

CONCLUSIONS AND RECOMMENDATIONS

“Third Regional Workshop on Justice for Children in East Asia and the Pacific”

Bangkok, Thailand

4-7 September 2018

From 4 to 7 September 2018, the “Third Regional Workshop on Justice for Children in East Asia and the Pacific” was held in Bangkok, Thailand. This Workshop was co-organised by the UNICEF Regional Office for East Asia and Pacific (EAPRO) and the Hague Conference on Private International Law (HCCH), with the support of Child Redress. Over 50 professionals, including government officials, judges, legal practitioners, academics and other experts from Fiji, Indonesia, Malaysia, Marshall Islands, Mongolia, Myanmar, Philippines and Thailand as well as representatives and staff from UNICEF, United Nations High Commissioner for Refugees (UNHCR), International Organisation for Migration (IOM), United Nations Action for Cooperation Against Trafficking in Persons (UNACT), International Labour Organisation (ILO) and HCCH, and Child Redress and other NGOs from the aforementioned States as well as from Cambodia, Singapore and Viet Nam, participated in this Workshop.

The aim of the Workshop was to:

- examine the role and value of the Hague Children’s Conventions in addressing cross-border child protection cases in East Asia and the Pacific, and to discuss some of the practicalities surrounding implementation of those Conventions and the benefits to be derived from becoming a party to them;
- understand how the best interests of the child are ensured in child protection measures such as custody and care arrangements and in other family and child protection matters as well as in new areas like surrogacy and migration; and
- strengthen the co-ordination between justice professionals, social workers and other experts on issues that affect the international protection of children, including in their role in implementing multilateral treaties and conventions as well as domestic family law.

The Workshop was an opportunity to raise awareness in the region about the HCCH, its objectives and mandate, and the benefits of becoming a Member of the Organisation, including active participation in co-deciding on the agenda of work of the HCCH and having priority access to technical assistance.

Experts from UNICEF, UNHCR, IOM, UNACT and ILO explained the global situation of children affected by migration, child trafficking and child labour, and the different international treaties, tools and programmes to address these matters.

From their side, participants discussed the existing mechanisms and initiatives to address child protection cases, at both the domestic and cross-border levels, in East Asia and Pacific countries. Participants shared their good practices and challenges with respect to these matters, including how they currently co-operate with other States.

Participants then learnt about the Hague Children’s Conventions and how they can assist in giving effect to the rights established in the *United Nations Convention on the Rights of the Child* in the context of cross-border movement of children. They also had an opportunity to learn how other States in the region are implementing some of the Conventions, including how they have developed good practices and overcome challenges.

In particular, participants were trained on the following Conventions and Protocols, and legislative projects:

- 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 Hague Convention);
- 2) the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the 1993 Hague Convention);
- 3) the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Hague Convention);
- 4) the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the 2007 Hague Convention) and the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (the 2007 Hague Protocol);
- 5) the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the United Nations Convention against Transnational Organized Crime*;
- 6) the *ILO 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.

Participants also learnt about how to ensure the best interests of the child in domestic civil cases.

During the Workshop, participants spent significant time working on case studies, which provided an opportunity to apply the best interest's determination procedures as devised by UNICEF and UNHCR. The case studies dealt specifically with the application of the 1996 Hague Convention to the cross-border trafficking of children, the cross-border movement of children due to regional conflict, political unrest, natural disaster, and child labour across borders. The case studies also covered the application of the 1993 Hague Convention to the adoption procedure, the adoption of children with disabilities, the regulation of financial aspects and how to prevent and address illicit practices. In addition, the case studies provided the opportunity to discuss the scope of these Hague Conventions as well as the determination of habitual residence under each Convention.

Participants learnt about the importance for States in the region of becoming Parties to the 1996 Hague Convention, especially in light of the cross-border co-operation mechanisms provided therein based on a Central Authority system, which is now lacking in the region. Countries were encouraged to become a Party to this Convention in order to better ensure co-operation between them.

The Workshop also provided the opportunity to learn about the benefits of the 1993 Hague Convention in: supporting birth families to raise their children and promoting domestic permanent family solutions when this is not possible (principle of subsidiarity); ensuring that the best interests of the child are the primary consideration in adoption; ensuring ethical and lawful adoption procedures; and preventing and addressing illicit practices and other abuses. Countries permitting intercountry adoption which are not yet Parties to this Convention, were encouraged to do so and to properly apply its rules and standards.

The value of the 1980 Hague Convention in combating the wrongful removal or retention of children in a civil context and in ensuring rights of access was identified, as was the value of the 2007 Hague Convention in facilitating the cross-border recovery of child support based on procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair.

Participants also learnt about the Malta Process, a dialogue process between States Parties to the 1980, 1996 and 2007 Hague Conventions and non-State Parties whose laws are based on or influenced by Sharia Law with a view to increasing co-operation in cross-border family disputes and encouraging these States to join the Hague Children's Conventions. Participants further learnt about the achievements of the Working Party on Mediation, in particular the development of the Principles for the Establishment of Mediation Structures and the creation of a system of Central Contact Points for International Family Mediation.

The Workshop also provided an opportunity to learn about surrogacy, how it is addressed by a State in the region through its specific law on surrogacy, and also to understand the need to protect all vulnerable parties, prevent problems and address them when they occur.

In addition, participants learnt about the different HCCH post-Convention services which can help them either to prepare to join a particular Convention and / or to better implement it. Such services include, among others, Special Commission meetings to review the practical operation of specific Conventions, Guides to Good Practice, Practical Handbooks, implementation checklists, Country Profiles, case law databases (INCADAT), 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 with their governments and other stakeholders regarding the importance and the possibility of becoming a Member of the HCCH and joining the Hague Children's Conventions, if it is not yet the case;
- 2) Participants of States which are not Parties to one or more Hague Children's Conventions committed to advocate for the analysis and review of their child protection system and the current situation in their State to better assess what needs to be done in order that their State joins (a) particular Convention(s);
- 3) Participants of States which are Parties to one or more Hague Children's Conventions and have not yet implemented the Conventions domestically through legislation (*i.e.*, dualist States), committed to advocate for the passing of the domestic laws to ensure that all actors in that State apply the Conventions;
- 4) Participants of States which are already Parties to Hague Children's Conventions expressed their intention to advocate for the analysis of whether their domestic legislation is in line with the Conventions, and if not in line, to advocate for making the necessary changes;
- 5) Participants of States which are already Parties to Hague Children's Conventions expressed their willingness to improve and increase the co-ordination among their authorities and bodies, as well as cross-border, to improve the implementation of those Conventions and to encourage other States in the region to join them;
- 6) Participants of States which are already Parties to Hague Children's Conventions (in particular the 1993 Hague Convention) were encouraged to further share their experiences and promising practices and challenges with other interested States regarding the implementation of a specific Convention;
- 7) HCCH commits to provide further information on the steps needed to become a Member of the Organisation and to join Hague Conventions;
- 8) UNICEF commits to support research on topics such as but not limited to children affected by migration and child protection systems.