

Standard Questionnaire for Newly Acceding States

I. Implementing Legislation

1. Is implementing legislation necessary to bring the Convention into force in Domestic Law?

- No. After the *Convention on the Civil Aspects of International Child Abduction* was ratified by the National Congress on September, 15th, 1999, (Legislative Decree n° 79), and promulgated by Decree n° 3.413, of April 14th, 2000, it was immediately incorporated into the Brazilian legal system with the status of ordinary law.

II. Locating Children

2. Please indicate the agencies involved and the processes available for the location of missing children in your country.

- The Brazilian Central Authority – ACAF established a legal agreement with INTERPOL for the location of missing children. According to this agreement the Central Authority may request INTERPOL to investigate the whereabouts of a child and to confirm his/her exact location, and to report if the child is apparently being abused or ill-treated.

- The Central Authority works in close contact with INTERPOL and also with the Brazilian Federal Police, that may be requested to help in child abduction cases. Usually, procedures for location of missing children are confidential and until the child is located there is no contact with the abducting parent. After the child is located by Interpol we forward the information to the Central Authority of the country of origin.

- The Central Authority is entitled to negotiate the child's release with the abducting parent if it is required to do so. It may also send someone to the address where the child is being held to deal directly with the parent in case an agreement is reached or if the court of justice determines the return of the child to the country of original residence

III. Central Authority

3. Designation and Contact details.

Name: Autoridade Central Administrativa Federal – ACAF

Address:

Secretaria Especial dos Direitos Humanos – Presidência da República
Esplanada dos Ministérios, Edifício T, sala 212
Brasília D.F. 70064-900 – BRAZIL

Telephones: 55 – 61 – 429.3481 / 429.3975

Fax: 429.3261 / 226.7980

Contacts:

President of the Central Authority – Minister Nilmário Miranda, Special Secretary for Human Rights

Coordinator – Patricia Lamego de Teixeira Soares (Portuguese, English, Spanish, French)

Assistant – Mr. Odilon Lima (Portuguese, German, English)

IV. Judicial Procedures

4. Which courts/administrative bodies within your system have been given jurisdiction to consider applications for return orders (and questions of access) under the Convention?

- There are two ways for presenting a child abduction case in Brazil:

a) A left-behind parent can file a motion before the competent court directly. This would be private procedure not conducted or followed up by the Autoridade Central.

b) The left behind parent may also petition the return or access rights through the Central Authority of his/her own country that will then forward the case to the Brazilian Central Authority. Once the case is accepted by the Brazilian Central Authority it becomes a public case and will be handled by the Central Authority which becomes responsible for all further proceedings.

- After a file is introduced it will be examined by the Central Authority and if the file complies within the requirements of the Hague Convention it will be sent to the **Advocacia-Geral da União – AGU / Federal Attorney's Office** (The AGU is an internal institution / body of the Executive branch created under the Constitution of 1988 (Art. 131) to defend, represent and handle all legal issues related to the Executive branch. The AGU also acts as an advisory body to the Executive branch).

- Once AGU receives the file, and after analysis, it will initiate judicial procedures for return of the child (or access rights) before the competent court. Inside AGU Hague Convention cases are handled by the Departamento Judicial Internacional – Department for Legal International Affairs.

- A child abduction case may also be denounced to the **Ministério Público Federal – MPF Federal Prosecutor's Office** (The Ministério Público Federal - Art. 127, Constitution of 1988 is the institution in Brazil that has, among other main functions, the exclusive responsibility for the promotion of criminal charges and the requisition of investigations on any subject anyone within the national territory, as well as, the opening of police inquiries in any type of investigation when deemed necessary.). This may happen in cases that present evidence of child abuse or violation of rights of children. If a child abduction case is presented to the MPF the Brazilian Central Authority is no longer in control of that file from the point of view of the criminal proceedings. The MPF acts independently and may proceed with investigations and bring charges against the abducting parent, even if the child has been returned to the court of its original residence.

Competent Courts:

- Federal Courts: Hague Abduction cases fall within the jurisdiction of the Federal Courts in Brazil. They are responsible for handling petitions for return of children or for ascertaining the

exercise of access's rights. This competence is based on Art. 109, III of the Federal Constitution of 1988, that states:

"Aos juizes federais compete processar e julgar (It is the jurisdiction of federal judges to prosecute and to judge) :

III – as causas fundadas em tratado ou contrato da União com Estado estrangeiro ou organismo internacional (the causes based on treaties or conventions between the Federal Union and a foreign State or International organization);

- The Federal Courts do not have exclusive jurisdiction because a parent may also file an application directly with a Family Court based on the Hague Convention, but in that case it will be a private procedure with no intervention by the Central Authority. If the Central Authority receives and accepts an application, the case becomes a public case and the petition will be directed to a federal court **only**. It is important to stress that the Federal Attorney's Office, as legal representative of the Executive branch, will be acting on behalf of the government and not as representative of the left-behind parent. (All legal issues related to the Federal Government fall within the jurisdiction of the Federal Justice).

5. What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?

- Medida/Ação cautelar-Precautionary Measure : Is a procedure that allows fast and preventive measures at first instance, before the case is fully examined and a final decision is issued by the court. An "ação cautelar" could be presented to the court together with the main petition but with a different objective, like for instance to prohibit /prevent the movement of the abducted child, or to guarantee the child's safety. However, it is important to point out that Federal Judges have total autonomy in Brazil and that the Central Authority has no control over the speed of judicial procedures once they are initiated.

6. What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what conditions?

- If the case is handled by the Advocacia-Geral da União or the Ministério Público, there will be no financial costs for the left-behind parent. Once the case has been forwarded to the AGU it becomes a public case, and the AGU will be acting on behalf of the Secretary for Human Rights, as Central Authority of Brazil, and as a result, on behalf of the Central Authority of the country of the original residence. AGU attorneys act in coordination with the Central Authority, following-up each case and when necessary, appeal from initial decisions.

V. Enforcement procedures

7. What procedures and measures exist for the enforcement of:

a) Return order? In this case the judge issues an order for the child to be returned immediately to the country of original residence. The order is enforced by a Legal Officer appointed by the court. However, it is necessary that the left-behind parent comes to Brazil to fetch the child. The Central Authority will organize the removal of the child and it will act in coordination with the AGU, the Federal Police, if necessary, and the Embassy/Consulate of the country of origin.

b) **Contact/access order?** In case of contact, the Central Authority may act if required as liaison between the parents, or to intermedate an agreement. In the case of an **Access order**, notification will be sent to the abducting parent by the Central Authority and if there is non compliance, the file will be sent the AGU for legal action to be undertaken.

VI. Substantive Law

8. What are the legal criteria by which custody and contact determinations are made?

- The legal criteria for custody and contact is based on the status quo which existed prior to the wrongful removal. Federal Courts in Brazil do not rule on custody matters and decisions issued by the court of the country of original residence should be respected by the Federal Court when deciding whether to return a child.

9. Is there a difference in the legal status of mothers and fathers in custody or contact cases?

- No. According to the new Brazilian Civil Code both parents have the same rights and responsibilities with respect to their children.

VII. Social Services and Child Protection Services

10. Please describe the services that exist for the assessment, care and protection of children in the context of international child abduction.

- Once a child is located the judge may summon the abducting parent and request information about the child's well being. In case any evidence of ill treatment is found the judge will refer the matter to the Ministério Público / Prosecutor's Office that may determine any necessary measure to protect the child, like for instance, to separate a child from the abducting parent until the trial is over.

11. Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

- Once a judge issues a return order the AGU and Central Authority will immediately be informed. Both agencies will provide that the child is returned safely. When necessary the Federal Police may be requested to accompany and protect both child and parent until they leave the country. Embassies and local consulates of foreign countries are always informed of return orders and a representative of the Central Authority will also accompany child and parent until they board an airplane. All necessary legal assistance required to expedite the departure is provided.

VIII. Information and Training

12. What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training?

- Since the Convention began to be implemented in Brazil, the Central Authority, INTERPOL and the Advocacia-Geral da União / Office of the Federal Attorney, have been in permanent contact to discuss the best ways for conducting Hague Abduction cases and to determine what

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procedures would facilitate the implementation of the Convention. Furthermore, the Central Authority has a yearly budget approved by Congress that will allow for the organization of national seminars aimed at providing training and information to federal judges and their staff on the Hague Convention.