

## **Conclusions & Recommendations (C&R)**

### **adopted by the Fifth Meeting of the Special Commission on the Practical Operation of the 1993 Adoption Convention**

- 1 The Fifth Meeting of the Special Commission (SC) on the practical operation of the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Adoption Convention) met online from 4 to 8 July 2022. It was attended by nearly 400 participants, representing HCCH Members, non-Member Contracting Parties, and Observers from non-Member States, intergovernmental and international non-governmental organisations, as well as by members of the Permanent Bureau (PB).<sup>1</sup>
- 2 The SC thanked the panellists,<sup>2</sup> which included adoptees sharing their lived experiences and professional work in the area of adoption, as well as Central Authorities which presented examples of practices related to post-adoption matters. In addition, the SC encouraged Central Authorities and other competent authorities and bodies to take into consideration the lived and / or professional experiences of adoptees in the course of their work.
- 3 The SC adopted the following Conclusions and Recommendations (C&R):

#### **I. Draft Toolkit on Preventing and Addressing Illicit Practices in Intercountry Adoption**

- 4 The SC approved, in principle, the draft of the Toolkit on Preventing and Addressing Illicit Practices in Intercountry Adoption (Prel. Doc. No 6 REV of January 2022), which is aimed at adoptions made under the 1993 Adoption Convention. It noted amendments will be made to the text to reflect clarifying comments and suggestions received in writing as well as the outcome of the SC discussions on specific elements that needed further consideration as outlined below. The SC recommended that the Council on General Affairs and Policy (CGAP) give its final approval and mandate the publication of the Toolkit.

<sup>1</sup> The following Members of the HCCH and Contracting Parties to the 1993 Adoption Convention were represented: Andorra, Armenia, Australia, Azerbaijan, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, European Union (E.U.), El Salvador, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Madagascar, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Türkiye, United Kingdom, Ukraine, Uruguay, USA, Venezuela and Viet Nam; in addition to the following non-Member States non-Contracting Parties: Holy See and Lao People's Democratic Republic; the following intergovernmental organisations: International Commission on Civil Status (CIEC), Committee on the Rights of the Child (CRC), the Hague Academy of International Law and UNICEF (United Nations Children's Fund); and the following international non-governmental organisations: American Association of Private International Law (ASADIP), Brazil Baby Affairs (BBA), Child Identity Protection (CHIP), EurAdopt, Inter-American Bar Association (IABA), Inter American Children's Institute, InterCountry Adoptee Voices (ICAV), International Academy of Family Lawyers (IAFL), International Association of Family Lawyers (AIJUDEF), International Association of Voluntary Adoption Agencies (IAVAAN), International Korean Adoptee Associations (IKAA), International Social Service (ISS), Latin American Network of Cooperation in the Field of Adoption (RELAC-ADOP), Nordic Adoption Council (NAC), Nos Buscamos, Racines Perdues and Reconnaissance des adoptions illégales à l'international en France (RAIF).

<sup>2</sup> There were two panels, one on the "Voice of Adoptees" and another one on "Post-Adoption matters".

## A. Part I: “Introduction”

5 The SC agreed that Contracting Parties might consider referring to the Toolkit in dealing with suspected illicit practices arising from adoptions that occurred prior to the coming into force of the Convention in their State. With a view to managing expectations, a few delegations cautioned that the Convention is not retroactive and that some Central Authorities may not have the authority to deal with illicit practices, as provided for in the Toolkit, in relation to adoptions that preceded the entry into force of the Convention in their State.

## B. Part II: “Fact Sheets on Illicit Practices”

6 In relation to Fact Sheet 3 “Improper Financial and other Gain”, the SC reiterated the importance of preventing and addressing improper financial and other gain, as financial aspects are one of the major sources of illicit practices in intercountry adoption.

7 The SC recognised that States are best able to address these concerns when States of origin and receiving States coordinate practices.

8 Recalling that contributions, donations and cooperation projects present a high risk of influencing the adoption process by creating dependency and encouraging competition amongst States, organisations and prospective adoptive parents (PAPs), the SC reiterated that there should be a clear separation of possible costs and fees of the adoption process, from contributions, donations and cooperation projects.<sup>3</sup>

9 Most delegations expressed strong support for ensuring that only costs and expenses are charged or paid in line with Article 32(2) of the Convention (view 1). In their view, contributions, donations and cooperation projects should not take place in the context of intercountry adoption in order to ensure a full separation from costs and fees.<sup>4</sup> They emphasised that States should make efforts to build a pathway towards this view to avoid the inherent risks of undue influence related to contributions, donations and cooperation projects, but recognised this may take some time to be achieved.

10 Some delegations expressed the view that setting and respecting strong safeguards regarding contributions, donations and cooperation projects is another way to ensure that there is no undue influence in the adoption process (views 2 and 3).<sup>5</sup> Nevertheless, the SC noted that even under this view, 1) lack of separation of contributions, donations or cooperation projects from the actual costs of an adoption, as well as from the intercountry process as a whole, and 2) cooperation with specific States influenced by levels of contributions, donations and support for contribution projects, still constitute illicit practices.

11 Due to the importance of preventing illicit practices related to the financial aspects of intercountry adoption, the SC recommended that CGAP establish a new Experts’ Group to take stock of current practices, identify possible coordinated, targeted approaches, and to prioritise them with the understanding that the objective would be to raise standards using the HCCH Guides to Good Practice and the [Note on the Financial Aspects of Intercountry Adoption](#) as the starting point.

12 The SC agreed that Fact Sheet 11 would be more appropriately titled “No preservation of, or unlawful denial of access to, information regarding origins”. However, some delegations were of the view that denial of access to information should be considered an illicit practice not only where denial of access is unlawful but also where denial of access is unjustified. Others were of the view

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<sup>3</sup> [Note on the Financial Aspects of Intercountry Adoption](#) (Note on Financial Aspects), paras 21 and 124-126; 2010 SC, Conclusions and Recommendations (C&R) No 14.

<sup>4</sup> For further explanations of View 1, see Note on Financial Aspects, paras 128-129; Draft Toolkit, Fact Sheet No 3, line 6.

<sup>5</sup> For further explanations of Views 2 and 3, see Note on Financial Aspects, paras 137-139; Draft Toolkit, Fact Sheet No 3, line 7.

that, considering the importance of the right to identity, any denial of access should be considered an illicit practice.

13 The SC agreed that allowing PAPs to select or choose a child outside of the matching process instead of being matched by a competent authority or accredited body constitutes an illicit practice.

14 The SC noted that contact between the PAPs and the child before or outside the matching process constitutes an enabling factor. A majority of delegations specifically raised concerns regarding participation in summer camps.

15 The SC agreed that Fact Sheet 9 would be more appropriately titled “Circumventing the procedure to apply for adoption, the preparation and assessment of prospective adoptive parents as well as the socialisation period”.

16 The SC agreed that authorising contact by PAPs with authorities and / or bodies in the State of origin without the PAPs having first applied for an intercountry adoption to the Central Authority in their State of habitual residence constitutes an illicit practice. However, the SC recognised that a few Contracting Parties are of the view that, in some instances, the Central Authority should be able to determine when limited contact between PAPs and a Central Authority is permissible, such as for habitual residence determinations and general adoption inquiries.

### **C. Part III: “Checklist”**

17 The SC agreed to include guidance on the approval of the proposed match by the Central Authority of the receiving State for situations where such approval by the Central Authority of the receiving State is required by its law or when it is required by the State of origin.

### **D. Part IV: “Model Procedure to respond to illicit practices”**

18 Some delegations expressed concerns that including references to political measures, such as investigative commissions and national apologies as well as measures not initiated by the State, such as civil suits and recourse to international courts and regional bodies, may not be appropriate for a Toolkit designed as a practical resource for States. However, the SC agreed to include the references as long as such measures were provided as examples and the political nature of such measures was expressly indicated.

## **II. Draft Recommended Model Forms for Use Under the 1993 Adoption Convention**

19 The SC approved, in principle, the draft of the Model Forms for use under the 1993 Adoption Convention (Prel. Doc. No 4 REV of April 2022), noting amendments will be made to the text to reflect the comments received in writing. In particular, regarding Annex 5 on the Agreement that the adoption may proceed, the SC recommended to have two separate Model Forms: one for the State of origin and one for the receiving State.

20 The SC recognised that Model Forms assist in standardising processes. Although the Model Forms are only recommended and not compulsory, the SC strongly encouraged all Contracting Parties to make use of them when consistent with the procedures and legislations of the State.

### **III. Post-Adoption Matters**

#### **A. Post-adoption services**

- 21 Recognising that adoption is not a single event but instead a life-long process and that post-adoption services are important, the SC encouraged States to carefully consider the role that adoptees can play in ensuring that the post-adoption services adequately meet their needs.
- 22 The SC encouraged Contracting Parties to take a holistic view on post-adoption services and to develop specialised and quality post-adoption services, including for children with special needs, and to further train professionals to respond to the unique needs of adoptees and their families.
- 23 The SC urged Contracting Parties to ensure that adoptees and their families are made aware of the availability of post-adoption services and that such services remain accessible to adoptees, adoptive families and birth families. Funding is a key issue in this regard.
- 24 The SC underlined the importance of cooperation between States of origin and receiving States in order to provide a continuum of post-adoption services.
- 25 The SC noted that the collection of statistics and data plays an instrumental role in informing the provision of post adoption services, search for origins and preventing and responding to adoption breakdowns, and encouraged States to carry out more research in those areas. The SC underlined the importance of such research to determine whether post-adoption services adequately meet the needs of adoptees and their families, and, where needed, how such services could be improved. The SC also highlighted the utility of carrying out multidisciplinary research, in particular for adoption breakdowns, and involving persons with lived experiences, social workers, psychologists and academics, among others.
- 26 The SC noted the possible benefits of using facilitators (e.g., mediators in some States) in the context of post-adoption matters.

#### **B. Search for origins**

- 27 Recalling 2010 SC C&R No 28 and the fact that an increasing number of adoptees are undertaking a search for their origins, the SC urged States to ensure that information is properly collected and preserved in its entirety and encouraged centralisation of information, preferably by public authorities.
- 28 The SC invited Contracting Parties to consider how technology (e.g., digitalisation of files) might assist the collection, centralisation, and preservation of information, while noting the importance of retaining the physical files.
- 29 Many delegations noted the benefits that increased cooperation in the area of search for origins is achieving.
- 30 The SC discussed the complexity of providing and obtaining access to information regarding origins and acknowledged that this topic is an evolving area of law and practice that requires further consideration. In this regard, the SC noted that Central Authorities may play a significant role in raising awareness about the services available in their State, for instance by providing consolidated information about such services.
- 31 The SC recalled 2010 SC C&R No 29 and 2015 SC C&R No 21, noting the importance of providing adoptees and their families, including, where appropriate, birth families, with specialised post-adoption services and appropriate guidance in the search for origins. States should promote the development of adoption counselling and post-adoption services.

32 The SC encouraged Contracting Parties to provide adoptees with as much information as possible regarding their origins to the extent allowed by laws pertaining to the protection of confidentiality and privacy. The SC heard from a number of delegations about the need to provide greater access and invited States to consider reviewing their laws and practices in this regard.

33 The SC also noted the increased use of DNA technology in the area of search for origins, its benefits as well as its challenges.

### **C. Post-adoption reports**

34 The SC recognised that while post-adoption reports provide important information to States of origin, the reporting requirements may pose privacy concerns for adoptees and / or adoptive families.

35 The SC recalled 2005 SC C&R No 18 which recommended to receiving States to encourage compliance with post-adoption reporting requirements of States of origin and recommended to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention. Several delegations recommended that post-adoption reports should only be requested for short reporting periods.

36 The SC highlighted that the shorter the report, the more chances it will be completed. The SC encouraged Contracting Parties to make use of the approved Model Form, as in paragraph 20.

### **D. Adoption breakdowns**

37 The SC recalled 2015 SC C&R No 19 that appropriate evaluations, preparation, reports, matching and post-adoption support, in relation to both the child and PAPs, will reduce the risk of breakdown of intercountry adoptions.

38 The SC urged States to evaluate their pre- and post-adoption services in order to determine whether improvements can be made with the aim of preventing adoption breakdown.

39 The SC encouraged States to consider the assistance Central Authorities may be able to provide in responding to an adoption breakdown, given their experience and knowledge of the adoption procedure. To that effect, it noted the importance for Central Authorities, from both the receiving State and the State of origin, to be made aware of adoption breakdowns and collaborate if appropriate.

### **E. Future work**

40 With a view to fostering better cooperation between Contracting Parties, the SC agreed that future work on post-adoption matters should include:

- The development, in the immediate future, of country fact sheets on available post-adoption services relating to search for origins, which will be published on the website of the HCCH.
- The holding, in both States of origin and receiving States, of State-led virtual workshops on post-adoption services, in order to allow interested Contracting Parties to share their experiences and practices on post-adoption services, learn from each other and improve such services. A steering Committee composed of representatives of States of origin and receiving States will be set up to facilitate the organisation of these workshops. The workshops should involve the participation of persons with lived experience. While the PB may support the steering Committee and participate in the workshops, it will not have an active role in organising the workshops. The SC welcomed Canada's proposal to organise the first workshop.

- The reporting by the steering Committee to CGAP 2024 on the outcome of these workshops. The report may recommend drafting a possible document on post-adoption services, the nature of which will be determined at that time.

#### **IV. Simple and Open Intercountry Adoptions**

- 41 The SC noted that simple adoptions may offer the possibility of maintaining a legal relationship with the birth family, and in the case of open adoption, a personal relationship, when it is possible to do so and it is in the best interests of the child. This could be especially meaningful for older children who may wish to keep contact with their birth family, or in the context of intrafamily adoptions.
- 42 It was noted that simple adoptions may pose challenges, for example, in regard to nationality and immigration status.
- 43 Support and counselling to facilitate contact between the adoptee and the birth family may be key for the success of an open adoption.

#### **V. Intrafamily Intercountry Adoptions**

- 44 The SC recalled 2015 SC C&R No 32.
- 45 The SC noted the challenges of adapting the standard adoption procedures to the specificities of intrafamily adoptions, which could have the unintended consequences of causing delays.
- 46 The SC acknowledged that for some children, other measures of protection (such as kinship care) may sometimes be more appropriate than intrafamily adoptions. In that regard, the SC invited States to consider the possibility of becoming a Party to the *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* (HCCH 1996 Child Protection Convention).

#### **VI. Use of technology**

- 47 The SC recalled the 2015 SC C&R Nos 38 and 40 and emphasised that when making use of technology throughout the adoption procedure, States should continue to respect all safeguards and procedures set in the Convention.
- 48 The SC noted the important role technology has played during the Covid-19 pandemic in reinforcing continued cooperation between States of origin and receiving States to ensure that adoption processes could move forward in the best interests of children. The SC noted the efforts of States for the implementation of new technologies.
- 49 Noting the positive benefits of the use of technology, the SC cautioned that there are steps in the adoption process that may not be suitable to take place through virtual platforms and are best done in person, such as the assessment and preparation of children and certain aspects of the assessment and preparation of PAPs.
- 50 The SC noted that the Covid-19 pandemic is ongoing and that, at a later date, it would be helpful for States to reflect on the measures that have been taken to adapt through the use of technology in order to determine best practices and improve where there are challenges.

#### **VII. Technical Assistance**

- 51 The SC reaffirmed the value of technical assistance in supporting States in the successful implementation and operation of the Convention. Such assistance should include the proper application of the principle of subsidiarity (*i.e.*, family preservation and reunification, and if this is

not possible or practicable, other forms of permanent family care in the State of origin). This principle is key in ensuring that an intercountry adoption only takes place in the best interests of the child and with respect for the child's fundamental rights.

- 52 The SC urged States to continue to support technical assistance, in particular through the HCCH Intercountry Adoption Technical Assistance Programme (ICATAP), and thanked States that made or are intending to make financial or other contributions to ICATAP.<sup>6</sup> The SC also encouraged States to request technical assistance if needed.

## VIII. Other matters

- 53 The SC took note of the preliminary exploratory work being undertaken by the HCCH Experts' Group on the Parentage / Surrogacy Project on a possible future instrument on the recognition of legal parentage, which may include the recognition of domestic adoptions. In that regard, the SC recommended that any possible work in this area should not undermine the 1993 Adoption Convention in any way.
- 54 The SC recalled the usefulness of linking the operation of the 1993 Adoption Convention to the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (HCCH 1961 Apostille Convention). In light of the high number of public documents included in intercountry adoption procedures, the SC invited Contracting Parties to the 1993 Adoption Convention but not to the 1961 Apostille Convention to consider the possibility of becoming a party to the latter.

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<sup>6</sup> Since the 2015 SC, these States include Australia, Belgium, France, Netherlands, Norway and Philippines.