

Conclusions & Recommendations of the International Seminar on the Protection of Children on the Move and Kafala are available

The Hague Conference on Private International Law (HCCH) has posted the Conclusions & Recommendations of the “International Seminar on the Protection of Children Across Borders: The 1996 HCCH Convention on the Protection of Children” that took place in Rabat, Morocco, in mid-November 2019.

The seminar focused on discussing ways to improve the protection of children across borders in West Africa, in North Africa and in Europe. Two topics of particular interest were discussed: *kafala* and unaccompanied and separated children.

With regard to the institution of *kafala*, the participants “welcomed the opportunity to share information and experiences concerning crossborder kafala cases; in particular, the participants noted that, in States where it is unknown under domestic law, kafala may be recognised or, at the very least and depending on the circumstances, its effects would correspond to the delegation of parental responsibility, guardianship or curatorship, in order to ensure its legal effectiveness across borders. Participants also recognised that kafala and adoption are two very different concepts” (C&R No 9).

The HCCH Child Protection Convention makes explicit reference to the institution of Kafala in Articles 3(e) and 33. Paragraph 3.27 of the *Practical Handbook on the Operation of the 1996 Child Protection Convention* explains what is understood by Kafala: “The institution of kafala is widely used in some States as a form of care for children when they cannot be cared for by their parents. Under kafala, children are cared for by new families or relatives but the legal link with their birth parents is generally not severed. Kafala can take place across borders but since it is an arrangement which does not constitute an adoption it is not within the scope of the 1993 Hague Intercountry Adoption Convention. However, where used, the institution of kafala clearly constitutes a measure of protection in

respect of a child and is therefore expressly within the scope of the 1996 Convention.”

With regard to the protection of unaccompanied and separated children, the participants “recognised the need to implement the “Guidelines for the Alternative Care of Children” resulting from Resolution 64/142 adopted by the United Nations General Assembly” (C&R No 11).

The Permanent Bureau of the Hague Conference is also working on this topic. In fact, in 2018 the governance body of the Hague Conference mandated to prioritise work on the finalisation of the revisions to a preliminary document relating to the application of the 1996 HCCH Child Protection Convention to unaccompanied and separated children (referred to as Preliminary Document No 7 of the Seventh Meeting of the Special Commission of 2017 on the 1980 and 1996 Conventions). To the best of my knowledge, this document has not yet been released.

Currently only two African States are States parties to the HCCH Child Protection Convention: Lesotho and Morocco. Only Morocco was present at the seminar probably due to its geographic scope.

The HCCH news items is available [here](#).