

**QUESTIONS FOR DISCUSSION: CONCURRENT SESSIONS
DAY 3 OF THE SPECIAL COMMISSION MEETING (10 JUNE 2015)**

Concurrent Session 1

Relative adoptions

1. In your experience, is it common for persons who are nationals of the State of origin but who are living in a receiving State to adopt a relative in the State of origin through a domestic adoption (when it should be an intercountry adoption under the 1993 Convention)? What measures might be taken to address this issue?
2. A number of States have expressed concern that, in relative adoption cases, it is not always clear that the child actually needs adoption. In such cases, how can the adoptability of the child be more reliably determined?
3. How should the principle of subsidiarity be applied in cases of relative adoption? Is a domestic adoption, allowing the child to remain in the State of origin, generally preferable to placing the child abroad with relatives? Or is it generally preferable to keep the child within his or her extended family?
4. Should the same procedures used in typical intercountry adoptions under the 1993 Convention be used for relative adoptions, or can the process be expedited while still protecting the interests of the child? If the latter, which aspects of the intercountry adoption process can be streamlined?

Further reading

All documents mentioned below are available at < www.hcch.net > in the specialised "Intercountry Adoption Section"

- [1993 Convention](#) Articles 2(1), 26(1)(c) and 29
- [Explanatory Report](#) on the 1993 Convention, paragraphs 92, 449 and 502
- [Guide to Good Practice No 1](#), Chapter 8.6.4, paragraphs 511-518
- Responses of States to the [2014 Country Profiles](#), Part VII
- Responses of States to the [Questionnaire on the Practical Operation of the 1993 Convention](#), Questions 3(b) and 33(i)
- "Conclusions and Recommendations" of 2010 Special Commission meeting (Nos 11 and 12)
- [International Social Service](#), "Fact Sheet No 49 – Relative Adoption"

Concurrent Session 2

Openness in adoption

Please see:

- Fact Sheet No 1 – The People at the Heart of the Adoption, p. 5
- Info. Doc. No 4 – Fact Sheet "Openness in Adoption"

Concurrent Session 3

Kafala

1. Does your State have any co-operation arrangements with States that only permit *kafala* and not adoption? If so, please share your experience as to how the co-operation arrangement works in practice.
2. If persons, habitually resident in your State, have a child placed into their care under *kafala* in another State ("State B"), can the child enter and reside permanently in your State? If so, under what conditions? What is the procedure? In particular, do the persons wishing to care for the child need to be assessed as prospective parents in your State before the *kafala* is granted in State B, or before the child is given permission to enter and reside permanently in your State?
3. Can persons, habitually resident in your State and caring for a child placed into their care under *kafala* in another State ("State B"), subsequently adopt the child in your State?
 - a. Does your State take into consideration whether the adoption of the child is permissible according to the law of State B?
 - b. Does it make a difference when the *kafala* in State B took place (*i.e.*, whether very recently or many years ago)?
4. If adoption is permissible in your State in these circumstances:
 - a. What procedures are used? In particular, does your State consult with the authorities of State B concerning the requested adoption?
 - b. Is the adoption a "simple" or "full" adoption?¹
 - c. Would the adoption be considered a *domestic* adoption?
5. If your State is party to the 1996 Hague Child Protection Convention,² did implementation of this Convention change your State's approach to adoption requests following *kafala* arrangements undertaken in other States? If so, please describe how.

Further reading

All documents mentioned below are available at < www.hcch.net > in the specialised "Intercountry Adoption Section"

- [Explanatory Report](#) on the 1993 Convention: paragraphs 41, 42 and 90
- Responses of States to [Questionnaire No 2](#): question 53
- [Reports and "Conclusions and Recommendations" of previous Special Commission meetings](#): 2000 (Report paras 98 to 101; C&R No. 22), 2005 (C&R No. 21), 2010 (Report paras 79 to 81; C&R No. 41)
- [The 1996 Hague Child Protection Convention](#): in particular, Arts 3(e), 23 and 33
- The [Practical Handbook on the Operation of the 1996 Child Protection Convention](#), paragraphs 3.25-3.28 and 13.31-13.36
- [International Social Service, "Fact Sheet No 50 – Kafalah"](#)
- [UN Convention on the Rights of the Child](#), Arts 20 and 21

¹ According to the 1993 Convention, a **simple** adoption is one in which the legal parent-child relationship which existed before the adoption is not terminated but a new legal parent-child relationship between the child and his / her adoptive parents is established. A **full** adoption is one in which the pre-existing legal parent-child relationship is terminated. See further Arts 26 and 27 and the [Guide to Good Practice No 1](#) at Chapter 8.8.8.

² Full title: *1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. In relation to *kafala*, see, e.g., Arts 3(e) and 33.