

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF  
THE 1980 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

<b>Name of State or territorial unit:<sup>1</sup></b>	ISRAEL
<i>For follow-up purposes</i>	
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**PART I: RECENT DEVELOPMENTS<sup>2</sup>**

**1. Recent developments in your State**

1.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No  
 Yes, please specify:  
[Please insert text here](#)

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities<sup>3</sup> in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

[Article 3 – Habitual Residence](#)

[Request for Leave to Appeal – Family Appeal 7784/12 – Anon. v. Anon. – Supreme Court of Israel, 28 July 2013. The Israeli parents had been living in Canada with their children for several years. A Canadian court granted the mother's request, inter alia, for custody and relocation to Israel. The father appealed. The court did not the stay the execution of the order pending the appeal, instead relying on the mother's consent to abide by the decision of the Appeal court and to return the children to Canada should the appeal be allowed. The appeal was allowed, yet the mother refused to return the children. The father filed under the Hague Convention for the return of the children. The mother claimed, inter alia, that the children had become habitually resident in Israel. The case reached the Supreme Court of Israel, which concluded that habitual residence is a factual determination, to be determined based on the facts of each case from the perspective of the child. As part of this analysis parental intention should be one of the factors taken into account, but it is](#)

<sup>1</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

<sup>2</sup> This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and 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* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

<sup>3</sup> The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

not determinative in and of itself. The Supreme Court ruled that this did not conflict with earlier case law, some of which gave parental intention greater priority, but rather parental intention is to be taken into account as one part of the factual background. In this case, the court viewed the mother's consent to be bound by the decision on appeal and to return the children to Canada should the appeal be accepted, as evidence that the habitual residence remained in Canada. Therefore in this case the habitual residence was not changed by the move to Israel based on a Judgment that was not absolute.

(See this case further below under Article 13(1)(a) – consent/acquiescence)

#### Article 13(1)(a) - Consent/Acquiescence

Family Appeal 741/11 – O.B-H. v. S.B-H. - Supreme Court of Israel – 17 May, 2011. Israeli parents lived in the United States with their young daughter. While on a visit to Israel their marriage broke down. The mother filed in a court in Israel for divorce, custody, etc., and obtained a non-exit order against the father. The parents then negotiated a draft agreement, pursuant to which, inter alia the mother and child would stay in Israel while the father would have visitation, and the mother would request to cancel the non-exit order against the father. The agreement was not signed as the mother did not agree with the financial provisions, but she did agree to cancel the non-exit order. The father returned to the U.S. and informed the mother that he expected her to return the child to the U.S. at the end of the visit. When she did not do so, the father commenced proceedings for the return of the child. The case reached the Supreme Court of Israel. All three judges agreed that the U.S. was the child's habitual residence. One judge ruled that although the draft agreement wasn't signed, it evidenced the father's consent to the child staying in Israel. Further, the mother's consent to canceling the non-exit order evidenced her reliance on the father's agreement to the child staying in Israel. The judge ruled that civil contract law could not be applied in its entirety to agreements in family law matters. She rejected the father's claim that parties would be deterred from negotiation agreements as any concessions could subsequently be used against them as consent, ruling that this case had special circumstances, particularly the partial performance of the draft agreement by the mother canceling the non-exit order and the father leaving. A second judge ruled that the father had acquiesced to the child remaining in Israel by returning on his own to the United States. The father's request for a further hearing was denied.

Request for Leave to Appeal – Family Appeal 7784/12 described above - The father accompanied the mother and children when she temporarily relocated to Israel. Both parents applied to the courts in Israel on various issues concerning the children and also entered into negotiations concerning future arrangements for the children. The mother argued that the father consented/acquiesced to the children being in Israel. The Supreme Court ruled that the father did not consent to the removal of the children to Israel – this was done on the basis of the Judgment of the Canadian court, which he opposed and appealed, and requested a stay of execution of the order pending the appeal. The court further ruled that the father did not acquiesce. He continued to pursue the return of the children to Canada. The father was guided by the best interests of the children not only for the long term but also for the short term, and he therefore accompanied them to Israel to be near them pending the appeal, and to reduce the damage in case he lost the appeal. The court distinguished Family Appeal 741/11 above on the basis of its facts and stated that that case did not set a precedent that negotiations constitute consent or acquiescence.

#### Article 13(1)(b)

Request for Leave – Family Appeal 2270/2013 – D.Z. v. Y. V. D – 30 May, 2013 – Supreme Court of Israel. The Convention applied to only one of two small children removed by their mother from Holland to Israel (the parents were not married and the father was not yet registered as a joint custodian of the younger child, therefore he did not have custodial rights under Dutch law). The mother argued that the return of the older child would put him at grave risk of psychological harm or an otherwise intolerable situation as a result of the separation from his sibling. The Supreme Court stated that it is not possible to set a rule that where there is a risk that siblings will be separated, or a child separated from a parent, the court cannot exercise its discretion in favour of ordering the return of the child – such a rule would negate one of the aims of the Convention, that being that the abducting parent shall not be rewarded for his actions. The court reviewed foreign judgments where

there was either a background of violence by the left-behind parent against some of the siblings and therefore the younger children were also deemed to be at risk, or the older siblings opposed their return and the court ruled that they met the exception under Article 13(2). In those cases there was not a possibility to return the situation to the status quo, as not all of the siblings could be returned together due to acts beyond the abduction or the way in which the abductor had conducted herself/himself. In the present case, the Supreme Court noted that the risk of the child being separated from his brother and the ensuing harm did not stem from the younger child's desire to stay in Israel, nor from a fear that harm would be caused to him if returned to Holland. Rather, the risk stemmed from the mother's refusal to return to Holland and the fact that she was not obligated to do so. Nothing prevented her from returning to Holland and thus prevent a separation of the siblings. To accept the mother's claims would widen the exception in Article 13(1)(b) and undermine the goals of the Convention. The court therefore ordered the return of the child, noting the terms of return prescribed by the lower court, including housing for the mother. Issues concerning the mother's entry to Holland and a claim concerning the possibility of criminal prosecution were resolved through cooperation between the Central Authorities.

The case of Request for Leave to Appeal – Family Appeal 5582/14 – Supreme Court of Israel, 18 September, 2014, demonstrated conditions that the courts have attached to return orders where it felt that the onus under Article 13(1)(b) was not lifted but the court still felt the need to make provisions for safe return. In this case the court ordered that the left-behind father deposit the amount of \$36,000 to cover needs of the mother and child upon return, and that the mother did not have to provide any details concerning the method and route of return to the Netherlands. The mother was given 48 hours to return and was permitted to return via a flight to a third country and ongoing train travel, after which she was to confirm to the father that she and the child had arrived.

In Family File 16925-04-16 (Nazareth Family Court) the taking father was deported from the United States as a result of a number of criminal convictions. The mother traveled with the children to Jordan to visit the father and he subsequently abducted the children to Israel. The court rejected the father's claim under Article 13(b) that the children would be exposed to a grave risk of harm as a result of the separation from the father, ruling that the father's entry prohibition could perhaps be resolved on other bases, including humanitarian.

#### Article 15

Request for Leave to Appeal – Family Appeal 1930q14 – Anonymous v. Anonymous – 5 June, 2014 – Supreme Court of Israel. The Supreme Court dealt with the question of how courts in Israel should handle motions for declarations under Article 15. It ruled that even though Israeli law enables an individual (as opposed to "authorities" as stated in Article 15) to submit a motion under section 15 to the courts in Israel, the court must exercise its discretion and decide whether the motion which was filed is consistent with the purpose of the Convention. The mechanism is intended for those cases where the requested State wishes to receive assistance from the other State by explaining its stance according to its own domestic laws regarding the legality of the removal/retention of the child, not to create a double enquiry on habitual residence as this needlessly complicates the main action in a way that undermines the objectives of the Convention. Determination of habitual residence must be resolved by the court in the requested State.

#### Criminal Prosecution

Criminal Appeal 5463/11 and 6328/11 - R.B. v. State of Israel – Supreme Court of Israel, 4 February, 2013. The taking parent – the mother – failed to comply with a Judgment of the Supreme Court of Israel ordering her to return a child to his custodial father in Belgium, and the child, age 9, immediately disappeared. The mother gave different versions with respect to the child's disappearance, denied her involvement while claiming that she had to protect her son from returning to Belgium, and then claimed her right to remain silent. The mother was arrested and charged under Israel's criminal code with Abduction from Custody and Violation of a Lawful Direction. The case ultimately reached the Supreme Court. She was convicted on both charges. The lower court did not find the mother's testimony credible and ruled that integral circumstances showed that she

was involved in the child's disappearance. Although other elements were involved in the child's disappearance, this was not enough to deny the mother's involvement and that the disappearance was carried out with her consent and coordination. The court stated that it was convinced that the mother could still contribute to the execution of the return order so that the child would not have to grow up without his mother and father and that should she do so, this would serve as an important consideration for the mitigation of her punishment, particularly when the main concern was the wellbeing of the child. The mother did not cooperate, and was subsequently sentenced to five years imprisonment on the offence of abduction from custody and one year imprisonment concurrently on the offence of violation of a lawful order.

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

In 2014 the Israeli government proposed a bill which included a rule stating that a parent who wishes to relocate or move his habitual residence to a foreign country together with his child, shall notify the other parent immediately once such a decision is taken, and at least 90 days before the scheduled date of his departure from Israel. Also, he shall propose that the other parent sign an agreement that would assure that their parental responsibility would be carried out, together and separately, after the relocation to the foreign state. According to the proposed rule, the parent remaining in Israel is to inform the parent requesting relocation of his position concerning the relocation within 21 days of receiving the proposal.

Should the parents be unable to reach an agreement, it would be necessary to obtain the approval of the court in order to relocate. The proposed bill is currently subject to debate, but the rule above seems to enjoy broad consensus.

It is hoped that should this bill be enacted into a law, this will encourage parents to relocate legally rather than resort to wrongful removal/retention.

## **2. Issues of compliance**

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

No

Yes, please specify:

The Israeli Central Authority (ICA) is experiencing challenges with certain State Parties, which appear to be systemic, in the following areas in particular:

- 1) Difficulties in communication with some Central Authorities
- 2) Delays in location of taking parent and child
- 3) Difficulties in securing legal aid / legal representation
- 4) Delays in institution and conduct of judicial proceedings
- 5) Effective enforcement of judicial orders for return

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

No

Yes, please specify:

The ICA is experiencing State Parties who apply political considerations with respect to applications concerning children who are habitually resident in certain parts of Israel. This has occurred with respect to Central Authorities who are hesitant to or will not accept an application from a child habitually resident in certain parts of Israel, or requested judicial authorities who have ruled that the Convention does not apply as its State does not recognize that area as being part of Israel.

### 3. The role and functions of Central Authorities designated under the 1980 Convention<sup>4</sup>

*In general*

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

No

Yes, please specify:

Some Central Authorities do not respond to communications or respond only after repeated requests or lengthy delays. Some countries do not update changes in contact details on the Hague Conference website, which causes delays in communication. Some Central Authorities do not provide updates in cases, and only do so after being requested to do so. Some Central Authorities still do not communicate by email but rather by regular mail, which causes significant delays in the handling of cases. In some instances the ICA has had no alternative but to seek diplomatic intervention in order to attempt to communicate with a foreign Central Authority - diplomatic channels should not have to be resorted to in order to achieve cooperation on such a basic issue. Lack of communication has resulted in the timeframe for the filing of an appeal lapsing.

3.2 Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

No

Yes, please specify:

Article 7(a) - see section 3.6 below

Article 7(b) - some State Parties do not have mechanisms to prevent reabduction of children prior to the commencement of judicial proceedings - eg. there is no possibility to secure provisional measures such as depositing of passports, obtaining orders preventing the removal of the child from the jurisdiction pending the legal proceedings

Article 7(c) - Voluntary return mechanisms should not come at the expense of initiating timely return proceedings where necessary. For example, in Israel the taking parent is given a limited window of two weeks to consider voluntary return failing which proceedings are then instituted. However in some State Parties, the process turns into an elongated process in and of itself, where each parent presents their full claims, often necessitating translation of documents. In some extreme cases, the requested Central Authority has even suggested, based on the taking parents' claims, that the left-behind parent reconsider whether s/he wishes to pursue the case. In the view of the ICA, such a process not only can cause severe delays in the case, but in effect usurps the function of the judicial authority.

Article 7(e) - in some cases the ICA has experienced difficulties in obtaining information from requested Central Authorities with respect to the laws and regulations, such as they may exist, governing Hague Convention proceedings in their jurisdictions. As such, it can be very difficult to provide left-behind parents with much-needed clarity concerning the proceedings and time-frames they will be facing.

Article 7(f), (g) and (h) - see below.

Article 7(i) - the ICA has often experienced difficulty obtaining cooperation from some Central Authorities in receiving information concerning the nature of proceedings in their State as well as timely updates, often resulting in lengthy delays and in an extreme case, resulting in a parent missing a deadline for the filing of an appeal.

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

No

Yes, please specify:

1) The ICA has been experiencing severe difficulties in some Contracting States in which the judicial authorities are not complying with Article 11 of the Convention by failing to conduct expeditious proceedings.

<sup>4</sup> See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

2) Some courts appear to be deciding cases based on custody considerations rather than in accordance with the provisions of the Hague Convention. For example, in one case the court ruled that the children should not be returned to Israel based, inter alia on the adequate environment in the requested country, the rapid and satisfactory in which they adapted (even though the application had been filed well within one year and the consideration of adaptation was irrelevant). In addition, in some cases there have been expert reports that relate more to general considerations of overall best interests of children, raising the question of what instructions were given by the court to the expert and whether the content of the requested report was specific and restricted to considerations under the Hague Convention.

### *Legal aid and representation*

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)-(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with?

- No  
 Yes, please specify:

In incoming cases, as Israel has made the reservation to the third paragraph of Article 26 of the Convention, the ICA acts very promptly to assist the parent in securing counsel, either by providing, if necessary a list of private attorneys in Israel broken down by geographic area and including a list of other languages of communication, or, upon being provided with documentation from the requesting State that the parent qualifies for legal aid in that State, by immediately forwarding an urgent request to the Legal Aid Bureau in Israel for the appointment of an attorney to represent the parent. Attorneys are normally appointed very quickly.

In outgoing cases, Israel has encountered various difficulties and delays in other member States. One country requires extensive documentation (some of which is difficult to obtain) together with translations, to support a request for legal aid. The parent must go to great time and expense to secure and translate all of these documents. The request for legal aid is then brought before the courts. This procedure can take a very long period of time, and delays the filing of the Hague Convention application.

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?<sup>5</sup>

- No  
 Yes, please specify:

In Israel, we have encountered instances where the left behind parent has been unable to show either a general entitlement to legal aid in their own country or entitlement in the specific case, as the proceedings are expected to take place in Israel. In these instances, we have faced challenges in providing the left behind parent with legal aid in Israel absent the certificate of entitlement and the parent must show, in such a case, that they would be entitled to legal aid in Israel. This has posed challenges in some cases and

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<sup>5</sup> See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical 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* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the [Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings").

Israel has made attempts to resolve this both on a case-by-case basis as well as vis-à-vis the legal aid office in Israel.

Israeli left-behind parents face significant challenges in some jurisdictions in obtaining any kind of representation. In some jurisdictions, the system of legal aid is open only to nationals of the requested State, thereby leaving the left behind parent with no financial ability to bring proceedings against the taking parent. In a number of more extreme cases, no attorney was found in the requested State who was sufficiently aware of the 1980 Convention and willing to represent the left behind parent in a petition for return to the Court. Despite significant efforts made to secure counsel for the left behind parent via the Central Authority, no petition has been filed to date, 3 years after an application for return was filed with the Requested Central Authority, due to lack of representation.

Language barriers continue to pose challenges in some jurisdictions. The ICA has recently updated its own list of attorneys to reflect the languages spoken by attorneys in the private sector qualified to handle Hague cases. The Legal Aid office in Israel also makes all efforts to provide eligible left behind parents with attorneys who possess the relevant language skills to handle the cases assigned.

### *Locating the child*

3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

No

Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

As a requesting State, Israel has on numerous occasions experienced difficulties in having children located in other countries. In many cases there are excessive delays in other contracting states in determining or confirming the child's location. Some countries will not allow an application to proceed until the child's location has been confirmed, and even where an exact address has been provided, there have been delays of several months to confirm the child's location. In some cases where the location was not known, excessive periods of time have passed with little information being provided as to the efforts to locate the child.

Difficulties are also being experienced in cases where a foreign court has ordered the return of abducted children but the taking parent has disappeared with the child, thus preventing the return. The foreign Central Authority at first stated that their role in the case was completed and that the left-behind parent must file a criminal complaint. In parallel, Israel has had to make requests for legal assistance in the criminal sphere due to lack of civil alternatives.

As a requested State, Israel has taken many steps to ensure the most expeditious and effective measures for locating children, when necessary. State Attorney Guidelines were established many years ago, and a special liaison officer in the Israel Police was appointed, to streamline and expedite the procedures for locating children. In difficult cases, the ICA works in close coordination with the police liaison officer to ensure that all investigative methods are being utilized. In one particularly difficult case after a court order for the return of the child, the taking parent, with the assistance of unknown factions, placed the child in hiding and despite intensive and extensive investigative efforts, the Israel Police were unable to locate the child. The mother was criminally prosecuted, convicted and imprisoned as a result.

The ICA also works closely with Interpol in order to locate abducted children. In addition, the ICA now has direct access to border control records and, provided that it has the necessary information, can determine almost instantly whether a child entered or exited Israel.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

- No  
 Yes, please share any good practice on this matter:

As stated above, the ICA works very closely with the Israel Police and Interpol, and when necessary, relevant orders are issued by the Court to allow for investigative measures to be taken to locate the parent and children. It further works in cooperation with other government ministries including the Ministry of Education and the Ministry of Social Welfare, in cases where these agencies might have information that may assist in locating children.

*Information exchange, training and networking of Central Authorities*

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?<sup>6</sup>

- No  
 Yes, please specify:

The ICA has stated its interest and willingness to take part in twinning/mentoring arrangements with developing Central Authorities. The ICA also consults with and has been consulted by Central Authorities when challenging issues have arisen, in order to share experiences and practices that may assist in resolving these issues.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

- No  
 Yes, please specify:

The ICA conducted bilateral meetings with the United States Central Authority in 2015 and the Central Authority for France in 2016. It further had a video conference call with the United States. In addition, it participated in seminars organized by the Central Authority for Russia in 2014 and 2015.

*Statistics<sup>7</sup>*

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

*Prompt handling of cases*

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

- No  
 Yes, please specify:

All attorneys and interns who handle cases are provided from the beginning with training on the provisions of the Convention and the need for expedited handling of the cases. Both incoming and outgoing cases are closely monitored. In outgoing cases, the Central Authority will regularly request updates from the requested Central Authority if they are not provided in a timely fashion.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

Delays in outgoing cases are normally caused as a result of: 1) delay by the left-behind parent in providing the necessary information and documentation in support of his/her request to the ICA; difficulties in obtaining responses from the requested Central Authority.

Delays in incoming cases are normally caused as a result of: 1) insufficient information

<sup>6</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

<sup>7</sup> See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).



being provided in the application from the requesting Central Authority, in particular with respect to the legal basis of the application and supporting documentation; 2) difficulties in obtaining responses and information from the requested Central Authority.

#### 4. **Court proceedings & promptness**

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?<sup>8</sup>

Yes

No, please indicate if such arrangements are being contemplated:

By law, return applications are heard in the first instance in Family Courts in Israel, of which there are 14, with a limited number of judges that hear the applications.

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (*e.g.*, production of summary evidence, limitation of appeals, swift enforcement)?

No

Yes, please explain:

In 1995 Israel amended its Civil Procedure Regulations, to include a special chapter governing court proceedings pursuant to the Hague Convention Law. These regulations provide for expedited time frames for filing material, for setting hearing dates, for the filing of appeals, etc. The rules are sufficient to allow the judicial authorities to reach decisions within six weeks, however a number of factors can affect whether or not a decision can be reached within this time, including the complexity of the case and whether an expert's report is necessary. The ICA closely monitors the cases, and in appropriate cases will request reasons for delay from the courts. The courts in their Judgments normally set out mechanisms in their orders for return can provide that allow for swift enforcement, including making orders for the police and welfare authorities to assist in execution where necessary. In such cases the ICA works closely with the police and welfare authorities and any other relevant authorities (for example, border authorities) in order to ensure that any execution operations are coordinated in advance and as quickly and efficiently as possible.

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (*e.g.*, procedures, bench-books, guidelines, protocols)?

No, please explain:

Please insert text here

Yes, please explain:

Please insert text here

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

For the reasons above, return decisions are normally executed very quickly. Delays are sometimes caused if the taking parent and/or child requires an entry permit from the requesting country, as this can sometimes be a time-consuming process in that country. Further, in a small percentage of cases where the court ordered conditions for return, the taking parent then challenged those conditions which caused a delay in the return.

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (*e.g.*, prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

No, please explain:

Please insert text here

Yes, please explain:

Measures are ordered on a case-by-case basis and not automatically.

The chapter of Israel's Civil Procedure Regulations that govern Hague Convention proceedings allow the court, if requested, to order numerous protective measures, including:

<sup>8</sup> See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

(1) an order preventing the child or the person retaining the child from leaving Israel;

(2) an order forbidding the child from leaving a place specified in the order;

(3) an order for the depositing of any passport or laissez-passer in the name of the child or one in which the child is registered;

(4) an order instructing the Israel Police to investigate the circumstances of the abduction, to locate the child's whereabouts and to assist a social worker in bringing the child before the court;

(5) any order which in the court's opinion will prevent additional harm to the child or to the rights of interested parties or which will ensure the voluntary return of the or for the sake of resolving the dispute in a peaceful manner. Thus where a left-behind parent travels to Israel for the proceedings, the court may order provisional access.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

Yes

No, please explain:

In Israel legislation is necessary in order to allow for direct judicial communication. Israel is in the process of drafting the necessary legislation.

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

Yes

No, please explain:

[Please insert text here](#)

4.8 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

[Please insert text here](#)

## 5. **Ensuring the safe return of children**<sup>9</sup>

*Methods for ensuring the safe return of children*<sup>10</sup>

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings<sup>11</sup> regarding the safe return of children are implemented?

In cases where children are ordered to be returned to Israel and there are welfare concerns, the ICA, whether or not there has been previous involvement of the welfare authorities or whether or not the foreign court has so ordered, will contact its liaison officer in the Ministry of Social Welfare and inform them so that the welfare authorities can take any action that they deem appropriate in order to protect the child.

The ICA also provides information, when requested and/or necessary, as to services that may be available to the taking parent if necessary upon return, including legal, financial, social, protective, etc. It further provides information concerning relevant laws on protection issues and the relief available from courts in Israel so that, if necessary, the taking parent can apply to the court in Israel for any relevant relief even prior to the return.

Normally there are no issues as to a returning parent being able to enter Israel together with the child/children. Should any issue arise, the ICA would then liaise with Israel's Ministry of the Interior in an effort to remove obstacles to the extent possible.

<sup>9</sup> See **Art. 7(2) h** of the 1980 Convention.

<sup>10</sup> Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

<sup>11</sup> See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

To the knowledge of the ICA, Israeli courts have rarely been asked to make safe harbor or mirror orders. In cases where the courts of requested States have ordered undertakings, the ICA will, to the extent necessary and possible, liaise with any relevant authorities with respect to the execution of such undertakings. However after the child is returned, the matter then becomes a private domestic case and the ICA does not have jurisdiction to intervene.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

In such cases the ICA will inform the requesting Central Authority of the need to alert the relevant welfare authorities in the requesting State (the knowledge as to which is the relevant authority would be in the hands of the requesting Central Authority, not the ICA). In the event that the order of the Israeli court made the return conditional on certain arrangements being made in advance, the ICA would immediately inform the requesting Central Authority and request confirmation that these arrangements have been put into place, and then notify the court in Israel. When necessary, the ICA has also used the channels of the International Social Services.

In one particular case that reached the Supreme Court of Israel, a psychologist and the welfare authorities in Israel were of the view that the children were at considerable risk due to the exposure to the serious conflict between the parents (one of the children had threatened suicide), and that the children were in need of a prolonged diagnosis in a non-domestic framework, either in Israel or in the requesting country. The ICA, who had been asked to present the position of the welfare authorities in court, therefore approached the requesting CA prior to the hearing to inquire as to whether that country's welfare authorities, who had a history of involvement with the family, could provide such a treatment framework for the children and whether, should the court order the return and in the circumstances of the case, the requesting state could send a social worker to accompany the children back, in order to prevent further harm to the children. The requesting Central Authority answered affirmatively. The Supreme Court therefore ruled that the children would not be at risk and ordered their return in accordance with a timetable to be set in coordination with the competent authorities in Israel and the requesting country, that in accordance with the positions of the competent authorities in both States the children would be transferred to a non-domestic treatment facility for further diagnosis, and that the Central Authorities coordinate the arrival of a welfare officer from the requesting State to accompany the children back.

In the above case, and in other cases, where there have been concerns of attempts at re-abduction at the time of execution of the order, the ICA has worked in close coordination with the Israel Police, the welfare authorities and the border authorities in order to escort the children to the airport and ensure that they are able to board return flights without interference. Where there are concerns for the children's welfare upon return, the ICA has asked in advance that the requesting Central Authority notify the welfare authorities of the requested State in advance so that any necessary measures can be taken. The ICA is of the strong belief that where possible, requested States should have a liaison person in the welfare authorities so that any immediate concerns cannot be addressed. Unfortunately in one case the requested State was only able to secure the involvement of welfare authorities several days after the return, and the children suffered further harm in the interim.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

This would depend on the type of risks.

As described in paragraph 1.2 above, in one case the court, based on the recommendation of an expert, ordered the return of the children to institutional care

pending further diagnosis by the authorities of the requesting State, with the details being coordinated in advance through the Central Authorities. The children were accompanied on the flight by social workers, and the court ordered that neither parent be on the same flight as the children.

*Use of the 1996 Convention to ensure a safe return*

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

No

Yes, please explain:

Yes. Generally speaking, Israel recognizes the positive aspects of the 1996 Convention and is currently in the process of examining the legal ramifications of the implementation of the Convention vis-à-vis Israel's domestic law. An extensive report was prepared some years ago and is presently being updated in light of new legislation on child protection. The Israeli authorities plan to present the report to the various government ministries who would be tasked with the implementation of the 1996 convention for their analysis. The report is planned to be presented for review during the 2017 work year.

*Protection of primary carer*

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please explain and provide case examples where possible.

To the ICA's knowledge there have not been any such cases since the last Special Commission.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

Courts in Israel have done so in the past when necessary, for example requiring the left-behind parent to provide temporary separate accommodations for the taking parent as a condition for the return.

*Post-return information*

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

This is a difficult issue that the ICA has dealt with in the past - it is often difficult to follow up due to privacy issues. This is not due to lack of cooperation between Central Authorities, but because the case is then considered a private domestic matter, and the Central Authority is not privy to ongoing information.

While the ICA recognizes the importance and value of being able to follow-up on cases, including as a means to determine the effectiveness of undertakings/mirror orders/safe harbour orders, it is difficult to see how this could be possible, unless a State's domestic laws provides for the release of such information.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a

report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No  
 Yes, please explain:

Consideration is being given to the advantages of the 1996 Convention. In addition, it would be a very useful learning tool for determining whether the child is being sufficiently protected after his return to his country of habitual residence.

## **6. Voluntary agreements and mediation**

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

In incoming applications, unless the left-behind parent is concerned that the taking parent is a flight-risk, the ICA will write to the taking parent to explore the possibility of a voluntary return. It further makes the taking parent aware that the left behind parent may choose to proceed under the Hague Convention in the event that an amicable resolution cannot be reached.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"<sup>12</sup> for the purpose of implementing the 1980 Convention in your State? Please explain:

While the ICA itself does not conduct formal mediation, it does try to assist parties, when possible, to resolve their matters amicably, in accordance with the principles in the Guide.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?<sup>13</sup>

- No, please explain:  
 At this point there is no formal Central Contact Point - the ICA will provide information on mediation services available.  
 Yes, please explain:  
 Please insert text here

## **7. Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?<sup>14</sup>

- No  
 Yes, please describe:  
 Please insert text here

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

- Yes  
 No, please explain:

This issue is under consultation and we are not in a position to give an answer at this point.

<sup>12</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

<sup>13</sup> As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

<sup>14</sup> See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

## **8. The Guide to Good Practice under the 1980 Convention**

8.1 In what ways have you used the Parts of the Guide to Good Practice<sup>15</sup> to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

The ICA's practices are consistent with the content and spirit of the Guide. In cases where new issues or challenges arise, it refers to the Guide for assistance. Further, in cases where the ICA experiences difficulties with other Central Authorities, it will refer them to the relevant sections of the Guide in the hope of soliciting effective cooperation.

b. Part II on Implementing Measures. Please explain:

The ICA endeavours to monitor the implementation of the Convention, identify areas where difficulties are encountered and take steps to improve the operation, for example through amendments to procedural regulations, through conducting/participating in seminars or holding meetings with relevant bodies such as the judiciary, the Legal Aid Bureau, etc.

c. Part III on Preventive Measures. Please explain:

Where possible the methods in the Guide are adapted into practice. For example, parents who contact the ICA concerning a fear of abduction are told to consult with an attorney concerning the possibility of obtaining a no-exit order from the court. Further, proposed legislation will hopefully result in more parents pursuing relocation through the courts rather than resorting to abduction.

d. Part IV on Enforcement. Please explain:

The ICA encompasses, to the extent possible, the practices in the Guide, both in its work and in its joint work with the relevant authorities (police, social services) in endeavouring to ensure that return orders are executed as swiftly as possible.

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

The relevant authorities with whom the ICA works in implementing the Convention and executing its obligations are guided and instructed by the ICA, in accordance with the principles of the Guide to Good Practice.

8.3 Do you have any other comments about any Part of the Guide to Good Practice?

Please insert text here

## **9. Publicity and debate concerning the 1980 Convention**

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

No

Yes, please indicate the outcome of this debate or discussion, if any:

On at least two occasions, taking parents have sought to bring their cases before the Special Committee for the Rights of the Child of Israel's Parliament. In one case Israel's Supreme Court had already issued a Judgment ordering the return of the child. The other case was pending before the Supreme Court. In both situations, the ICA and/or representatives of the Legislation Department of the Ministry of Justice immediately stated that due to the separation of the executive and judicial powers it was improper to discuss these cases in such a forum.

On more than one occasion a taking parent has turned to the media in order to garner public attention for their case. Unfortunately in some cases stories are published from the point of view of the taking parent without heed to the law and the provisions of the Hague Convention. In cases in which the Ministry of Justice is asked to comment, the ICAT provides clear background on the aims and provisions of the Hague Convention, although it cannot comment on the particulars of any case.

<sup>15</sup> All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice".

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

The ICA has revised its website, with comprehensive information in Hebrew and English.

<b>PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION</b>
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**10. Transfrontier access / contact**<sup>16</sup>

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No  
 Yes, please explain:  
[Please insert text here](#)

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

[Please insert text here](#)

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;

[One State, while providing legal representation in return cases, does not do so in access cases, therefore unless the parent can afford a private attorney s/he will be unable to secure/enforce access rights.](#)

[Many States do not seem to have expedited procedures for securing or enforcing access rights. This causes difficulty given the international nature of these cases. For example, where a parent has been told by the custodial parent that they are refusing to send the child to the other country for an annual visit, the case cannot be heard quickly enough and the parent therefore loses the visit for that year.](#)

- b. the effective exercise of rights of access; and

[In Israel's experience, often there are no real or effective sanctions for breach of access rights. Where a parent has been denied a visit, given the international nature of the case it is not possible to reschedule the visit, and the parent simply loses that visit. Further, the parent will also suffer financial losses with respect to airfare and other such expenses that were paid in anticipation of the visit.](#)

- c. the restriction or termination of access rights.

[Please insert text here](#)

[Please provide case examples where possible.](#)

[Please insert text here](#)

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"<sup>17</sup> to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

[The ICA makes efforts to help resolve cases on an amicable basis where possible.](#)

<sup>16</sup> See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra.* note 5) at paras 1.7.1 to 1.7.3.

<sup>17</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice".

## **11. International family relocation**<sup>18</sup>

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

As mentioned above, there is an ongoing public debate on the issue of parental responsibility in disputed cases. In 2014 legislation has been proposed, though not yet passed, which includes a provision rule on international family relocation. In addition, a new law is in effect as of July 2016 - the "2014 Litigation Arrangements for Family Disputes Law" that will be in force for a trial period of 3 years, making the examination of use of ADR in family law disputes mandatory both in family and religious courts. Thus a dispute regarding an international relocation would also be affected by this procedural change.

<b>PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES</b>
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## **12. Non-Convention cases and non-Convention States**

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

*The "Malta Process"*<sup>19</sup>

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?<sup>20</sup>
  
- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?
 

No

<sup>18</sup> See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

<sup>19</sup> The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

<sup>20</sup> The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".



Yes, please explain:

Further to the recommendations agreed upon at the conclusion of Malta IV, the ICA has acknowledged that the 1980 and 1996 convention complement each other and have taken steps, domestically, to assess the possibility of acceding to the 1996 Convention by bringing the conclusions and information to the attention of the relevant governmental officials who would be instrumental in assessing the possibility of acceding to the 1996 Convention and insofar as necessary, proposing the necessary changes to domestic legislation which would allow for this.

c. What is your view as to the future of the "Malta Process"?

The ICA has a very positive view of the Malta Process as an excellent forum for ongoing discussion and development of good practices and as a platform for both Convention and non-Convention countries to come together and learn about the challenges and possible solutions available through the various instruments when handling cross-border family conflicts, taking into account the possible challenges posed by the different legal systems. The ICA strongly supports the continuation of the Malta Process as an additional process to develop and strengthen the ICA's knowledge and as a way in which to encourage the development of the necessary domestic structures.

<p><b>PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU</b></p>
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### **13. Training and education**

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

The ICA has participated in or organized various seminars/conferences over the years in order to improve the operation of the Convention. For example a seminar was conducted by the Legal Aid Bureau at which the ICA explained the Convention, the need for expedited proceedings and the need for rapid appointment of attorneys in incoming cases where legal aid representation is necessary. As a result, attorneys are generally appointed very quickly. The ICA will further be participating in a three-day seminar through the Bar Association together with judges and private attorneys, to educate members of the Bar Association on the operation of the Hague Convention, and hopefully to recruit attorneys for a pro bono panel. In addition, the ICA participated in a seminar for Family Court judges - this allowed the ICA to stress areas or issues that it felt were crucial to bring to the attention of the judiciary. Further such activities are being planned with other key actors in the execution of the Convention such as the police, district attorneys and the court directorate.

### **14. The tools, services and support provided by the Permanent Bureau**

*In general*

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

a. The Country Profile available under the Child Abduction Section.

The ICA has found this to be an extremely valuable tool and refers to it frequently in order to understand other countries' procedures and systems and to be able to explain them to left-behind parents. The ICA finds that it is crucial to be able to provide as much information as possible to LBP's, who are often very traumatized by the abduction and feel helpless. Member States should endeavour to ensure that their Profiles are updated as needed. Further, there is not always enough explanation of the legal proceedings - it is helpful to have as much information as possible.

b. INCADAT (the international child abduction database, available at < [www.incadat.com](http://www.incadat.com) >).

INCADAT is an invaluable tool when trying to learn how certain issues under the Convention have been interpreted and adjudicated. The Israel Supreme Court has referred to INCADAT and to the section on case law analysis, for example on the issue of habitual residence. Not all States put their judgments on INCADAT, and it would be very helpful for them to do so.

- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;<sup>21</sup> *The Judges' Newsletters* contain valuable information and insights.

- d. The specialised "Child Abduction Section" of the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >);

The ICA finds this Section to be very well organized and user-friendly, and that it contains crucial information for the operation of the Convention. The ICA uses this Section on an extremely regular basis.

- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);<sup>22</sup>

INCASTAT is a very useful tool in learning how the Convention is being applied in the various member States. Sometimes the data does not give an accurate picture of why a case may have proceeded a certain way. For example, if there was a lengthy delay between when a Central Authority received an application and when it was filed in court, this does not necessarily mean that it was due to a delay by the requested State - it may be that the taking parent was requested to provide further information and did not do so.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.<sup>23</sup> Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

This is a valuable service, and follow-up is a key factor in determining whether such parties are properly implementing the Convention.

- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);<sup>24</sup>

This is very crucial. It is suggested that prior to joining the Convention, potential member States must first have any necessary implementing legislation enacted and that they complete the country profile.

- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;

Prompt communication between Central Authorities is a crucial element for the successful operation of the Convention - all actions taken in this respect are most welcome.

- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges

Such communications are crucial and should continue to be supported.

#### *Other*

<sup>21</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

<sup>22</sup> Further information is available via the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "INCASTAT".

<sup>23</sup> Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

<sup>24</sup> Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

## 14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;

Israel suggests the consideration of forums for Central Authorities to communicate with each other, to raise difficulties that are being encountered in the operation of the Convention, and to exchange ideas and information as to how such issues have been dealt with or may be dealt with. It could be done regionally and/or a general forum for any interested Central Authorities. Possibilities for conducting such forums could be through the internet, by periodic videoconference, etc.

Israel further suggests that consideration be given to appointing additional liaison officers in other regions. The ICA has found it very beneficial in the past to be able to be in contact with the liaison officer for Latin American countries, to raise concerns or questions for which it has not been able to obtain answers, and to bring issues to the attention of the liaison officer that might be relevant to regional meetings. From the Conclusions and Recommendations of the recent Inter-American meeting of Central Authorities and Network Judges, the ICA learned that many issues that it faces vis-à-vis other countries are also being experienced in the Inter-American region. It could therefore be very beneficial to have such meetings in other regions, not only for the member States in those regions but for other States to learn how certain issues are being dealt with. Such regional meetings would greatly supplement the Special Commissions, which only take place every 4-5 years.

Israel further suggests exploring the possibility of establishing an Advisory Panel, within or under the auspices of the Permanent Bureau. In cases where contracting States are experiencing severe difficulties with the Central Authorities or judicial authorities of another contracting State, the matter could be referred to the Advisory Panel, who could then review the matter and, in appropriate cases, write a "letter of concern" to the authorities of the requested State. Such referrals would not deal with the merits of the case, but rather only with issues dealing with the operation of the Convention, for example excessive delays at the administrative or judicial level, lack of response or disregard of where judicial authorities do not respond to requests under Article 11 or 16 of the Convention.

In Israel's experience, two of the most serious issues affecting the operation of the Convention are excessive delays in judicial proceedings and difficulties in enforcement of return orders. Israel suggests that consideration be given to establishing working groups to explore these two issues and provide recommendations as to how they can be addressed. The statistical analysis that will be presented by Professor Lowe would provide an excellent basis for determining the types of delays and the States in which they are occurring, whether they are systemic, and how they can be addressed. Likewise with the issue of enforcement, a survey could be prepared with respect to delays in and/or lack of enforcement, after which recommendations could be made as to how to address these issues. Israel commends the excellent work of the Permanent Bureau in producing the Guides to Good Practice in various fields including enforcement, however it appears that some member States do not follow many of these practices, whether it be due to obstacles as a result of their internal law, or otherwise.

- b. To assist States in meeting their Convention obligations; and

1) Further to Recommendations 28 and 29 of the Sixth Special Commission, Part I, in addition to new States being offered the opportunity to visit an experienced Contracting State, to gain knowledge and understanding, Israel suggests that this program be extended to a mentoring and/or assistance program. Experienced States could indicate to the Permanent Bureau their willingness to participate. New States or any States of any States wishing assistance could then contact a "mentor" for assistance. Rather than visits to the experienced State, the contact could be by telephone, by video conference, or any other rapid means.

2) Israel would propose a revision to the Modern Form for Application for

Return, specifically to Paragraph V – "Factual or Legal Grounds Justifying the Request". In a number of cases Israel has received applications where this paragraph is not sufficiently detailed, and a delay is caused as it has to ask the Requesting Central Authority for details. Israel would suggest that the Factual or Legal Grounds be broken down into three parts, in accordance with Article 3 of the Convention:

a) Basis for claim that the Requesting State is the child's state of habitual residence

b) Basis for claim that the person/institution/body claiming the wrongful removal/retention had rights of custody of the law of the State of habitual residence (attach relevant law, agreement or court order)

c) Basis for claim that the person/institution/body claiming the wrongful removal/retention was actually exercising custodial rights or would have but for the removal/retention

3) With respect to the issue of enforcement of orders for return, it is suggested that courts should make such orders as detailed as possible in order to eliminate, to the extent possible, any points of contention and to ensure that the order can be executed as quickly as possible. Issues that should be addressed in the return order would include:

a) Who is to purchase the flight tickets and by what date

b) Which parent is to effect the return – if it is the taking parent there should be a provision that should that parent not comply by the set date, the left-behind parent is then entitled to come to return the children

c) Provision for the handing over of passports if necessary

d) Orders allowing police and welfare officers to assist in the execution of the order if necessary

e) Orders preventing the taking parent from leaving the jurisdiction with the children pending the execution of the return order

f) If there is a period of time between the date of the order and execution of the order, the taking parent could be required to report to the authorities in order to ensure that he has not further abducted the children

4) In some contracting States, orders for return are not enforced by the court that issued them. Rather, the left-behind parent must apply to a separate enforcement court, in which the taking parent can in effect raise the same claims in opposition that were already rejected by the court in the Hague Convention proceeding. This is a lengthy and complicated process, and not only contravenes the provisions of the Convention but defeats its very purpose. It is therefore suggested that in countries where such a system exists, such systems be re-examined to determine what steps are necessary (amendment of legislation, etc.) in order to ensure simpler and immediate execution of return orders.

5) In some contracting States, if the taking parent does not comply with the order for return, the only option available to the left-behind parent is to file a complaint with the police in that country so that criminal proceedings against that parent can be considered by the prosecution authorities. The prosecution authorities then have discretion as to whether they will institute such proceedings. The very possibility of having the prosecution authorities determine whether or not they will enforce a final order of return undermines the whole process. It is further suggested that where such systems exist, the Central Authority of the Requested State should remain actively involved in the case and be in contact with the prosecution authorities and to continue to update the Central Authority of the Requesting State.

c. To evaluate whether serious violations of Convention obligations have occurred?

Consideration might be given to establishing an advisory panel, as detailed in section 14.2.a above.

<b>PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS</b>
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**15. Views on priorities and recommendations for the Special Commission**

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

1. DELAY IN PROCEEDINGS - as set out above.
2. ENFORCEMENT – AS SET OUT ABOVE – lack of mechanisms for return in order for return; or in cases where there are mechanisms, not to exceed - only to ensure child's safe return and to cover the interim period prior to the court of habitual residence dealing with the matter.countries whose systems do not allow prompt enforcement or any enforcement
3. HABITUAL RESIDENCE - there are vast differences in how habitual residence is being determined in the different member States, leading to a great lack of uniformity in how the Convention is applied.
4. ACCESS TO JUSTICE as set out above.
5. Article 13(b) – this is already on the agenda re the draft Guide to Good Practice.

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

[Please insert text here](#)

**16. Any other matters**

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.