birth family or extended family whenever possible. Only after due consideration has been given to permanent domestic family type care solutions should intercountry adoption be considered, and then only if it is in the child's best interests.

4. In order to reach this goal, States made the following proposals:

- a. Prevention measures should be put in place to avoid separation of families. In particular, better support should be given to biological families, notably single mothers and families at risk of being separated because of migration.
- b. Thorough efforts should be made to locate the parents of children considered to be abandoned through proper procedures, financial support and capacity building.
- c. States should do their utmost to prevent institutionalisation from being the first and only option for children deprived of parental care. Gatekeeping systems should be put in place to ensure that institutionalisation is the last resort.
- d. Some further steps should be taken to ensure that children who entered institutions have the chance to return to their (extended) family.
- e. States should set up precise timeframes for each step of the procedure in order to ensure that decisions are taken in a timely manner and avoid unnecessary delays.

- f. States are encouraged to have a comprehensive database to record all children who enter into care. Such a database is a useful tool to ensure timely decisions and avoid unnecessary delays.

Habitual residence, including in-family adoptions

5. States recognised that the criterion for the scope of application of the 1993 Hague Adoption Convention (including in-family adoptions and adoptions by nationals of the State of origin) is the place of habitual residence of the prospective adoptive parents (PAPs) and the child, and not their nationality.
6. States should ensure that the criteria in their legislation to define what is a domestic and an intercountry adoption (*i.e.*, habitual residence) are in line with the Convention. If this is not the case, competent authorities are encouraged to bring this matter to the attention of parliamentarians.
7. Family members who wish to adopt and are habitually resident in a country other than the State of origin must adopt through intercountry adoption, not domestically.
8. Where habitual residence is not clear, Central Authorities and / or competent authorities should seek to clarify matters in advance, and the Central Authority of the receiving State should provide the PAPs with advice before they proceed with an adoption application. States are encouraged to refer to the Note on Habitual Residence that will be shortly published by the HCCH.
9. Where an adoption falling within the scope of the Convention has been processed in a Contracting State as a non-Convention adoption, the Central Authorities concerned are strongly recommended to co-operate in efforts to address the situation in a manner which respects Convention procedures and safeguards, and to prevent these situations from recurring.
10. States should promote education of the relevant judicial and administrative authorities or bodies in Contracting States in relation to determinations of habitual residence and the scope of the Convention.

Procedure

11. Authorities should ensure that the consents necessary for the adoption are given in line with Article 4 of the 1993 Hague Adoption Convention (*e.g.*, freely given, informed, after counselling, and not induced by payment or other compensation).
12. There should generally be a preference for keeping siblings together, unless doing otherwise is in the best interests of the children involved.
13. Matching should be done by a team of interdisciplinary professionals.
14. It is important to ensure that the child can enter and reside permanently in the receiving State.
15. States should strengthen the capacity of the stakeholders involved in the adoption process and ensure better co-ordination among them at the national level.

Financial issues

16. States are encouraged to regulate the costs of adoption and to better control and monitor them. Costs of the adoption procedure must be transparent and reasonable, and must be directly related to the professional services provided. It is crucial to ensure that costs and fees of adoption are clearly dissociated from any development aid project, contributions and donations.

17. Intercountry adoption costs should be made known to the PAPs at the beginning of the adoption process. PAPs should make all payments by bank transfer to a specified bank account, and never in cash. They should also get detailed invoices and official receipts for all payments.

18. Central Authorities and competent authorities should carefully monitor and supervise payments made during the adoption process including those through accredited bodies.

19. States are encouraged to use the tools developed by the Experts' Group on the Financial Aspects of Intercountry Adoption.

Illicit practices

20. States must keep accurate birth records. States must ensure that information regarding children's origins is preserved.

21. States must ensure that the child or his / her representative has access to such information, under appropriate guidance, in accordance with the 1993 Hague Adoption Convention and the laws of the State.

22. "Historical" cases of illicit practices that are discovered should be properly addressed.

23. Orphanage tourism is not considered a good practice. There should be no contact between the PAPs and the child before matching as established in Article 29 of the Convention.

24. Receiving States should limit the number of Adoption Accredited Bodies authorised to operate in a specific State of origin, and the number of files sent to that State, in accordance with the number of adoptable children in that State.

25. Intercountry adoption should not take place in the immediate aftermath of a natural disaster or other crisis that displaces children.

Capacity building

26. States should continue efforts to build capacity among actors in the adoption process and promote co-operation among them.

27. The permanence of technical personnel in Central Authorities and competent authorities has helped States develop good practices. When changes in technical personnel occur, authorities should ensure the transfer of knowledge to new arrivals.