

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE
DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS
CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

(Comprenant des questions relatives à la mise en œuvre de la *Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants*)

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

(Including questions on implementation 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*)

drawn up by the Permanent Bureau

*Document préliminaire No 1 d'avril 2006
à l'intention de la Commission spéciale d'octobre / novembre 2006
sur les aspects civils de l'enlèvement international d'enfants*

*Preliminary Document No 1 of April 2006
for the attention of the Special Commission of October / November 2006
on the Civil Aspects of International Child Abduction*

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE
DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS
CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

(Comprenant des questions relatives à la mise en œuvre de la *Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants*)

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

(Including questions on implementation 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*)

drawn up by the Permanent Bureau

INTRODUCTION

The Permanent Bureau is undertaking preparations for the fifth meeting of the Special Commission to review the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child abduction*, which is to be held in The Hague from 30 October – 9 November 2006. It is intended that the Special Commission will provide the opportunity for State Parties to the Convention (as well as States which are considering or preparing for ratification or accession) to exchange information and experiences on the operation of the Convention, to compare practices, to consider any difficulties in respect of the implementation and practical operation of the Convention, and to continue work on new Parts of the Guide to Good Practice under the 1980 Convention. In addition the opportunity will be taken to examine implementation issues concerning the *Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and measures for the Protection of Children*.

The following activities are being or have been undertaken by the Permanent Bureau in preparation for the meeting of the Special Commission:

- continued work on transfrontier contact / access issues;
- continued work on the Guide to Good Practice on enforcement measures;
- publication in 2005 of the Guide to Good Practice on Preventive Measures in English, French and Spanish;
- continued development of the INCASTAT database of statistical information on cases under the 1980 Convention;
- work on the statistical survey of all cases in the year 2003, as a follow up to the statistical survey of cases in 1999. This work is being undertaken in co-operation with Professor Nigel Lowe of Cardiff Law School, United Kingdom;
- the commencement of a pilot project in 7 Central Authorities in 6 Contracting States to test the iChild case management and statistical system developed by WorldReach Software Corporation, Canada. This software and a comprehensive User Guide are now available in English, French and Spanish;
- continued work on the subject of direct judicial communications including maintenance of the Liaison Judges' Network;
- research on the issue of domestic violence in the context of the 1980 Convention;
- research on the issue of mediation in the context of the 1980 and 1996 Conventions;
- continued work on a report on regional initiatives and developments.

In order to make the maximum use of the time available at the Special Commission, the Permanent Bureau is gathering information with a view to its circulation for use by the Special Commission. We would be very grateful for your co-operation in this exercise, and we hope that you will be able to send us your replies to this Questionnaire by **10 July 2006**.

If you responded to the Questionnaire in 2001, you may wish to refer to your answers from 2001 again in this Questionnaire. Both this Questionnaire and that of 2001 are available on the Hague Conference website at: < www.hcch.net > → Convention 28 → Questionnaires & Responses.

This Questionnaire is addressed to Members of the Hague Conference and Contracting States to the 1980 and 1996 Conventions. Obviously, it is understood that some questions can only be readily answered by Contracting States.

As regards all other States which are not yet Party to either Convention, as well as certain intergovernmental organisations and non-governmental international organisations which have also been invited to the Special Commission as observers, we would welcome from them any comments in respect of any items in the Questionnaire which are considered relevant.

We intend, except where expressly asked not to do so, to place all replies to the Questionnaire on the Hague Conference website. We would therefore request that replies be sent to the Permanent Bureau, if possible by e-mail, to: < secretariat@hcch.net >.

Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

(Including questions on implementation 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 role and functions of Central Authorities

1. Have any difficulties arisen in practice in achieving effective communication with other Central Authorities? In particular, how are “modern rapid means of communication,”¹ used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?
2. Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?
3. Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see < www.hcch.net > → Child Abduction Section → Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001:
 - a) *the other Contracting States in relation to whom the Convention is in effect;*
 - b) *the means by which a missing child may be located;*
 - c) *the designation and contact details for the Central Authority;*
 - d) *application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;*
 - e) *details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;*
 - f) *the judicial procedures, including appeals procedures, which apply to return applications;*
 - g) *enforcement options and procedures for return and access orders;*
 - h) *any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);*
 - i) *information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;*
 - j) *information, if applicable, concerning liaison judges”?*
4. What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings? [Note: Questions 20-22 deal with the subject of mediation.]

¹ See the Guide to Good Practice – Part I on Central Authority Practice, Chapter 1.3.3.

5. In accordance with the Guide to Good Practice – Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority?²

Court proceedings³

6. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts or judges? Are such arrangements being contemplated?
7. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:
 - a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?
 - b) What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?
8. What measures exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?
9. In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?
10. How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?

Legal issues and interpretation of key concepts

11. Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.
12. Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please could you provide us with an electronic copy of relevant legislation if possible?
13. Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:
 - a) rights of custody (Articles 3 *a*) and 5 *a*));
 - b) habitual residence (Articles 3 *a*) and 4);
 - c) rights of access (Article 5 *b*));

² See, in particular, Chapter 6.5 on twinning arrangements.

³ See Guide to Good Practice – Part II on Implementing Measures, Chapters 5 – 7.

- d) the actual exercise of rights of custody (Articles 3 *b*) and 13(1) *a*));
- e) the settlement of the child in his / her new environment (Article 12(2));
- f) the one year period for the purposes of Article 12;
- g) consent or acquiescence to the removal or retention of the child (Article 13(1) *a*));
- h) grave risk (Article 13(1) *b*));
- i) exposure to physical or psychological harm (Article 13(1) *b*));
- j) intolerable situation (Article 13(1) *b*));
- k) the child objects to being returned (Article 13(2)); (see also question 9)
- l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10)

Direct international judicial communication

14. Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002 Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Questionnaire & Responses).

Immigration / asylum / refugee matters

15. Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?
16. Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the country in which the application for return is to be considered. How have such cases been resolved?
17. Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?
18. Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

Criminal proceedings

19. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

Mediation

20. Are there any programmes of mediation available in your State for parents or other persons involved in Hague Convention cases? Please describe these, indicating *inter alia* the methods employed to ensure that mediated agreements are enforceable

and respected by the parties, as well as the availability of, and training opportunities for, international mediators.

21. How do you ensure that mediation procedures do not unduly delay proceedings for the return of the child?
22. Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?

Training and education

23. Do you have any comments relating to how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the Convention? In particular, how have the conclusions and recommendations of these seminars or conferences, (some of which are available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section), had an impact on the functioning of the 1980 Convention?
24. Can you give details of any training sessions / conferences organised in your country, and the influence that such sessions have had?

Ensuring the safe return of children where issues such as domestic violence and abuse are raised

25. Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?
26. What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?
27. To what extent are your courts entitled and prepared to employ "undertakings" (*i.e.* promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.
28. Will your courts / authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement between the parties and those made at the request of the court?
29. To what extent are your courts entitled or prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned)?
30. Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?
31. Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?

32. Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child?

Standard questionnaire for newly acceding States

33. If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?
34. Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?
35. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations, and how do you ensure that this process does not result in undue delays?

The Guide to Good Practice

36. In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on Preventive Measures to assist in implementing for the first time, or improving the implementation or operation of, the Convention in your State?
37. How has the Guide to Good Practice assisted your State in making policy or practical decisions relating to the implementation or operation of the Convention?
38. How have you ensured that relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?
39. Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?
40. Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Questionnaire & Responses).
41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report" drawn up by William Duncan, Deputy

Secretary General, Preliminary Document No 5 of July 2002 available at: < www.hcch.net > → Conventions → Convention 28 → Practical Operation Documents.)

42. Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures as well as enforcement measures and access / contact)?
43. Do you have any other comments about any Part of the Guide to Good Practice?
44. Can you list any examples of good practice not included in the Guides?

Standardised consent form

45. The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State (see the Guide to Good Practice – Part III on Preventive Measures). Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?

Statistics and case management

46. Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.
47. Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?

Publicity / debate concerning the Convention

48. Has the Convention given rise to (a) any publicity (positive or negative) in your country, or (b) any debate or discussion in your national Parliament or its equivalent?
49. Is the Convention having any negative effects which are causing concern?
50. By what methods do you disseminate information about the Convention?
51. Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Conventions?

Services provided by the Permanent Bureau

52. Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:
- a) INCADAT;
 - b) the Judges' Newsletter on International Child Protection;
 - c) the bibliography of the Convention;
 - d) the Child Abduction Section on the website of the Hague Conference;
 - e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);
 - f) iChild (the electronic case management system designed by the Canadian software company WorldReach, which is currently being piloted by seven Central Authorities in six Contracting States).
 - g) support for national / international judicial (and other) seminars / conferences concerning the Convention;
 - h) support for communications among Central Authorities, including maintenance of updated contact details.
53. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

Compliance with the Convention

54. Are there any Contracting States with whom you are having particular difficulties in achieving successful co-operation? Please specify these difficulties.
55. Are you aware of situations / circumstances in which there has been avoidance / evasion of the Convention?

Non-Convention cases and non-Convention States

56. Are you aware of any troubling cases of international abduction which fall outside the scope of the Convention?
57. Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission meeting in October / November 2006. Would you be willing to contribute to a fund to enable certain developing States to attend?
58. Do you have any comments on bilateral or other agreements between your State and a non-Contracting State?
59. What additional information would you find useful on the non-Hague Convention page on INCADAT available at < www.incadat.com >.

Relationship with other instruments

60. Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000* and the *1989 Inter-American Convention on the International Return of Children*?
61. Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Hague Convention, in particular, the *1989 United Nations Convention on the Rights of the Child*?

The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

62. If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?
63. If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?
64. Have you experienced any difficulties concerning interpretation of particular provisions?
65. Would you find a Guide to Good Practice on implementation of this Convention useful?
66. The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?

Any other matters and recommendations

67. States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the 1996 Convention.
68. States are invited to make proposals concerning recommendations to be made by the Special Commission.