

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

The Intercountry Adoption Technical Assistance Programme

Update on Cambodia

In mid-2008, Cambodia was selected to receive adoption technical assistance from the Permanent Bureau after the Royal Government of Cambodia formally requested assistance in February 2008. Cambodia became the second pilot country to receive technical assistance from the Permanent Bureau under its Intercountry Adoption Technical Assistance Programme.

Cambodia became a Party to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption 1993 (the 1993 Hague Convention) in 2007 and the Convention entered into force for Cambodia on 1 August 2007. Objections to Cambodia's accession under Art 44(3) of the 1993 Hague Convention were made by Germany, the Netherlands and the UK. Certain problems with intercountry adoption were already known, such as a lack of certainty about the origins of adoptable children, but the Cambodian Government also requested advice on its new draft adoption law and assistance with establishing its central authority and training personnel. The Secretary General of the Hague Conference on Private International Law, Mr Hans van Loon, visited Cambodia in May 2007 to establish contacts and make a preliminary assessment of needs. In close cooperation with UNICEF, Cambodia's Child Protection Office and the Cambodian authorities, a programme of assistance was developed. A consultant was appointed by the Permanent Bureau for 2 months to implement Stage 1 of the Technical Assistance Plan.

The purpose of Stage 1 was to acquire a correct understanding of the complexities of the adoption situation in Cambodia and, in close co-operation with UNICEF, to respond quickly to the needs of Cambodia for effective implementation of the 1993 Hague Convention. Assistance included giving extensive comments and drafting suggestions on the proposed law, the development of procedures and regulations, and giving practical support and initial training in how the draft law will operate in practice (and its consistency with 1993 Hague Convention principles and procedures) to Cambodian officials. However, as the draft law has not yet been passed and the necessary 1993 Hague Convention structures are not yet established (the central authority is designated but not fully functioning, other competent authorities are not yet designated and operational procedures are not yet in place), it has not yet been possible to give the

necessary assistance with organisation and capacity building of those structures. This may occur under a proposed Stage 2, if the evaluation of progress achieved under Stage 1 is positive.

During Stage 1, other legal and practical concerns with intercountry adoptions were identified which could be obstacles to the ethical and effective implementation of the 1993 Hague Convention. These included:

- The need for prompt passage of the law and a commitment to implement it.
- Illicit adoption activity such as solicitation, child buying, the changing or erasure of the child's identifying information, and moving children from one province to another, possibly to disguise the true origins of the children.
- The origins of children being adopted not being thoroughly investigated, and accurate and authentic information about each child not always being obtained and preserved.
- Matching procedures are supposed to be done by the central authority, as required in the law, but this continues to be done by orphanages/agencies and may be influenced by levels of monetary contribution, as there seems to be a requirement that adoption agencies give direct financial support to orphanages as a condition of having an adoption programme.
- Corruption concerns exist that payments made in connection with adoptions will continue to provide incentives to find and place more children for adoption.

As a result of Stage 1, a number of recommendations will be made to the Royal Government of Cambodia to take further action to eliminate improper financial gain, to regulate the number of intercountry adoptions, and to investigate thoroughly the origins and background of children declared adoptable through intercountry adoption. The Permanent Bureau is seeking the support of certain other Hague Convention countries with an interest in Cambodia to act in collaboration to improve the implementation of the 1993 Hague Convention in Cambodia, and specifically to improve its intercountry adoption procedures so that receiving countries can be confident that intercountry adoptions from Cambodia are in conformity with the 1993 Hague Convention and in the best interests of the children concerned.

While the recommendations will be directed to the Cambodian government, there are actions that receiving countries can take unilaterally to support the implementation of the recommendations. An

important step for each receiving country will be to consider how its own adoption policies and practices could be impacting on the development or implementation of new regulations and procedures in Cambodia.

Guatemala and Kenya

The Intercountry Adoption Technical Assistance Programme, which aims at providing assistance directly to certain states that are planning ratification of, or accession to, the 1993 Hague Convention, or that have ratified or acceded but need assistance with implementation of the Convention, has continued its work during 2008.

In the case of Guatemala, after all the hard work in this country in 2007 (see [2007] IFL 150), on 11 December 2007 the Congress approved the Law on Adoptions. On 31 December 2007 the new law entered into force and the 1993 Hague Convention became effective again within the legal order of Guatemala. The new law also created a new body, the Consejo Nacional de Adopciones (CNA), to be the central authority, which started operating in February 2008.

The new legal framework, based on the 1993 Hague Convention and the new law on adoptions, effects a significant positive change in favour of Guatemalan children and it is coherent with the United Nations Convention on the Rights of the Child 1989. In general terms, the most important achievements of the new system have been the elimination of adoptions arranged directly by notaries ('private adoptions'), the requirement of a declaration of adoptability in every case rendered by a Children Court and the participation of the central authority in the adoption procedure.

In order to be informed about the plans and initiatives developed by Guatemalan authorities for the Convention's implementation, so as to assess how to better assist them in their efforts, two experts from the Permanent Bureau, through the Hague Conference International Centre for Judicial Studies and Technical Assistance, paid a visit to Guatemala in April 2008. This was an opportunity to discuss with key government officials and relevant authorities, including CNA, many of the challenges for the implementation of the new legal framework. The mission was structured with a view to studying the new situation regarding adoptions in Guatemala, as well as identifying specific resource and training needs.

Training to Guatemalan authorities was also provided by different countries and with the support of UNICEF. Personnel from the central authority, the judiciary, UNICEF Guatemala and other bodies went on study visits to Chile, Colombia and the US. In addition, international experts worked for several months in Guatemala with the new central authority. Finally, three Chilean experts, with the support of the Hague Conference, were in Guatemala for two weeks training the Guatemalan authorities.

During 2008 CNA worked very hard. First of all, it had to review the situation of intercountry adoptions started under the old law (adoptions in transition). According to CNA there were 2,379 adoption files of children in transition. 1,406 cases were reviewed by CNA, but 893 children were not presented by the notaries or lawyers during the review period. This represents an irregularity in the adoption process. Thus CNA worked to locate these children and to ascertain their legal and social situation, in order to ensure their well-being, protection and best interests.

On a more positive note, in 2008 CNA carried out 51 national adoptions. 197 children have been declared adoptable and 227 domestic prospective adoptive parents have registered their interest to adopt. This means that CNA is working very hard in guaranteeing the principle of subsidiarity of intercountry adoption, which will only be open when there is a need for Guatemalan children to find a home abroad.

For 2009 some analysis and review of all the work and assistance given to Guatemala is envisaged. A opportunity to do so could be an event that is starting to be organised by the Hague Conference, UNICEF and some Latin-American countries.

Third Judicial Conference within the 'Malta process' concerning cross-frontier child protection and related issues

The Government of Malta, in collaboration with the Hague Conference on Private International Law, will be hosting a third Judicial Conference on Cross-Frontier Family Law Issues in Malta on 24–26 March 2009. The conference will continue the process of dialogue started in the first and second Malta Conferences in 2004 and 2006 (see the Malta Declarations of 17 March 2004 and 22 March 2006, available at www.hcch.net under 'Child Abduction Section' and then 'Judicial Seminars').

The issues addressed in the third Malta Conference will include: how to respond to the unilateral removal of a child from one country to another and how best to secure continuing contact between the child and both parents. Particularly, the conference will explore the development of closer inter-state and judicial co-operation, measures to prevent abduction, practical arrangements needed to facilitate cross-border visits, cross-border mediation in family matters, the exchange of information concerning the laws and practices of the different legal systems, and the cross-border recovery of child support. In addition, the conference will continue to identify and elaborate the building blocks for the development of a legal structure that will provide a firm basis for judicial co-operation and that will provide parents with a secure international framework within which to resolve their differences. This will include consideration of relevant Hague Conventions, in particular 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, as well as bilateral and possible regional initiatives.

The countries invited to participate are Algeria, Australia, Bangladesh, Belgium, Canada, Egypt, France, Germany, India, Indonesia, Israel, Italy, Jordan, Kuwait, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Oman, Pakistan, Portugal, Qatar, Saudi Arabia, Spain, Sweden, Switzerland, Tunisia, Turkey, the UAE, the UK and the US. The intention is to maintain a balance between, on the one hand, states which are parties to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, and on the other hand, states which are not parties to the 1980 Hague Convention, and whose legal systems are influenced by or based upon Shariah law. In addition, several international organisations active in the field of cross-border family law have been invited to attend.

Joint Conference on Direct Judicial Communications in Family Law Matters and the Development of Judicial Networks

The Hague Conference on Private International Law and the European Community organised a joint conference on Direct Judicial Communications in Family Law Matters and the Development of Judicial Networks in Brussels on 15–16 January 2009. The main objectives for the conference were to promote direct judicial communications in trans-frontier family law matters worldwide and within the different regions, and to consolidate and expand the existing networks by encouraging the appointment of specialised family judges. The next *International Family Law* Hague Update will report in more detail on this conference, but see also the item by Lord Justice Thorpe at p 3 of this issue.