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# Monthly Review

## EDITORIAL

### Special Commission on the operation of the HC-1993: An assessment tool with multiple facets

*The fourth Special Commission on the operation of the HC-1993 (hereinafter, the 'Commission') took place from 8 to 12 June 2015 – a unique opportunity for all receiving countries and countries of origin, whether current or prospective Parties to the Convention, and some well-known observers, to meet and debate on some – sometimes sensitive – issues relating to intercountry adoption, provided that the tongues loosened themselves...*

The Commission took place under the good auspices of the Permanent Bureau of the Hague Conference, which provided it with some new dynamics, in particular thanks to the introduction of round tables and simultaneous sessions, which made it possible to debate in smaller groups on specific issues chosen by the participants, such as *kafalah*, open adoption or relative adoption. The Commission is, undoubtedly, an essential tool for the assessment of intercountry adoption, not only globally, but also at the domestic level of every country. Whether in the course of its preparation, during the meeting itself, or in its subsequent follow-up, it allows for a snapshot to be taken, which enables to identify the progress made and the concerns linked to the good implementation of the HC-1993.

#### Assessment in its preparatory stage

The detailed questionnaires<sup>1</sup> drafted by the Permanent Bureau of the Hague Conference, and sent to all participants, are a valuable instrument for the assessment of the domestic systems of adoption, and of the impact that the Convention has been able to generate on the latter. Indeed, even though the adoption of international child protection instruments is a decisive step forward, the establishment of mechanisms aimed at measuring their impact in law (see p. 7) and in the countries' internal policies (see p. 11) is just as fundamental. Furthermore, the publication of synoptic technical factsheets<sup>2</sup> on some of the debated topics (see p. 6) is not only an efficient preparation tool, but also a compilation of useful resources for the implementation of specific aspects of the HC-1993, such as the supervision of costs, the conclusion of agreements between Contracting States, or the increasing resort to new technologies. Finally, this preparatory stage has fostered regional actions, for example in Africa (see p. 9).

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## Assessment during the meeting itself

The first day of the Commission celebrated the 20<sup>th</sup> anniversary of the HC-1993 and allowed to pay tribute to its major impact on the implementation of the rights of children without parental care (see p. 4). Furthermore, the Commission witnessed the submission of instruments of accession to the HC-1993 by Zambia and the Ivory Coast. The Convention has successfully met its challenge, *i.e.* to regulate the field of intercountry adoption, which was, until then, subject to the discretion of the countries, and marred by serious violations of children's rights. New challenges for the next twenty years are arising and were identified in the debates that took place throughout the Commission: to improve the preparation of potential adoptive parents through a franc speech and the ongoing search for profiles that are as adjusted as possible to the needs of adoptable children; to search for solutions that would allow accredited adoption bodies to face the decline in intercountry adoption and to preserve the expertise developed by many of them; to develop the means of prevention of illicit practices and of compensation for the adoptees and families, who are the victims of fraud, amongst many others. The ISS/IRC is currently undertaking a project aimed at offering responses to the latter (see p. 6).

## Assessment thanks to its follow-up

The final conclusions<sup>3</sup> suggested by the Commission, and approved by all the States that were present, are a first step forward towards rising to these challenges, that affect us all as intercountry adoption and child protection actors. However, the non-mandatory nature – from a legal perspective – of these conclusions makes their implementation unpredictable, including some crucial aspects, such as the prohibition of private adoptions, the systematic application of the HC-1993, even in non-Contracting States, or the ban on donations, for want of being solved once and for all. These final conclusions are also an advocacy tool when placing States, accredited adoption bodies and civil society before their responsibilities. Domestic, regional and international cooperation, that is transparent and focused on the needs of adopted children and adults, and of those, who may require an adoption, is key to the success of the HC-1993. Receiving countries and countries of origin must, in their day-to-day work, offer as many safeguards as possible to every adoption that is undertaken.

**The ISS/IRC reiterates its constant offer of support to Central Authorities, aimed at strengthening the dialogue amongst the latter, at assisting them in the development of their competences, and their capacity to offer to every child a family environment that is adapted to his needs. Now more than ever, time has come for receiving States and States of origin to ensure a decent future to the children in alternative care on their own territory.**

The ISS/IRC team  
June 2015

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## References:

<sup>1</sup> See Questionnaire N° 1 on the impact of the 1993 Convention over the past 20 years and Questionnaire N° 2 on the practical operation of the 1993 Hague Intercountry Adoption Convention, available at: [http://www.hcch.net/index\\_en.php?act=progress.listing&cat=8](http://www.hcch.net/index_en.php?act=progress.listing&cat=8).

<sup>2</sup> Documents available at: [http://www.hcch.net/index\\_en.php?act=progress.listing&cat=8](http://www.hcch.net/index_en.php?act=progress.listing&cat=8).

<sup>3</sup> Conclusions available at: [http://www.hcch.net/upload/wop/adop2015concl\\_en.pdf](http://www.hcch.net/upload/wop/adop2015concl_en.pdf).

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## ACTORS

- **Ivory Coast and Zambia:** On 11 June 2015, the Special Commission on the practical operation of the HC-1993 witnessed the accession of these countries to the HC-1993, which will enter into force in both countries on 1 October 2015.

**Source:** The Hague Conference on Private International Law, [http://www.hcch.net/index\\_en.php?act=conventions.publications&dtid=43&cid=69](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=43&cid=69) and [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).



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## BRIEF NEWS

### Bhutan: Intercountry adoption open under new rules and regulations

According to the National Commission for Women and Children's announcement on 22 April 2015, based on the endorsement of the Child Adoption Rules and Regulations of Bhutan 2015 by its Commission, Intercountry adoption is now open for processing. However, according to these Rules and Regulations, only foreign nationals of countries with the presence of a Bhutanese Embassy/Consulate/Mission/Designate Representative are eligible for the adoption of a Bhutanese child. Furthermore, the Commission stipulates that, as per Section 5 of the Child Adoption Act 2012 and Rule 28 of the Child Adoption Rules and Regulations, intercountry adoption will be considered only as a last resort when suitable prospective adoptive parents cannot be found for a child within the country. As a reminder, Bhutan has not acceded to the HC-1993. For further and detailed information, the ISS/CIR will soon publish a country situation on Bhutan.

Source: National Commission for Women and Children, 22 April 2015, <http://www.ncwc.gov.bt/ncwc/notification?tpages=4&page=2>.

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## ISS NEWS

### Conference on cross-border child protection: Legal and social perspectives

In cooperation with partners, such as the Hague Conference of Private International Law, the University of Geneva and several Central Authorities, ISS is organising an international conference that will bring together, from 21 to 23 October in Geneva, various actors to debate and exchange ideas for the strengthening and implementation of the 1996 Hague Convention worldwide, as well as to analyse its synergies with the Brussels II Bis Regulation and to promote ISS involvement in cross-border child protection globally. 150 delegates from governments, the legal sector, academia and social practice will gather to discuss the socio-legal perspectives of cross border child protection while, in parallel, 50 international family mediators from around the world will work together to draft a charter on International Family Mediation, an important tool to strengthen cross-border child protection. Hosting the two events in one place at the same time will evidently create a multidisciplinary platform that will generate common opportunities of work during the plenary sessions and well as a cross-sectoral analysis of some issues. It goes without saying that the participation of governmental delegates and practitioners from developing countries is essential for the success of the conference. 130,000 CHF will be needed to hold the two events, drive them to success and to ensure post-conference follow-up. So far, contributions and the generous support of various public and private donors cover 60% of the budget and ISS is actively looking for additional support to complete the balance of 40% or 52,000 CHF.

For further information, please contact: [Jeannette.wollenstein@iss-ssi.org](mailto:Jeannette.wollenstein@iss-ssi.org) and/or [Vito.bumbaca@iss-ssi.org](mailto:Vito.bumbaca@iss-ssi.org).

### Changes to the ISS/IRC team as of 1 July 2015

After many years of extensive and loyal service to ISS and particularly to the International Reference Centre (IRC), Hervé Boéchat will assume different responsibilities with a new Organisation. Hervé will continue to serve ISS in part time mode as Special Advisor on Child Protection matters to the Secretary General as well as assuming his function as Deputy Secretary General until further notice. As of July 1st 2015, Mia Dambach will act as the Director for IRC heading the IRC team to promote ethical intercountry adoptions and alternative care options in line with international standards. Mia an Australian/Swiss national brings over a decade of experience in child protection matters to this new role, starting her career as a children's lawyer in Sydney and later children's rights specialist in Geneva. She has worked on international advocacy specifically linked to the UN Guidelines for the Alternative Care of Children as well as undertaken numerous evaluation missions in countries, such as Viet Nam, Cote d'Ivoire and Ghana. Mia will report to the Secretary General of ISS and her responsibilities will be revisited in November 2015.



# SPECIAL COMMISSION ON THE OPERATION OF THE 1993 HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

## 20 years of the 1993 Hague Convention

*The Permanent Bureau of the Hague Conference on Private International Law (HCCH) presents in this article some of the main aspects of a paper<sup>1</sup> on the 20 years of the HC-1993 prepared by the HCCH for the 2015 Special Commission meeting. The paper was based on the answers provided by States and EurAdopt to a Questionnaire<sup>2</sup>.*

Twenty years after the entry into force of the HC-1993 (it was concluded on 29 May 1993 and entered into force on 1 May 1995), 95 States are parties to it. This is a great achievement. However, in total numbers, and due to the fact that several major States of origin are not yet a party to the Convention, approximately half of current intercountry adoptions worldwide are still undertaken outside of the Convention's framework. This is a major issue as, although Contracting States, in their relationship with non-Contracting States, should apply as far as practicable the standards and safeguards of the Convention<sup>3</sup>, one can still query whether intercountry adoptions undertaken outside the Convention's framework can ever – at a systemic level – uphold the rights and interests of children in the same way as Convention adoptions.

### Is the 1993 Hague Convention meeting its key objectives?

The first overarching aim of the Convention is to ensure that intercountry adoptions are undertaken in the best interests of children. According to the answers provided by States, the Convention has contributed to a more orderly, rule-based and State-supervised global intercountry adoption system (it is an 'international benchmark' for intercountry adoption), with clear roles for each actor and a safer, more transparent intercountry adoption procedure. However, further work needs to be done in some Contracting States: for example, ensuring that proper implementing legislation is in place and improving the functioning of Central Authorities.

A second aim of the Convention is to establish a system of cooperation amongst Contracting States. According to States, the Convention has stimulated community building (e.g. Central

Authorities, accredited adoption bodies), and Contracting States work more efficiently together thanks to the well-established official channels and the fact that there is a common language. However, States recognise that there is still room to improve coordination.

A third aim is to prevent the abduction, sale of, or traffic in children, and to eliminate profiteering and other abuses associated with intercountry adoption. States reported increased efforts to combat and prevent such illicit practices and stated that the Convention has promoted joint efforts to ensure effective regulation of intercountry adoption and to mobilise political will to curb corruption and malpractice. At the same time, States recognised the need for further cooperative efforts to address illicit practices.

A fourth aim of the Convention is to secure the automatic recognition of intercountry adoptions undertaken in accordance with the Convention in all Contracting States. The Article 23 certificate of conformity is mentioned by States as being a significant improvement. However, there are still challenges in some States, such as ensuring complete and accurate Article 23 certificates and ensuring that recognition takes place 'by operation of law' (i.e. automatically) and with no additional steps as a condition of recognition.

### The dilemma of the principle of subsidiarity

The Convention, and in particular its principle of subsidiarity of intercountry adoption, has also stimulated programmes for in-country adoption and in-country child care generally. However, questions remain as to what should be done when a State does not have the necessary resources to properly implement the principle of subsidiarity. In addition, receiving States may assist States of origin to implement the Convention but, at the same time and in order to prevent abuses, they must ensure that



intercountry adoption is separate from contributions, donations and development projects.

### The changed landscape

The global decline in the number of intercountry adoptions has been one of key changes in the adoption landscape over the past 20 years. It would appear that this decline cannot be attributed solely to the increasing global implementation of the Convention by States. Rather, it appears to be attributable to a complex mix of societal, economic, political and legal factors, including the implementation of domestic child care policies.

In the past 20 years, in combination with these declining numbers, in many States the profile of children being adopted intercountry has changed, as they are now frequently older children, siblings and/or have special medical needs. Again, the reasons for this are complex and varied.

Many States expressed concern regarding the perceived overall increase in the duration of intercountry adoption procedures when

compared with 20 years ago, although such increases vary depending on the State and the particular stage of the intercountry adoption procedure. Some States suggested that these increases are a natural 'side effect' of the positive fact that the intercountry adoption procedure is better regulated today. However, as was pointed out by other States, lengthier processing times might also result from the poor practices of others or from bureaucratic hurdles which do not add anything to the protection of the child.

States also noted that while costs are more transparent, they have generally increased. While some States see no link between this increase and implementation of the Convention, others attribute the increase to measures taken under the Convention to regulate and monitor costs and to make them more transparent. States have mixed views regarding the benefits and risks of contributions, cooperation projects and donations, but the need to separate such activities from the intercountry adoption process is clearly recognised.

**The Convention has had an important and positive impact on laws and practices relating to intercountry adoption. However, challenges remain, particularly as the landscape of intercountry adoption continues to evolve. These challenges were the subject of some of the discussions at the 2015 Special Commission meeting and the Conclusions and Recommendations of the meeting provide some guidance on these issues.**

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### References:

All HCCH documents mentioned in this article are available on the HCCH website at <http://www.hcch.net>, under 'Intercountry Adoption Section' and '2015 Special Commission'.

<sup>1</sup> HCCH, *20 Years of the 1993 Hague Convention – Assessing the impact of the 1993 Hague Convention on laws and practices relating to ICA and the protection of children*, Prel. Doc. N° 3 of May 2015 for the attention of the 2015 Special Commission meeting. In that paper, the Permanent Bureau summarised and analysed the responses received to the Questionnaire identified in note 2 below.

<sup>2</sup> HCCH, '20 Years, 20 Questions: A questionnaire on the impact of the 1993 Hague Convention on laws and practices relating to ICA and the protection of children', Prel. Doc. N° 1 of July 2014 for the attention of the 2015 Special Commission meeting.

<sup>3</sup> See: Conclusions and Recommendations of the previous meetings of the Special Commission (in 2000, Recommendation N° 11; in 2005, Recommendation N° 19; and, in 2010, Recommendation N° 36 and 37).



## 2015 Special Commission toolbox of adoption resources

*In preparation for the Special Commission, the Permanent Bureau and its partners prepared a number of tools to help provide a framework for the different sessions during the week-long meeting.*

Tools in their abundance – cutting-edge and comprehensive – are now available on the Permanent Bureau’s website for professionals working in adoption matters. This article seeks to briefly outline some of the different resources [available](#), trusting that through their usage, a more detailed understanding will follow.

### Draft model forms

In an effort to streamline practices and at the request of State parties, the Permanent Bureau has developed a number of model forms. These cover important matters such as the consent of the child to his intercountry adoption; the reports on the prospective adoptive parents as well as the child, and post-adoption reports. By relying on these forms, there are information ‘triggers’ of what should be included to ensure that practices are HC-1993 compliant.

### New technologies and openness in adoptions

As numerous sessions were dedicated to specific issues linked to the changing landscape of intercountry adoption, ISS prepared two international comparative studies, which were, to some extent, completed by State responses to the Permanent Bureau’s preparatory survey. These documents cover in depth the array of global laws, policies and practices as well as the associated benefits and risks. We trust that these documents will provide professionals with necessary tools to help maximise the opportunities and prevent the challenges as a consequence of their use.

### Financial aspects

The ISS/IRC congratulates the Expert Group’s work addressing the complex nature of financial issues, encouraging the widest dissemination of

the tools developed and table of costs, ideally not only on the various Central Authority websites but also on the accredited adoption bodies’ websites. Regarding the future mandate for the Expert Group, ISS recommends that priority be given to the subject of avoiding the creation of dependency on income from intercountry adoption and circumventing improper competition between receiving States or accredited adoption bodies – to ensure more ethical adoption practices as outlined in its *Manifesto on Ethical Intercountry Adoption Practices*.

### Illicit practices

The ISS/IRC would like to give its wholehearted support for the resumption of the Working Group on illicit practices, given the increasing visibility of adoption cases marked by irregularities potentially affecting thousands. Priority should be given to identifying prevention mechanisms to avoid this regrettable situation, which could be part of the future work of the Working Group. The factsheet summarising ‘ways forward’ provides a good foundation – ideally, more detailed promising practices would be quite useful.

Likewise, how one responds to such challenges has become a growing preoccupation of those working in adoption as well as those personally affected. ISS is now regularly receiving requests for support from professionals lacking tools to face this complex situation. To address this gap, ISS has launched a project to develop a professional handbook covering the array of responses and remedies (at legal, psychosocial and political levels).

**With such an adoption resource toolbox, the ISS/IRC strongly believes that we are moving in the right direction towards a better protection of all adoption stakeholders, especially children and older adoptees.**



### Kenya: Overview of the Guidelines for the Alternative Family Care of Children in the country

*In October 2014, the Government of Kenya issued Guidelines aimed at addressing and responding to the complex situation of an important number of children without parental care in the country, including those orphaned due to HIV/AIDS. The present article intends to provide an overview of their situation and of these Guidelines.*

It is estimated that 2.6 million children have been orphaned due to all causes in Kenya, whilst one million of them have been orphaned due to HIV/AIDS. In this context, according to UNICEF Kenya, '[t]he capacity of families to care and protect orphans is overstretched. This, combined with the increasing levels of poverty, has resulted in many children heading their own households, living in institutional care or surviving on the streets'<sup>1</sup>. The Government of Kenya has therefore taken an important step forward in issuing the Guidelines for the Alternative Family Care of Children in Kenya<sup>2</sup>.

#### Alternative care options

Like most Africans, Kenyans have a long tradition of caring for their children via informal care, although this situation is changing due to the current social and economic context. According to Save the Children (2012), it is estimated that approximately two million Kenyan children lived under some form of kinship care. Although foster care remains relatively unknown, it has experienced some expansion. Finally, residential care remains widespread, although not all children's homes have been registered. A study estimated that, in 2012, 8,176 children were living in state residential care and 40,230 in non-state residential care<sup>3</sup> (for further information, see 'Kenya: Domestic adoption in the best interests of the children?', *ISS/IRC Monthly Review* N° 188, January 2015).

'[C]ompetent authorities, professional organisations and others are encouraged to develop national or professionally specific guidelines that build upon the letter and spirit of the present Guidelines'.  
Guidelines for the Alternative Care of Children,  
Para. 26.

#### The Guidelines' legal framework

Kenya has a series of child-related legislation, in particular the *Children Act 2001*, which is currently being reviewed. However, it is very much welcome that the country has focused efforts on developing other types of documents to promote and support the implementation of the UNCRC and international principles and standards relating to the protection of children without or at risk of being without parental care, as well as in alternative care.

Thus, in addition to providing an overview of the situation of children and adolescents in the country, the Guidelines start by describing the general principles that should guide any action in the provision of alternative care as well as the process of determination of the most appropriate form of care. It is interesting to mention that, although the document was aimed, initially, at regulating guardianship and foster care, it adopted a more comprehensive approach in order to include all forms of alternative care and all stages of the process, including the prevention of family separation and the reintegration of children into their families. The Guidelines also adopt a comprehensive approach to duty-bearers, thereby putting emphasis on the importance of having coordination mechanisms, such as the Alternative Care Committee, and referral systems to respond to such situations.

## Overview of the content of the Guidelines

Following these initial chapters, Kenya's Guidelines focus on preventing alternative care and on promoting family reintegration, thereby ensuring that these are fully in line with the U.N. Guidelines for the Alternative Care of Children. Indeed, the document offers recommendations as to the measures that the government and its partners should take in order to prevent family separation and to support families, such as family assessments and gatekeeping mechanisms. The subsequent chapters provide detailed recommendations to ensure quality care in kinship care, *kafalah*, foster care, temporary shelters, guardianship, adoption, child-headed households and institutional care. In particular, they offer definitions of the various concepts, information on eligibility and requirements, an overview of the roles and responsibilities of relevant actors and the process of provision of each form of care as well as its

### Some promising practices:

**On family reintegration:** In Thika, the Sub-county Children's Office is leading a strong Government and non-governmental partnership, collaboration and networking around family tracing and reintegration.

**On supporting children in particular situations:** Tumaini Kwa Watoto (Children of Hope) operates a family-based outreach and empowerment programme for children living on the streets. For those who cannot go home, a halfway house is run by a couple and can accommodate up to six children for a maximum of six months.

monitoring and support. The Guidelines also briefly mention other situations that should be addressed, such as the after-care process and care in emergency situations. In order to further support the implementation of these measures, it undoubtedly proves very useful that the document provides promising practices in the country and elsewhere in relation to each of these aspects.

The final section of the Guidelines focuses on the means and mechanisms to take the implementation of these Guidelines forward, through: strengthening the legal framework, providing resources for their implementation, dissemination and awareness-raising, capacity-building, planning and monitoring. Furthermore, its annexes provide a summary of the terminology, organisational structure of children's services, definitions of forms of care, a chart explaining the route to assess an individual situation as well as to prevent, provide and terminate appropriate alternative care.

**Given the challenges currently faced by Kenya in providing protection and care to its children and adolescents without parental care, the ISS/IRC welcomes the country's initiative to issue Guidelines in this regard, thus complying with Para. 26 of the Guidelines for the Alternative Care of Children. Kenya's Guidelines are a true example of a comprehensive approach to the provision of alternative care, addressing all its forms and all its stages, from prevention to reintegration or after-care, and also provides an example as to how to design, promote and establish interinstitutional coordination mechanisms and roles and responsibilities in such a context.**

## References:

<sup>1</sup> UNICEF Kenya, [http://www.unicef.org/infobycountry/kenya\\_statistics.html](http://www.unicef.org/infobycountry/kenya_statistics.html) and <http://www.unicef.org/kenya/children.html>.

<sup>2</sup> Government of the Republic of Kenya, *Guidelines for the Alternative Family Care of Children in Kenya*, October 2014, <https://drive.google.com/file/d/OB4A1y230eseYaFRsdUpKWUxoa3M/view?pli=1>.

<sup>3</sup> Denise Stuckenbruck, *Advancing the rights of children deprived of parental care: Domestic adoption of children in Kenya*, Thesis submitted in the framework of the Master of Advanced Studies in Children's Rights, 2 April 2013.





## PRACTICE

### Informal workshop promoting the functioning of African Central Authorities for implementing the HC-1993

*The ISS/IRC welcomes this contribution from M C Klute and J Sloth-Nielsen<sup>1</sup>, who organised the informal workshop on the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption with multiple grass-root participants from several African countries.*

To prepare for the Special Commission in June, an informal learning workshop was organised in Cape Town in March 2015 for seven Anglophone African countries, in collaboration with UNICEF. This workshop was commissioned by Wereldkinderen, a Dutch association for international child wellbeing. The workshop's ultimate goal was to share practices and promote possible collaboration amongst Central Authorities in Africa, especially of those countries where intercountry adoption is on the rise.

#### Providing an open space for conversation and learning

As this informal workshop was a safe space and purely a linking and learning event, in this article, all names of countries, participants and indicators that may lead to identification of participants have been omitted. Nevertheless, the workshop relates both to African countries that have already ratified and are in principle implementing the HC-1993 and to some, which are still in the process of approving, ratifying and applying it. The workshop explored concrete ways to implement the HC-1993 procedure(s) in a context where resources are limited and most state personnel are not aware of the Hague Conventions. Moreover, the workshop sought to face the reality that Western actors can place enormous pressure on 'new' countries, countries with weaker governmental structures. Some actors do not always apply the 2010 recommendation '*that Contracting States, in their relations with non-Contracting States, should apply as far as practicable the standards and safeguards of the Convention*'. This is caused by an increasing competition due to reducing numbers of adoptable children worldwide.

#### Specific challenges related to varied cases

During the introductory session, many questions for this workshop arose. These were gathered on flip charts and monitored for follow-up. This included, for example: 'Is there cooperation between countries to apply the HC-1993?'; 'Are there "fees" to be published or fixed for steps in the procedure for processing applications?'; and 'How should we finance the Central Authority and what is the ideal structure?'

Throughout the workshop, in confronting the above-mentioned questions and others, it became clear that, in the majority of instances, a straight-forward answer is not always possible. This was illustrated in cases where questions arose about when foster care should be converted into an adoption, as well as interrogations about the necessity of having the biological parents present in courts to provide their consent upon relinquishment. A possible solution could be to have child-friendly courts to address such delicate situations.

Two specific case studies merit more detailed examination. On the one hand, the situation that arises even in countries that have ratified the HC-1993, where accredited adoption agencies in-country are both, the ones deciding a child to be adoptable and the ones that handle the adoption procedures with prospective adoptive parents. This bears a risk of conflict of interest and of increasing fees to be paid for each step forward in the adoption procedure. It is clear that better safeguards are needed for the authority – ideally a multidisciplinary team – that declares the adoptability of the child.

A second recurring challenge occurs when expats from the West adopt in a foreign country



and want to have the adoption recognised in their country of origin. They may have lived in African countries that do not recognise classic adoptions, but do have other cultural forms of adoption and kinship care systems. While living in the country, they adopt the children and they comply with all the requirements of that country for adoption. However, the procedure in that country does not comply with their own countries' standards for adoption. The authorities may refuse to recognise the adoption. In such situations, a practical solution must be found to avoid the child becoming stateless.

### Specific challenges related to Central Authority functions

At the workshop, Central Authorities presented their history, and it was revealed that, even when there is not yet an official Central Authority, intercountry adoptions are already taking place. In some countries, they have approximately 10 bilateral contracts with receiving countries whilst others have none. The practice is that these are officially processed under the existing laws and regulations – in some cases without an adequate 'Children's Act' in place.

Consequently, it is acknowledged that there are loopholes. For example, participants referred to the situation where a visa is given to a child, just for foster care leave, but when the child is abroad, the procedure is started to adopt that child. This is problematic as the numbers of children leaving the country this way are higher than the official number, which conforms to the HC-1993 procedures for intercountry adoption.

### Ongoing questions at the end of the workshop

A key question when this workshop was conceived and for Central Authorities to begin

with was: 'Should a country only seek to ratify the HC-1993 after it first has arranged that the Central Authority is in place, and competent authorities and accredited bodies are acknowledged? Or, should a country first ratify the HC-1993, and then start to implement the staffing of the Central Authority, implement procedures, acknowledge competent authorities and accredit agencies/interested parties?'. Like the other questions mentioned above, there appeared to be no easy answer. As it was these questions that were dealt with by the participants, we present their feedback to this informal workshop below:

- An annual meeting of Central Authorities of this kind would be recommendable;
- During such a meeting, more time should be given, instead of 2 days it should be 2.5 days;
- The case studies and (in)-country problems shared were most useful and meaningful;
- The global network of ISS could play a greater role by providing training and support from their International Reference Centre to establish a rights-based child protection system in a country;
- Reach out to countries' foreign affairs departments to use diplomatic channels to raise awareness of the HC-1993 and the importance of inter-state cooperation and learning;
- Have a joint session before the start of the Special Commission in The Hague;
- Have a website specifically for African Central Authorities to serve their needs. They would only have to become a member to informally share their progress.

**The ISS/IRC warmly welcomes the questions, debates and recommendations from this informal meeting, as well as the *Declaration on the need to develop a harmonised framework for the adoption of children in Africa*, adopted at the June 2015 Special Commission. Furthermore, the ISS/IRC is committed to working with stakeholders for a better protection of children's rights.**

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### References:

<sup>1</sup> The workshop was conceived by Wereldkinderen Programme Coordinator, Margot Klute, in collaboration with Prof. Julia Sloth-Nielsen of the University of the Western Cape and Leiden University, and Member of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC).

<sup>2</sup> Available at: <http://www.hcch.net/upload/wop/ica2015wd06en.pdf>.



### Spain: Guide for Child Rights Impact Assessments (CRIAs) in legislative processes

*L Carlos Chana García, Head of the Children in Difficulty Programme at the Spanish Red Cross, and of ISS's Correspondent's office in Spain, presents a new high-quality tool, which he contributed to, to improve the assessment of the impact of legislative, political and practical measures on children and adolescents through impact assessment reports.*

The Observatory on Children and Adolescents of the Principality of Asturias, UNICEF's Spanish Committee and the Santander Chair on Law and Children of the University Pontificia Comillas, in association with numerous members of the academic sector and civil society organisations, have drafted a guide<sup>1</sup> to support the work of public authorities (as well as of other professionals and organisations that could be interested) in relation to the preparation of preliminary impact assessment reports on the rules drafted in the various government departments.

#### The importance of assessing measures on children and adolescents through reports

Spain's current Child Protection Bill includes, as a new element, the mandatory undertaking of these reports. Furthermore, other regions are considering the inclusion of mandatory reporting as a rule in their jurisdictions. The States' implementation of the Convention on the Rights of the Child entails numerous challenges, that are cultural, economic, social, political or legal and, among other things, these require an ongoing assessment of the measures adopted by public authorities on children and adolescents. The implementation of systems and tools to improve this assessment is a pending task in many of the States that have ratified the Convention, but there is an increasing number of examples of promising practices in many of them.

One of these tools is the Child Rights Impact Assessment (CRIA). The preliminary assessment of the potential effects of policies and legal standards, in addition to ensuring that children and adolescents are taken into account in the process of drafting and design of the latter, prevents undesirable negative effects – or promotes positive ones – and contributes to ensuring two basic principles of the Convention: the principle of the best interests of the child and the principle of non-discrimination.

#### A guide for assessment systems

This Guide intends to be useful to these impact assessment systems, by offering a model and a process for the drafting of reports and minutes relating to the legal impact on children. It is divided in four sections and two appendices.

The first section includes the background and the recommendations that justify the existence of this type of impact assessment reports. The second section provides general guidelines for the preparation of the reports. The third section presents the basic content of these reports and a standard form for their preparation. The fourth section offers directions and support for the drafting of the reports.

In addition to these sections, and considering that many people, who draft these reports, do not necessarily have any specific knowledge on children's rights, there are two appendices with additional information on the rights and needs of children, which will undoubtedly contribute to a better interpretation of the potential impacts and their remedies.

The ISS/IRC encourages the dissemination of this Guide, which promotes the necessary – and, ideally, mandatory – assessment of the impact of measures adopted by public and judicial bodies within the framework of the implementation of children’s rights, and provides professionals with tools in this context.

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### References:

<sup>1</sup> UNICEF, Government of the Principality of Asturias and University Pontificia Comillas, *Guía Metodológica para la Elaboración de los Informes Previos de Impacto en la Infancia y la Adolescencia de las Disposiciones Normativas*, March 2015, available at: [https://www.unicef.es/sites/www.unicef.es/files/guia-web\\_0.pdf](https://www.unicef.es/sites/www.unicef.es/files/guia-web_0.pdf). The guide was written by: Carlos Becedóniz Vázquez, Coordinator of the Observatory on Children and Adolescents of the Principality of Asturias, Gabriel González Bueno Uribe, Head of Childhood Policies at UNICEF’s Spanish Committee, Isabel Lázaro González and Clara Martínez García, Members of the Santander Chair on Law and Children and Professors of Law at the University Pontificia Comillas – ICADE.

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## FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *L’enfant placé*, COPES, Paris, 28 September - 1 October 2015; **b)** *Les mineurs et jeunes majeurs isolés étrangers: Comprendre pour mieux accompagner*, COPES, Paris, 7-9 October 2015. For further information, see: <http://www.copes.fr/Annexes/Formations>; **c)** *Comment «les temps intermédiaires» peuvent ne pas être des temps vides et d’attente*, Association Pikler Lóczy, Paris, 29 September 2015. For further information, see: <http://www.pikler.fr/activites/programmeformations.pdf>.
- **Romania:** *14th ISPCAN European Regional Conference*, International Society for the Prevention of Child Abuse and Neglect, Bucharest, 27-30 September 2015. For further information, see: <http://www.ispcan.org/event/Romania15>.
- **South Africa:** *From Welfare to Well-being: Child indicators in research, policy and practice*, 5<sup>th</sup> Conference of the International Society for Child Indicators, Cape Town, 2-4 September 2015. For further information, see: <http://isc2015.org/>.
- **Switzerland:** *L’audition des enfants dans les procédures relatives au droit de la famille*, University of Fribourg, 1-2 October 2015. For further information, see: <http://admin.unifr.ch/uniform/faces/pages/index.xhtml>.
- **United Kingdom:** **a)** *Tread softly because you tread on my dreams – Child-centred matching in adoption*, conference, BAAF, London, 8 September 2015; **b)** *Managing the virtual world – The realities of parenting children in the technical age*, BAAF, Leeds, 10 September 2015; **c)** *Planning and preparing for long-term foster placements*, workshop, BAAF, Birmingham, 10 September 2015; **d)** *Telling children difficult information*, BAAF, Cardiff, 17 September 2015; **e)** *Parent and Child Arrangements*, BAAF, Stockport, 22 September 2015; **f)** *Training in Psychological Interventions and Therapeutic Parenting with Children and Adolescents with Trauma-Attachment Problems and their Families*, BAAF, Cardiff, 29-30 September 2015; **g)** *Missing from care and risks of child sexual exploitation*, BAAF, London, 2 October 2015. For further information, see: <http://www.baaf.org.uk/training/allevts> and <http://www.baaf.org.uk/training/conferences>.
- **World:** *Child Rights-Based Approaches*, Online training, HREA (The global human rights education and training centre), 2 September - 17 November 2015. For further information, see: <http://www.hrea.org/learn/elearning/child-rights-programming/>.

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