

Hague Conference Update: Permanent Bureau of the Hague Conference on Private International Law

The Intercountry Adoption Technical Assistance Programme

The Intercountry Adoption Technical Assistance Programme, which aims at providing assistance directly to certain States which are planning ratification of, or accession to, the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Hague Intercountry Adoption Convention), or which have ratified or acceded but need assistance with implementation of the Convention, has continued its work during 2009 (see [2009] IFL 61 for the work carried in previous years). The pilot countries are Guatemala and Cambodia. The 1993 Convention now has 78 Contracting States, the majority of which are countries of origin. The latest addition is the Former Yugoslav Republic of Macedonia whose accession became effective on 1 May 2009.

Guatemala

As was explained in the previous article (above) in 2007 Guatemala approved a new law on adoption and the 1993 Hague Intercountry Adoption Convention became effective again within the legal order of Guatemala. A new Adoption Central Authority (Consejo Nacional de Adopciones (CNA)) started work in February 2008. During 2008 the CNA reviewed the situation of intercountry adoptions that had started under the previous law (adoptions in transition, or transition cases). It arranged 51 national adoptions and declared 197 children adoptable in the country. There are 227 domestic prospective adoptive parents who have registered their interest in adopting a child. Furthermore, the Central Authority met 32 mothers who were considering relinquishing their children. The Central Authority provided psychological counselling, after which only four mothers decided to relinquish their child. These figures show that the CNA worked hard to guarantee the principle of subsidiarity, which means that placement of a child within Guatemala should be given priority when this serves the child's best interest. They also demonstrate that the adoption situation changed drastically as private adoptions managed by notaries and lawyers were banned completely whereas, in previous years, there were still approximately 5,000 children involved in an intercountry adoption 'business'. All these achievements have been possible thanks to the support of UNICEF.

The Central Authority has continued its work on domestic adoptions in 2009. However, as some

children have not been able to find a family in Guatemala, the CNA is conscious of the fact that for these children an intercountry adoption could be the solution.

The Permanent Bureau under its Intercountry Adoption Technical Assistance Programme, is providing some help for this step which implies many challenges. The main one is that the CNA has to decide with which receiving States and, in particular, which adoption accredited bodies they would like to work. In order to make this important choice, a consultant of the Permanent Bureau has been sent to Guatemala. The objectives of this consultancy will be to provide assistance in developing criteria and questionnaires to make this choice, and to establish a pilot project which will involve work during a first period with a very limited number of foreign adoption accredited bodies with very good and ethical practices and experience in other countries.

Cambodia

UNICEF and States Parties to the 1993 Hague Intercountry Adoption Convention represented in Cambodia have indicated their strong support for the Permanent Bureau's work in Cambodia, and they share the Permanent Bureau's serious concerns regarding obstacles to reform and achieving compliance with the 1993 Hague Intercountry Adoption Convention. Recommendations were proposed for the Government of Cambodia in 2008. UNICEF and States Parties to the 1993 Hague Intercountry Adoption Convention represented in Cambodia were consulted on the development of the Recommendations, which were sent to the Prime Minister of Cambodia in February 2009. The Recommendations covered the following matters:

- (1) adequate procedures to protect against improper financial gain and unethical practices;
- (2) a cap on the number of healthy children placed for adoption each year; and
- (3) a training and capacity-building programme to assist in determining a child's eligibility for intercountry adoption.

In December 2008, all countries that had been active in Cambodia received a request to take part in a Working Group of Concerned Countries, in order to make a joint effort together with the Permanent Bureau to continue supporting the Cambodian Government as it implements the 1993 Hague Convention. The Group held its first meeting in The Hague on 27 June 2009. The main purpose of the Working Group is to offer combined support for

Cambodia during its transition to a Hague-compliant adoption system, including support to develop safe adoption procedures for the benefit of Cambodian children who are genuinely in need of intercountry adoption. The first priority from this meeting is to send a letter to the Government of Cambodia to urge that the new law be passed as quickly as possible. This will allow the necessary subordinate legislation to be prepared and training of all stakeholders to begin.

Kenya

Discussions are ongoing with authorities in Kenya concerning the provision of technical assistance and training (including judicial training) to help ensure the continuing effective implementation of the 1993 Intercountry Adoption Convention, which came into force for Kenya in June 2007.

Francophone Seminar on the Hague Intercountry Adoption Convention, The Hague (the Netherlands), 22–26 June 2009

A Francophone Seminar on the 1993 Adoption Convention, organised by the Hague Conference on Private International Law in partnership with the French Institute of the Netherlands, the Organisation internationale de la Francophonie (OIF) and the Governments of Belgium (French-speaking community), Canada, France, Luxembourg and Switzerland, took place in The Hague, Netherlands, from 22–26 June 2009. The aim of the seminar was to bring together experts and judges from different French-speaking countries, in order to promote a good understanding of the Hague Intercountry Adoption Convention, to study the implementation of the Convention in these countries and to examine the responsibilities of receiving countries to assist in resolving certain problems.

The invited countries were States of origin which are parties to the Hague Intercountry Adoption Convention (Burkina Faso, Burundi, Cambodia, Guinea, Madagascar, Mali, Mauritius and Seychelles) and States of origin which have shown an interest in becoming a party (Haiti, Côte d'Ivoire, Togo and Vietnam). Furthermore, French-speaking experts from Belgium, Canada, France, Luxembourg and Switzerland, as well as experts from other international organisations and non-governmental organisations, also attended the seminar.

The participants adopted some conclusions and recommendations which aimed at: promoting the accession and ratification of the 1993 Hague Convention; promoting the use of the Hague Conference Guide to Good Practice on Intercountry Adoption; promoting co-operation between the

Hague Conference and UNICEF; promoting co-operation between States; promoting the principle of co-responsibility of receiving States and States of origin; understanding adoption as a part of the child protection system; putting an end to private and independent adoption; promoting the adoption of children with special needs; improving the roles of judges, Central Authorities and adoption accredited bodies in the adoption procedure; coordinating the actions of States regarding post adoption reports; preventing abuses of the Convention; and expressing the willingness of the Permanent Bureau, receiving States and other international organisations to provide technical assistance and professional support to States of origin.

Judicial Training Seminar for Ukrainian Judges on the Child Abduction Convention, in co-operation with UEPLAC

From 29 June to 3 July 2009, five senior judges from the Ukraine, along with a member of their Central Authority, attended a training seminar at the offices of the Permanent Bureau in The Hague. This seminar was jointly organised by the Hague Conference International Centre for Judicial Studies and Technical Assistance and the Ukrainian-European Policy and Legal Advice Centre (UEPLAC), and concerned the practical implementation of the Child Abduction Convention. This seminar followed a training seminar that took place in Kyiv in July 2008. Presentations were given on various topics relating to the implementation of the Convention and the participants worked through several hypothetical scenarios. At the conclusion of the seminar the judges considered what actions they will take when back in the Ukraine to promote the successful operation of the Convention.

Future Special Commission Meetings

November 2009 will see the first meeting in the Hague of a Special Commission to consider issues surrounding the implementation of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and its Protocol on the Law Applicable to Maintenance Obligations. The next Special Commission to review the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption will take place in The Hague in June 2010. The equivalent Special Commission relating to the Hague Conventions of 1980 (international child abduction) and 1996 (international child protection) is expected to be held in mid 2011.