

**Hague QUESTIONNAIRE on the Practical Operation of the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption**

**1. Description**

(a) **Is your country a receiving state or a state of origin?**

Brazil is a State of origin, even though in the last few years many Brazilians have contacted our Central Authority to request information about the possibility of adopting children from other countries. We also have many cases of Brazilians who are residents in other countries and adopt children abroad.

(b) **Not applicable.**

(c) -----

**2. Good Practice**

(a) All petitions for international adoption have to be presented at Regional Central Authorities, the CEJAIS. As a result, a list of prospective adopters is available for the local judges and this system allows for a better control of the adoptions and a better choice of parents for the children.

(b) Organization of Central Authorities

(c) The main problem has been the lack of knowledge about the implementation of Convention among local magistrates and local staff in some of the regions of Brazil. In some regions the work with international adoption is far more advanced than others and a number of states in the North of Brazil lack both the experience and the necessary staff to work with intercountry adoptions.

(d) -----

**2. Questions Concerning Scope**

(a) No problems registered in relation to this particular situation.

(b) This situation has already been regulated in Brazil.

(c) Temporary adoption does not exist in the Brazilian Legislation, therefore it does not take place on any circumstance.

**4. General principles for the protection of children.**

(a) A child can be placed at a foster family or local institution if there is any danger to his/her physical and psychological integrity; and institutions such as the Conselhos Tutelares – Custody Councils, were established in all the regions to look after children who are at risk. These councils may denounce to the local courts any situation that represents a danger to the child.

(b) In the Brazilian legislation, it is mandatory for local adoption to be considered the first choice for a child, in accordance to the Statute of Child and Adolescent – ECA and the Brazilian Civil Code.

(c) The magistrate at a family court will be informed about a child's situation and if the child is no longer with the family of origin, he/she might be placed for adoption by the local court.

(d) The magistrate has to verify that the child has been abandoned or that the family of origin has agreed to the adoption. The magistrate also has to check all the situation of that child, before placing him/her for adoption. If there is a family, consent has to be given before the court in a hearing with the participation of a public defender that works with children's issues (promotor).

(e) No.

(f) No.

(g) Eligibility and suitability are assessed by a team of specialists (psychologists, social assistants) that work within each Family court. This team has to prepare a report to be presented to the local judge that will decide on the eligibility of the prospective parent.

(h) They have to undergo a preparation conducted by the specialists at the Family court. This preparation may include counseling and training on adoption.

(i) No adoption takes place before a couple has been duly approved by the Family court to adopt, and a report on this couple or person has to be presented in advance to the magistrate.

(j) The Family court will follow-up the adoption to verify if the child is adapted to the new family. Ex: Visitation from social assistants may take place after the family has adopted the child.

## **5. Central Authorities**

(a) All functions described in Chapter IV are performed by the Regional Central Authorities which are part of the Judiciary Branch in Brazil. The Federal Central Authority is responsible for coordinating this work, for following-up procedures and for accreditation.

(b) Four people at the Federal Central Authority all qualified to deal with intercountry adoption, administrative procedures and accreditation. All four are permanent staff – civil servants - of the Brazilian Government. At Regional Central Authority where intercountry adoptions take place, there are between five and up to twenty people according to the Region of Brazil.

(c) At the Regional Central Authorities the staff is formed by civil servants, who occupy permanent positions within the structure of the State Courts. The admission to the civil service in Brazil takes place by public examination authorized by the government. Staff training is part of a continuous system of supervision of the civil careers in Brazil.

(d) Yes, funding and resources have been limited and as a result of this situation, public programs related to intercountry adoption have been developed with difficulties.

(e) No difficulties have been reported so far in the communication with Central Authorities of other countries, and with Regional Central Authorities the communication is excellent and takes place by mail or e-mail.

## **6. Accreditation**

**(1) Accredited bodies are accepted in Brazil. Only foreign bodies are accredited at this moment.**

(a) Only the Federal Central Authority has the power to grant accreditation at the national level, and only after accreditation has been granted at the Federal level, could there be accreditation at regional level.

(b) At the moment 34 bodies are accredited in Brazil and 5 accreditations have been denied so far. Seven bodies have had their accreditations cancelled.

(c) **See information attached in the chart of accreditation.**

(d) **Same information as above.**

(e) **Sent attached to this form.**

(f) Supervision of the accredited bodies is under the responsibility of the Central Authority and a yearly report is to be handed by each body. This report shall include financial reporting, and complete information on the status quo of the children adopted each year.

(g) The accredited body is assessed according to the report presented yearly and by the follow-up of their activities conducted by the Central Authority and the

Brazilian Federal Police. New legislation on accreditation has just been enacted in Brazil.

(h) Yes, in some cases there have been difficulties in assessing the activities of accredited bodies.

(i) Yes. In Brazil adoption procedures are free of any charge and the main problem encountered by the Brazilian Central Authority has been the establishment of fees by the bodies that work with intercountry adoption.

(j) The renewal has to take place every two years and it is necessary for the body to send a letter to the Federal Central Authority indicating its willingness to continue to work in Brazil. Then the situation of this body will be examined and if there are no problems renewal is automatic after the publishing of a decree that allows for the continuance of the work for another two years.

(k) So far no difficulties have been found.

(l) Yes, there have been concerns over the participation of local attorneys as representatives of the accredited bodies and also about the high fees charged sometimes for each individual adoption.

(m) Yes.

**(2) Yes.**

(a) Description in answer to question number 6.

(b) Only bodies have been authorized to act in Brazil so far.

(c) Not until this moment.

**(3) Situation does not occur.**

**(4) Establishment of fees and mechanisms for controlling the accredited bodies.**

**(5) Yes. Establishment of fees and surveillance.**

***Approved bodies and persons.***

**(6) Only approved bodies are accepted to work in intercountry adoption.**

(a) Question answered in number 6.

(b) Approval is granted only to bodies.

(c) Answered in question 6.

(d) Answered in question 6.

(e) Answered in number 6.

(f) No declaration under article 22(4) has been made yet.

## **7. Procedural aspects.**

### **(1) Please indicate any operational difficulties that have been experienced, including in particular:**

(a) No difficulties, this point is under the responsibility of the regional central authorities.

(b) Same as above. If the family court or regional central authority consider there is not enough information on the prospective adoptive parents, adoption will be denied.

(c) Yes, this difficulty has been encountered and has not yet been solved.

(d) No, that point is under the responsibility of the accredited body and of the regional central authority.

(e) Yes, because of the different procedures established in each of the 27 states of Brazil, there have been difficulties in the past with article 17 but this issue was settled at the last meeting of the council of the Brazilian Central Authorities, that took place this year.

(f) No difficulties encountered after the ratification of the Hague Convention by Brazil, but in adoptions that took place before the Hague there have been difficulties in obtaining information about the situation of the children.

(g) No, documents related to the applications for adoption are to be presented at the regional Central Authorities. No difficulties have been reported so far.

(h) No information on difficulties related to time taken to process Convention cases have been received so far.

### **(2) Yes.**

**(3) Yes, in a few cases prospective parents have contacted the Central Authority to complain about the high fees charged by some accredited bodies.**

**(4) The breakdown of placements has been reported to our Central Authority by Brazilian Consulates abroad. When such situations take place we contact the Central Authority of the Receiving State and we try to solve the situation with the support of our local consulates or embassies.**

**(5) The issue of legalisation of foreign documents is under the responsibility of the Ministry of Foreign Affairs of Brazil.**

**(6) No problems of this nature has yet been informed to the Brazilian Central Authority, because the placement of a child for international adoption has to be preceded by the destitution of paternal rights of the biological parents and this is a separate procedure conducted at the level of the family courts.**

#### **8. Private International Law Issues.**

**(1)**

**(a) No. In Brazil only the judiciary branch / family courts and regional central authorities have the jurisdiction to grant, amend or revoke an adoption. It is necessary a judicial decision in all three situations and no difficulties have been reported in relation to the issue of jurisdiction.**

**(b) So far, there have been no difficulties reported in the application of the Convention concerning the law or laws to be applied to the conditions governing the effects of an adoption.**

**(2) No difficulties experienced in this issue.**

#### **9. Recognition and effects.**

**(1) According to information available at our Central Authority, our courts have not used the Recommended Model Form “ Certificate of Conformity of Intercountry Adoption”.**

**(2) Yes, the difficulty arises from the lack of knowledge by some courts of the application of article 23.**

**(3) No.**

**(4) So far this situation has not occurred.**

#### **10. Payment of reasonable charges and fees.**

**(1) The process of adoption in Brazil is totally free, there are no charges and the prospective parents are informed by the family courts about this fact. The only fees that exist are those charged by the accredited bodies. This information is available for all authorities or parents who desire to adopt a Brazilian child.**

**(2) No.**

- (3) Yes, information on such practices should always be available at the websites of Central Authorities with specific information on amounts that are to be paid by prospective parents.**
- (4) No information on this situation has been reported, except that there is a high difference between fees charged by accredited bodies of European countries.**
- (5) Yes, in Brazil fees charged by some accredited bodies in intercountry adoptions have been higher than fees charged in other family law matters such as divorce. The Brazilian Central Authority is discussing this situation with the National Bar Association.**
- (6) In Brazil no fees are charged for national or intercountry adoption by any authority, regional or provincial.**
- (7) Because there are no fees for intercountry adoption there is no answer to this question.**
- (8) Yes, the Brazilian Central Authority has recommended to the provincial Central Authorities that prospective foreign parents are asked about the fees they are paying to the accredited bodies. This practice will provide more information on the real situation of intercountry adoption. There is a concern about high fees being charged by some of the accredited bodies.**
- (9) Yes, because high fees are being charged by several accredited bodies, and because there are no costs for adoption in Brazil, the number of bodies seeking accreditation with our Central Authority has increased.**

#### **11. Improper financial gain.**

- (1) The Criminal Code of Brazil, the Statute of the Child and Adolescent – ECA, and a new decree recently published about accreditation, DECREE 5.491, of July 18<sup>th</sup>, 2005. Sanctions may include suspension of activities, and prohibition to work in intercountry adoption in Brazil permanently or for a number of years.**
- (2) The Accreditation Decree is beginning to be implemented and it will serve to control and discourage improper financial gains.**
- (3) No.**
- (4) Yes, the follow-up of the activities of the accredited bodies by the Brazilian Federal Police.**
- (5) In case any information is provided on the issue of solicitation of children for intercountry adoption, any adoption procedure under way is immediately suspended and the prospective parents may face criminal charges and expulsion of the country. The local courts does not allow for any contact between the prospective parents and the child before all the necessary conditions for the adoption have taken place.**
- (6) No. Cooperation has always been provided by other States in all situations that have occurred so far.**

#### **12. Relative Adoptions.**

The procedures are the same. The future adoptive parents have to contact a provincial Central Authority-CEJAI or Family court of any state in order to initiate the adoption process.

**13. Children with special needs.**

In Brazil children with special needs receive the same amount of attention from the family courts which are undertaking more efforts to provide them with a family. A number of programs aimed at educating prospective parents in Brazil have been directed in recent years for the adoption of children with special needs.

**14. Other forms of Cross-border child care.**

(1) No. The international placement of children in Brazil may only occur for the purpose of adoption.

(2) No.

(3) The issue is under discussion by Brazilian authorities.

**15. Avoiding the Convention.**

A few such situations have been reported but the application of the Hague Convention in Brazil has greatly contributed to diminish this possibility.

**16. Additional safeguards and bilateral arrangements.**

No agreements have yet been signed with other States with a view to improving the application of the Convention.

**17. Limits on number of States with whom cooperation is possible.**

There are no limits in Brazil in the number of States with whom we cooperate but precedence in intercountry adoption is given to prospective parents from member States of the Convention over non member States.

18. Yes, we have organized seminars on the Adoption Convention in cooperation with other States. The first seminar took place in September, 2004, and was organized with the Italian Government. It was directed to the staff of the Regional Central Authorities of all Brazil. This year a new such seminar is being organized with the Central Authority of France – MAI, and it will take place during the month of november, in the state of Pernambuco.

**19. Yes.**

20. First the issue of the granting of citizenship to adopted children, and second the issue of deportation of formerly adopted children.