

INFORMATION NOTE TO STATES AND CENTRAL AUTHORITIES

Haiti earthquake and intercountry adoption of children

The Secretariat of the Hague Conference on Private International Law (the Hague Conference), noting with great concern the tragic situation in Haiti and the high number of children victims of the recent earthquake, would like to make the following information available to governments, international organisations and the public.

Following the earthquake, many children have become separated from their families and may find themselves without shelter, food, water or other basic necessities. They may also be at risk of illegal adoptions, abduction, sale and child trafficking.

The primary concern should be the safety of these children and some consideration is being given to the possible need for evacuation. However, evacuation should not be confused with intercountry adoption which is a more radical measure changing the parenthood of a child. Adoptions should always be made in the best interests of the child, with respect for his or her fundamental rights and all safeguards should be respected to prevent, among others, the abduction, the sale of, or traffic in children.

The *United Nations Convention on the Rights of the Child* (UNCRC) establishes clear principles to protect all children. In addition, the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* provides protection to children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. This Convention reinforces the UNCRC (Art. 21).

Haiti is party to the UNCRC but not to the 1993 Hague Intercountry Adoption Convention. However, in 2000, the Hague Conference adopted a Recommendation to the effect that States parties should, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of States that have not yet joined the Convention. More than 80 States, including almost all receiving States, are parties to this Convention. **Therefore, even if Haiti is not party to the 1993 Hague Convention, all receiving States should apply these standards and safeguards.**

The Hague Conference would like to raise the following issues regarding children in Haiti affected by the earthquake:

Intercountry Adoption of Displaced Children

A Recommendation was adopted by the Hague Conference in 1994, in consultation with UNHCR, urging all States – whether or not they were parties to the 1993 Convention – to observe particular caution to prevent irregularities in respect of any cross-border adoptions of refugee children and children who are, as a result of disturbances in their countries, internationally displaced.

In the spirit of this Recommendation, it is clear that in a disaster situation, like that brought about by the earthquake, efforts to reunite a displaced child with his or her parents or family members must take priority. Premature and unregulated attempts to organise the adoption of such a child abroad should be avoided.

Expediting pending intercountry adoption cases of children

Many receiving States are considering the need to expedite the transfer of children who are the subject of intercountry adoption procedures which are pending in Haiti. The pending cases may be at different stages:

1. Children where a final adoption decree has been granted by an Haitian Court before the earthquake, but travel documents are missing:

Where an adoption has already been completed by a court in Haiti and all safeguards have been applied, but certain administrative procedures (e.g. relating to travel documentation) remain to be completed, it may well be justifiable to expedite the transfer of the child to the State where the child is to live with the adoptive parents. It is essential that the identity of the child be verified before departure.

2. Children where a final adoption decree has not been granted by an Haitian Court and the child had not been entrusted to (placed in the care of) the prospective adoptive parents before the earthquake struck:

If the safety of the child requires that he or she is evacuated within or from Haiti, and if there is no other way to secure the child's protection, it may be justified to arrange for the child's transfer to another place for a limited period of time and until the situation is more stable. **Any decision to evacuate a child should be based on considerations of the child's safety and should not be confused with the adoption process.**

A humanitarian disaster such as the earthquake should not be the reason for by-passing essential safeguards for safe adoption. Under the 1993 Hague Convention, the decision to place a child in the care of prospective adoptive parents is subject to strict conditions. The authorities in both States must agree that the adoption may proceed. This implies that all the necessary pre-conditions for adoption have been satisfied (e.g. that the child is free to be adopted, that necessary consents have been obtained and that the prospective adoptive parents are eligible and suited to adopt), and that there exist no legal obstacles to the adoption of the child. In addition, authorisation for the child to enter and reside permanently in the receiving State should have been given.

The reason for such caution is to avoid a situation in which the child is placed with prospective adoptive parents, the process of bonding and integration begins, but then has to be terminated because legal obstacles or irregularities emerge, with all the potential for damage to the child and anguish for the prospective adoptive parents.

These considerations apply equally in an emergency situation. Indeed **in a situation where child care and protection services have broken down such as in Haiti, the risks are even greater that the adoption may be "unsafe". This is why in these**

tragic situations the emphasis should first be on child protection, rather than adoption.

A coordinated approach of all receiving States as well as international organizations and NGO should be taken in order to provide a common solution. Humanitarian aid and help should be provided to these children as well as other children in care in Haiti.

The Hague Conference is prepared to give whatever assistance or advice it can to authorities in relation to these matters. Please contact Deputy Secretary General of the Hague Conference, Mr William Duncan or Secretary Ms Jennifer Degeling [tel. +31 70 363 3303 or at secretariat@hcch.net].

More detailed information on the aforementioned instruments is available under the website of The Hague Conference, at www.hcch.net under "International Adoption Section". The above mentioned Recommendation is available in this section under "Documents related to 1994 Special Commission".

20 January 2010

The Hague Conference is an intergovernmental organisation based in the Netherlands working for the harmonisation of rules of private international law. It has 68 Member States located on every continent and 1 Member Organisation (the European Union). Furthermore, more than 130 States are Parties to one or more of the Hague Conventions. In essence, the purpose of the Organisation is to build bridges between various legal systems, while respecting their diversity. In doing so it reinforces the legal security of private persons – an essential role in an age of globalisation in which rules and guidelines are needed.