

## **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**

Increasing rates of international mobility have been accompanied by growing concerns for the protection of children in cross-border situations. Children represent half of the global population on the move between borders. Issues of concern include the cross-border trafficking and exploitation of children and their global displacement as a result of war, civil disturbance, or natural disaster. Children are also affected by cross-border disputes relating to custody and relocation. The number of transnational families has also led to the increased susceptibility of children to international abduction and to having contact with their parents severed, and a growth in the necessity of the cross-border placement of children and the provision of alternative care.

The Child Protection Convention enables competent authorities to protect children and cooperate in a varied range of cross-border situations, offering States practical means to fulfil international obligations arising under the United Nations Convention on the Rights of the Child (UNCRC). The Child Protection Convention applies to a wide range of civil measures for the protection of a child and a child's property, ranging from orders concerning parental responsibility and contact, to public measures of protection and care, as well as to matters of representation to the protection of children's property. Based on the principle that child protection provisions should constitute an integrated whole, the Convention has a broad scope, covering both public and private measures of protection or care. The Convention overcomes the uncertainty that may otherwise arise were separate rules to apply to different categories of protective measures applicable to a child. It takes account of the wide variety of legal institutions and systems of protection that exist around the world and avoids legal and administrative conflicts, enabling effective international civil cooperation in child protection matters. The Convention therefore provides an opportunity to build bridges between legal systems with diverse cultural and religious traditions.

### **Principal features of the Convention**

#### ***Scope and mechanism of the Convention***

The Child Protection Convention applies to children from birth to the age of 18. Its purpose is a) to determine the competent authority to take measures directed to the protection of the person or the property of the child; b) to designate the law applicable to measures of protection and parental responsibility; c) to provide for a framework enabling the recognition and enforcement of measures of protection among Contracting Parties, and d) to establish a cooperation mechanism between the authorities of the Contracting Parties (Art. 1).

The Convention has uniform rules that determine which authorities are competent to take the necessary measures of protection. These rules, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the country where the child has their habitual residence (Arts 5 and 7). However, the Convention recognises certain situations where another authority will be competent. For example, the Convention allows the authority of any Contracting Party where the child is present to take necessary urgent or provisional measures of protection (Arts 11 and 12). This is also the case for refugee children and children who, due to disturbances in their country, are internationally displaced (Art. 6).

The Convention designates the applicable law and provides for the recognition and enforcement of measures by operation of law among the Contracting Parties. As a general rule, authorities must apply

their own law when exercising their jurisdiction (Art. 15). Exceptionally, the law of another State can be considered or applied in so far as the protection of the person or the property of the child requires. *Renvoi* is expressly excluded (Art. 21).

### **Parental disputes over custody and contact**

The Convention provides frameworks for the resolution of disputes relating to custody and contact that may arise when parents are separated and living in different countries. The Convention enables the avoidance of problems that may arise if the courts in more than one State are competent to decide these matters. The recognition and enforcement provisions in the Convention avoid the need to re-litigate custody and contact issues, and ensure that decisions taken by the authorities of the State where the child has their habitual residence enjoy primacy. The cooperation provisions provide for exchange of information where necessary and offer a structure through which, by mediation or other means, voluntarily agreed solutions may be found.

### **Reinforcement of the HCCH 1980 Child Abduction Convention**

The Child Protection Convention reinforces the 1980 Child Abduction Convention by underlining the primary role played by the authorities of the child's habitual residence in deciding the matters that affect the child in the long term. It also adds to the efficacy of any urgent protective measures ordered by a judge when returning a child to their State of habitual residence (Art. 11). These protective measures lapse as soon as the authorities of the child's State of habitual residence have taken the measures required by the situation (Art. 11(2)).

### **Unaccompanied minors**

The cooperation procedures provided for by the Convention are helpful in the growing number of circumstances in which unaccompanied minors cross borders and find themselves at risk. For example, the Convention protects refugee and internationally displaced children in different ways. First, if necessary, the Convention provides for cooperation between Contracting Parties in order to locate the child. Secondly, the authorities competent to take any necessary measures of protection, including the placement of the child in alternative care, are identified by the Convention. Thirdly, the Convention provides the framework for the exchange of any necessary information between the authorities in the receiving States and the States of origin.

### **Alternative care across borders**

The Convention provides for cooperation between Contracting Parties in relation to cases in which children are being placed in alternative care, such as foster care or kinship care, across borders. The Convention also recognises alternative care placements made by way of the Islamic law institution of *kafala* (Art 3(e)).

### **Additional resources**

The [Child Protection Section](#) of the HCCH website contains the latest information about the Child Protection Convention. This includes:

- Text of the Convention
- Status table of Contracting Parties
- List of Central Authorities and practical information
- Explanatory Report on the Child Protection Convention
- Practical Handbook on the Operation of the Convention
- An Implementation Checklist