

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

A new guide to good practice for intercountry adoption

There are now 76 countries which are a party to the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the 1993 Hague Intercountry Adoption Convention). The number of States parties continues to grow steadily. All the major receiving countries are party, as are all the main countries of origin, excluding Russia. As more and more countries of origin join the convention, so the need grows to provide technical assistance to support implementation of the Convention in these and many other countries.

In this context, the Permanent Bureau is pleased to announce the official publication of the first in a series of guides to good practice for the 1993 Hague Intercountry Adoption Convention: *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: A Guide to Good Practice*. The new guide is available in English and French. The Spanish version of the guide will be available by the end of 2008.

The new guide will be a valuable resource for the Permanent Bureau to give the assistance and guidance needed by many new contracting States. Important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention are identified. It is directed at policy makers involved in short-term and long-term planning to implement the Convention in their country, as well as judges, lawyers, administrators, caseworkers, accredited bodies and other professionals needing guidance on some practical or legal aspects of implementing the Convention. Importantly, the Guide supports the development of a national child care and protection system which provides the integrated framework for an ethical, child-centred approach to intercountry adoption.

The Guide tries to maintain a focus on the purposes of intercountry adoption: to find a family for a child who genuinely needs one, by making the decisions which are in the child's best interests, and which follow an ethical procedure based on Convention principles and procedures. Emphasis is placed on the shared responsibility of receiving States and States of origin to develop and maintain ethical intercountry adoption practices. The Convention provides a sound and internationally accepted framework for intercountry adoptions. It is the responsibility of Convention States, individually and collectively, to ensure that the guarantees, safeguards and protections are implemented effectively. This first *Guide to Good Practice on the Implementation and Operation of*

the Intercountry Adoption Convention shows, with practical examples from many Contracting States, how these guarantees, safeguards and protections can be implemented effectively. The new Guide can be found on the Hague Conference website at: http://www.hcch.net/upload/adoguide_e.pdf.

General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children

The *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* was published by the Hague Conference on Private International Law in autumn 2008. The purpose of the Guide is threefold. The general principles and good practices outlined encourage the more effective implementation and application of those provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Convention) which concern transfrontier contact. They draw attention to provisions of 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 Convention) which relate to transfrontier contact and which supplement the 1980 Convention, and provide guidance concerning their application. Finally, they provide an overall model or template for constructing an international system of co-operation designed to secure effective respect for rights of contact. As such, the Principles and Guide are intended to also be helpful to those States, which are not Parties to the Hague Conventions, but are considering how best to develop effective structures.

The Guide is based on a Preliminary Document drawn up by William Duncan, Deputy Secretary General of the Permanent Bureau, which received the general endorsement of Special Commission to review the operation of the 1980 Convention and the Practical Implementation of the 1996 Convention at a meeting which took place in the Hague in October/November 2006 (See W Duncan, 'Transfrontier Access / Contact – General Principles and Good Practice', Preliminary Document No 4 of October 2006, pp 55-58; available at: http://hcch.e-vision.nl/upload/wop/abd_pd04e2006.pdf).

It is generally recognised that children should for their well-being maintain personal relationships and have regular contact with both of their parents unless it is unsafe or otherwise contrary to their interests to do so. This remains the case even when the parents are living apart and in different countries, and even

though the primary care of the child is vested in one of the parents. This is recognised under Art 9, para 3 and Art 10, para 2 of the United Nations Convention on the Rights of the Child 1989. The Guide opens by establishing as a general principle the obligation to vindicate this right of the child and this principle is the basis for the discussion throughout. Emphasis is placed on the importance of promoting and facilitating agreement between parents or other holders of parental responsibility concerning the exercise of contact. Such agreements tend to increase the likelihood of successful contact arrangements. Chapter 2 outlines the challenges involved in achieving such agreements, gives some guidelines for good practices in mediation, and discusses the role of the State and the importance of the existence of a legal framework that encourages and supports such agreements.

Two particular aspects of the legal framework that are important for successful inter-State legal co-operation to support contact rights across frontiers, are common rules for jurisdiction and mutual respect for decisions. Chapter 3 discusses these aspects, noting in particular the relevance and usefulness of the 1996 Convention. One key obstacle to be avoided is constant unnecessary reassessment of contact arrangements in different States because common jurisdictional rules are not followed and foreign decisions are not respected. Another key element in the protection of contact rights is strong inter-State administrative co-operation. The Central Authorities designated under the 1980 and/or the 1996 Conventions have an important role to play in giving effective protection to contact rights across borders. Chapter 4 examines the role of Central Authorities as focal points for information and assistance and

explains how and why they should adopt a progressive approach to their responsibilities in the area of contact rights.

When an application is made to a competent authority concerning transfrontier contact the provision of effective access to procedures, speed, the concentration of jurisdiction and case management can help ensure these cases are effectively processed. Chapter 5 discusses these principles and practices, their benefits and how they can be achieved. When making a contact order, competent authorities should always consider ways to ensure that it will be complied with. The discussion in Chapter 6 highlights that courts should have at their disposal a broad range of measures which help to safeguard and guarantee stipulated contact arrangements.

It is vital that effective enforcement mechanisms are in place for transfrontier contact orders. Chapter 7 explains that this means ensuring that the conditions for and challenges to enforcement should be limited, voluntary compliance should be promoted, co-operation should occur between all the bodies and professionals involved and all those involved in the enforcement of cross-border contact orders should receive appropriate training. One important instance of transfrontier contact is following the relocation of the child and the primary carer to another State. Chapter 8 discusses the approach that should be taken by the court to guarantee and secure the contact rights of the 'left-behind' parent. In this context, use of mechanisms such as advance recognition, mirror orders and direct judicial communications can be invaluable. The Guide finishes with a discussion in Chapter 9 of the interpretation of the terms 'access/contact rights' and 'rights of custody' under the 1980 Convention. In particular, a broad interpretation of the meaning of access rights under Art 21 is advocated.