

NAME OF COUNTRY OR ORGANISATION: MALTA

A EXPLANATIONS AND QUESTIONS

If a question does not apply to your State, please answer "Not applicable".

1. Description

- (a) Is your country (primarily) a receiving State or a State of origin? If both, please ensure your answers to the questions clearly distinguish, when necessary, between your role as a receiving State and your role as a State of origin.

Malta is essentially a receiving State

- (b) If your country is not yet a Party, please specify if your country is considering becoming a party to the Convention.

Malta is already a party to the Convention

- (c) Was your country represented at the 2000 Special Commission? Were the Conclusions and Recommendations of that meeting discussed or implemented by relevant authorities in your country?

N/A

2. Good practice

3. The Permanent Bureau has commenced work on a Guide to Good Practice on Implementation of the Convention. A consultative group met in September 2004 to provide advice to the Permanent Bureau on this project. It is anticipated that the draft Guide will be circulated, in English, French and Spanish, to all Contracting States in June 2005 seeking comments and for discussion at the Special Commission.

- (a) In relation to any aspect of intercountry adoption, what examples of good practice can you report, (i) from your own country or (ii) from another country?

(i) When working in conjunction with prospective/adoptive parents, and adoption organisations, established guidelines which were already in place, made the work easier and clearer, and delays in the process were avoided.

(ii) Cooperation and good communication with the Donor States/Central Authorities, as well as direct contact with the Central Authorities of the Donor States, facilitated the work and made the outcome of the proceedings more expedient.

- (b) Please indicate what topics you would suggest for future chapters in the Guide to Good Practice (in addition to "Implementation", "Central Authority Practice" and possibly "Accreditation").

- ⇒ **Guidelines for cooperation and good communication (especially in cases where there is a language barrier);**
- ⇒ **Exchange of information and updates regarding procedures established by Central Authorities;**
- ⇒ **Cooperation between State and its Central Authority for a clear outline of the procedure to be used;**
- ⇒ **Certain procedures to be common to all Central Authorities in order to provide for consistency in intercountry procedures;**

⇒ **Assistance in establishing a procedure for accreditation.**

- (c) Have you experienced any major concerns or problems (i) in your State and (ii) in another State, associated with implementation of the Convention, such as a lack of implementing legislation, inadequate staffing or funding issues?

The Hague Convention came into force in Malta, in February 2005, and thus, certain methods of practice are still in their initial phase of implementation.

- (d) If your State has signed but not yet ratified the Convention, please indicate whether your State would like implementation assistance from the Permanent Bureau or other States. What type of assistance would be most beneficial?

In view of the fact that the Convention has only recently started operating in Malta, implementation assistance would be welcome in the following areas:

- ⇒ **Information about implementation procedures and practices in other States;**
- ⇒ **The workings and procedures of other Central Authorities;**
- ⇒ **First-hand experience from Central Authorities who have successfully implemented good practice.**

4. Questions concerning scope

5. Please specify any difficulties you have experienced in determining whether certain situations do or do not come within the scope of the Convention.

6. In particular, have there been any problems in determining whether:

- (a) a child was or was not habitually resident in the State of origin;

N/A

- (b) a prospective adopter was or was not habitually resident in the receiving State (as e.g. in the case of a short-term or temporary resident); and

N/A

- (c) the removal of the child was or was not "for the purpose of adoption" in the receiving State (as e.g. where the child is initially moved to the receiving country on a temporary basis or for foster care, and later on adoption is considered)?

In Malta we have a situation where children are brought over from other countries, supposedly to be 'hosted' on a temporary basis and then a few of the families decide to initiate adoption proceedings

7. General principles for protection of children

- (a) What are the different types of care available to a child in need of care and protection in your State?

Residential care, Foster care, and being placed in the care of a guardian/tutor, who may also be a member of the child's family

- (b) Please specify the procedures or other measures in place to ensure that due consideration is given to the possibilities for placement of the child within the State of origin before intercountry adoption is considered (the principle of subsidiarity - see Article 4 *b*) and Preamble, paragraphs 1-3).

N/A

- (c) What are your procedures to establish if a child is adoptable?

All relevant consents, according to local legislation, must be obtained, including the child's consent if he/she is over the age of 14

- (d) What procedures are in place to ensure that consent to an adoption is given in accordance with Article 4 c) and d) of the Convention?

Since Malta is a receiving country, no particular procedures are required for the consent to adoption as per Articles 4 (c) and (d) of the Convention. However, local laws do have provisions regarding all consents to be obtained prior to an adoption decree being granted.

- (e) Do you make use of the Model Form for the "Statement of consent to the Adoption"? See < www.hcch.net >, "Intercountry Adoption", "Practical Operation Documents", "Annex B to the Special Commission Report of October 1994".

N/A

- (f) Have you applied the "Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption"? See Annex A to the Special Commission Report of October 1994.

N/A

- (g) How is the eligibility and suitability of prospective adoptive parents assessed in your country (see Article 5 a))?

The Central Authority will determine the eligibility and suitability of prospective adoptive parents: the former will be determined according to law, while the latter will be assessed and determined following a home study report which will be drawn up by a social worker from the Adoption Unit.

- (h) What preparation (counselling, education or training) is given to prospective adoptive parents to prepare them for the intercountry adoption?

The Adoption Unit organises preparation groups and training for parents who have made an application to adopt a child

- (i) Please also specify the measures / procedures in place to ensure that the requirements concerning the counselling of prospective adopters are complied with (see Article 5 b)).

All applicant parents are invited to participate in preparation groups, together with other prospective adoptive parents. These groups are facilitated by trained people, and the parents are counselled as to the different issues which arise in the course of adoption proceedings, as well as after such proceedings have been finalised.

- (j) Please specify any post-adoption services established or contemplated in your country (see Article 9 c)).

Post adoption services are offered both to the adoptive parents and to the child. The Adoption Unit will guide the family in their needs, and will refer them to adequate professionals, according to their specific circumstance and requirements. The Unit also makes home visits to ensure that the child has integrated well with the family. The families are also supported and counselled in cases where they would like to trace the birth parents.

8. Central Authorities

- (a) Please specify any of the functions under Chapter IV of the Convention performed directly by your Central Authority or Central Authorities.

The majority of functions are carried out by the Central Authority with the help of the Adoption Unit, except for the report mentioned in Article 15, which is drawn up by social workers from the Adoption Unit, after the required home visits have been made.

- (b) Please indicate the number of personnel employed by your Central Authority to deal with intercountry adoption, their experience and qualifications, and what type of training they have received. (Where personnel undertake other functions, count them only for the amount of time spent on intercountry adoption, for example, if a person spends 50% of their time on intercountry adoption, count them as 0.5 of a person.)

The Maltese Central Authority consists of 4 persons. The Central Authority is still being developed, after the Convention came into force in Malta in February 2005.

- (c) What procedures are in place to ensure continuity of experienced staff and training for new staff?

Staff have ongoing training through local and international seminars/conferences regarding children and adoption

- (d) Have you experienced difficulties with regard to the establishment or operation of the Central Authority, for example, difficulties over funding or resources?

The establishment of the Central Authority is still in its early stages

- (e) Please provide details of any difficulties you have experienced communicating with "central" Central Authorities in other countries or with provincial Central Authorities (in your own country or other countries)?

The main difficulties include language problems, mainly with countries who are not conversant with the English language, and delay problems where certain Central Authorities take a long time to respond to our queries, or never send any reply.

9. Accreditation

10. At the Special Commission meeting in September 2005, the first day will be devoted to an examination of accreditation issues. Your responses to this part of the questionnaire will be very helpful to the Permanent Bureau in the planning and preparations for that day.

Accredited bodies

- (1) Please indicate whether your country uses or intends to use accredited bodies in intercountry adoption. If so, please provide details on the topics (a) to (m) below.

Malta intends to use the system of accredited bodies

- (a) Please provide details (including powers and resources) of the authority or authorities which grant accreditation.

N/A

- (b) How many bodies have been accredited by your country? Federal States may provide the number for each state or province. If possible, please indicate how

many bodies have been refused accreditation.

N/A

- (c) Please give a brief outline of your accreditation criteria, guidelines or legislation.

Still being developed

- (d) What is the process by which accreditation is granted?

Still being developed

- (e) If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.

N/A

- (f) How is the supervision of accredited bodies carried out in your State (Article 11 c))? Are there regular reporting requirements (including financial reporting) by the accredited body to the supervising authority?

Still being set up

- (g) How is the performance of the accredited body assessed or evaluated?

N/A

- (h) Has the competent supervisory authority encountered any difficulties in relation to (f)?

N/A

- (i) Are you aware of any acts or behaviour by accredited bodies or approved bodies or persons that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?

N/A

- (j) What are the conditions for renewal of accreditation?

Still being developed

- (k) Have you experienced any difficulties in obtaining assistance or cooperation from other Central Authorities in regard to accredited bodies?

No particular problems were encountered

- (l) Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

There were concerns as to whether certain accredited bodies were being adequately supervised with regard to financial issues, as well as the forwarding of the child's information and history

- (m) Do you consider that standard or model accreditation guidelines would assist countries in developing appropriate safeguards or procedures?

Yes

- (2) Has your country authorised foreign accredited bodies to undertake intercountry adoptions in your country (see Article 12)?

N/A

- (a) What steps are involved in the process of authorisation?

N/A

- (b) What supervision of foreign authorised bodies occurs?

N/A

- (c) Have you experienced any difficulties regarding a body accredited in one State and authorised to act in another State?

N/A

- (3) If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision.

N/A

- (4) What particular issues concerning accreditation would you like discussed on the Accreditation Day (17 September)?

A model process of accreditation criteria and procedure

- (5) Would you like to see a chapter on Accreditation developed for the Guide to Good Practice for Intercountry Adoption? What issues do you think should be covered in this chapter?

Yes – criteria for granting and revoking accreditation, as well as a system of monitoring for the procedure used by accredited agencies

Approved bodies and persons

- (6) Please indicate whether your country uses or intends to use approved bodies or persons (see Article 22(2)) in intercountry adoption. If so,

Still being discussed

- (a) How many bodies or persons have been approved by your country to provide adoption services in accordance with Article 22(2)? **N/A**
- (b) Do you grant approval to persons or bodies from abroad? **N/A**
- (c) What are the guidelines by which approval is granted (if different from 1(c))? **N/A**
- (d) What is the process by which approval is granted and renewed? **N/A**
- (e) How is the supervision of approved bodies or persons carried out in your State (Article 22(2))? **N/A**
- (f) Has your country made a declaration under Article 22(4)? **N/A**

11. Procedural aspects

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

- (a) obtaining accurate and sufficient health and social information on the child;

The main problem encountered in these areas is the lack of information provided on the child/children

- (b) obtaining accurate and sufficient information on prospective adoptive parents;¹

Not applicable, since Malta is essentially a receiving country

- (c) obtaining an accurate estimate of fees to be paid by adoptive parents prior to adoption and / or travel to collect the child;²

No precise fees are ever indicated

- (d) documentation requirements, including requirements for legalisation or authentication of documents, or the acceptance of documents by the other country;

Not all requests for authenticated documents are complied with

- (e) obtaining the agreements required in Article 17;

No problems were encountered

- (f) receiving post-placement reports from adoptive parents or Central Authorities;³

N/A

- (g) translation requirements;

Whereas reports originating from Malta are sent readily translated, reports coming from other countries are always received in the country's native language

- (h) time taken to process Convention cases.

Usually, the delays experienced, are not due to the Central Authorities, but to accredited agencies or other bodies.

- (2) Do you permit prospective adopters, once their eligibility and suitability have been established, to make their own arrangements for contacting directly the placement agencies in the country of origin?

Yes

- (3) Has the practice referred to in the preceding question given rise to particular problems of which you are aware?

When the child to be adopted will be coming from another Hague country, the procedure will be done through the two Central Authorities of the countries involved

- (4) Please provide details on the breakdown of placements in the Receiving State. What steps have been or are being taken in your country to address this problem (Article 21)?⁴

Any such problems will be addressed by the Maltese Social Services Sector

- (5) Legalisation of foreign documents can be very time consuming for Contracting States. At the Special Commission on the Apostille, Evidence and Service Conventions in November 2003,⁵ a recommendation was made concerning the 1993 Convention. The Report states that:

¹ The Convention, Articles 15 and 16.

² See Report of the Special Commission of 2000, page 42, paragraph 7.

³ See the Convention, Article 20.

⁴ The number of placement breakdowns is sought in the new draft Statistics Form.

⁵ See "Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions", 2003, page 5, available on the Hague Conference website at < www.hcch.net >.

"The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention [the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents]. In light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter."⁶

Would you favour a similar recommendation from the forthcoming Special Commission meeting for the 1993 Convention?

Yes, as long as the documents are certified by the Central Authority of the State from where the child will be sent

(6) DNA testing has been used to establish identity (if, for example, a consent is in doubt). Can you provide details of such cases, including the cost and procedures involved?

N/A

12. Private international law issues

(1) The Convention does not determine which authorities have jurisdiction to grant or amend / revoke an adoption nor which law applies to the conditions governing, or the effects of, an adoption.

(a) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the jurisdiction of the authorities to grant or amend / revoke an adoption?

As long as the required documents are received in good order, authenticated, and bearing the seal of the sending country, no problems should arise.

(b) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the law or laws to be applied to the conditions governing, or the effects of, an adoption?

As per previous question

If the answer to either or both of these questions is "yes", do you wish the Permanent Bureau to study these questions further?

(2) Issues of applicable law may arise when bodies accredited in one Contracting State act in another Contracting State (Article 12), for example:

- whether and to what extent agents of that body are authorised to act and bind their principal;
- whether they have exceeded or misused their authority.

Have you experienced any difficulties in this respect (see also the *Hague Convention of 14 March 1978 on the Law Applicable to Agency*)?

No such problems have been encountered so far.

⁶ See paragraph 6.

9. Recognition and effects

(1) Have your courts used the Recommended Model Form "Certificate of Conformity of Intercountry Adoption"? See < www.hcch.net >, "Intercountry Adoption", "Practical Operation Documents", "Annex C to the Special Commission Report of October 1994".

N/A

(2) Have you knowledge of any difficulties that have arisen in obtaining certificates under Article 23(1)?

To date there have been no particular difficulties in this regard.

(3) Do you have information about any case in which recognition of a Convention adoption has been refused under Article 24?

N/A

(4) Are there any circumstances in which you would recognise the validity of a foreign adoption coming within the scope of the Convention despite Convention procedures or requirements not having been followed?

Procedures would have been complied with from the initial stages till the end

13. Please specify any other difficulties that have arisen in relation to Chapter V of the Convention.

14. **N/A**

10. Payment of reasonable charges and fees

(1) Please quantify the costs and expenses charged or fees paid in your country in respect of intercountry adoptions (Article 32(2)). Is this information freely available and accessible to prospective adoptive parents and competent authorities?

Local prospective adoptive parents have contact with the foreign authorities conducting the adoption proceedings, and the relative fees are paid directly to them

(2) Have you had any experiences with the use of fee caps, established and publicised appropriate fees, established expediting fees, or other similar controls?

N/A

(3) Do you have any comments on the practice in some countries of requiring a mandatory contribution by adoptive parents for the support or development of child protection services in such countries?

Yes, some countries do ask for contribution towards maintenance prior to the child being given in the care and custody of the prospective adoptive parents – this is a request which is usually complied with

(4) Do you have any comments on or experiences of uneven processing amongst countries due to large disparities in fees (for example, applications from countries that offer higher fees may be processed more quickly)?

Some countries who charge higher fees do have a better and speedier procedure, however this is not always the case

(5) Are you aware of any instances of disparity between professional salaries or fees charged for adoptions compared to other forms of legal work? (For example, large legal

fees may be charged for adoption, while standard or lower fees are paid for other family law matters such as divorces – see Article 32(3).)

In Malta, there are no substantial disparities in fees

(6) Are you aware of any significant differences in fees charged for intercountry adoption by regional or provincial authorities?

N/A

(7) To what extent, if any, are intercountry adoption fees used (a) to support or develop the national childcare and protection system; or (b) to contribute to funding resources of Central Authorities or accredited bodies?

N/A

(8) Do you have any other comments about reasonable or unreasonable costs and expenses or fees?

N/A

(9) Are you aware of any other problems arising from the payment of fees or charges in your country or in other countries with which you have adoption arrangements?

N/A

11. Improper financial gain

(1) Please indicate the laws (including criminal sanctions), measures and procedures in place to give effect to the principle that no one shall derive improper financial or other gain from an activity related to an intercountry adoption (Article 32(1)).

The Maltese Civil Code, in Article 128, provides for the prohibition of payments with regard to adoption proceedings, as well as the criminal sanctions applicable should there be such an offence

(2) Are you aware of any instances of success in enforcing penalties to discourage improper financial gain?

No

(3) Are you aware of any difficulties in the enforcement of laws or regulations or in prosecution of criminal activity?

No

(4) Apart from the measures referred to in Question 11(1) above, have any other preventive measures been taken in your country to combat improper financial gain?

All parties are made aware from the very beginning of the proceedings, that it is illegal to make any sort of financial gain from adoption proceedings

(5) Please provide details of any measures taken to prevent solicitation (e.g. through inducements to consent) of children for adoption (Articles 8 and 29).

N/A

(6) Have you experienced any difficulties in obtaining co-operation or assistance from other States in eliminating practices that lead to improper financial gain?

N/A

12. Relative adoptions

15. Do you have any comments on the application of the Convention procedures to relative (inter-family) adoptions?

16. **N/A**

13. Children with special needs

17. What policies or programmes do you have to ensure that children with special needs are given the same opportunity to find a family through intercountry adoption as other children?

18. **The Central Authority gives the same opportunities to all children, however, it is the parents who ultimately decide whether to proceed with the adoption once a child is located. All prospective adoptive parents, while attending the training provided by the Central Authority, are prepared for any eventual special needs that the children might have**

14. Other forms of cross-border child care

19. International foster care, transnational *kafala* and other forms of child care with a cross-border element are not covered by the 1993 Convention, but by 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*: See for example its Articles 3 e) and 33(1).

20. (1) Is your country involved in international placements of children other than for purposes of adoption?

21. **Yes, children are hosted in Malta on a temporary basis**

22. (2) Are you aware of any difficulties concerning such placements?

23. **These placements create traumas and changes to the children, mostly due to cultural and language differences, as well as separation from people with whom they would have bonded.**

24. (3) If your country is not yet a Party to the 1996 Convention, is your country actively studying ratifying or acceding to it?

25. **As of the 1st March 2005, the "New Brussels II Regulation" (Council Regulation EC 2201/2003) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, is applicable in Malta.**

15. Avoiding the Convention

26. Are you aware of any attempts to circumvent the Convention or to avoid protections afforded to children, including the moving of children or birth parents to other countries?

27. **N/A**

16. Additional safeguards and bilateral arrangements

28. Please describe any additional safeguards, requirements or procedures, which you apply to Convention adoptions (*i.e.* over and above those which are set out in the Convention itself). Are these applied generally, or only in relation to particular States?

29. When dealing with Convention adoptions, we apply all measures provided for in Maltese law, which safeguard the interests of children in local adoptions

30. Have you made agreements with one or more other Contracting State (see Article 32(2)) with a view to improving the application of the Convention? If so, please specify with which States and what matters are covered by the agreements.

31. Not Yet

32. Do you have any comments on the efficacy of bilateral arrangements:

(a) with non-Contracting States? Are Convention safeguards applied?

Bilateral agreements with non-Contracting States will regulate the process of intercountry adoption, as well as introduce aspects of the Convention to countries who are not parties to it.

(b) with Contracting States? Do they improve the operation of the Convention? Have they caused any difficulties?

Bi-lateral arrangements may facilitate the procedural aspect of intercountry adoption, as well as promoting and giving effect to the provisions of the Convention.

17. Limits on number of States with whom co-operation is possible

33. In making arrangements for intercountry adoption (whether as a receiving State or as a State of origin), have you found it necessary to confine co-operation under the Convention to a limited number of other Contracting States? If so, please explain the reasons (e.g. no appropriate accredited body, lack of resources to process applications from large number of States, etc) and indicate what has influenced the choice of these States.

34. N/A

B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

18. Do you regularly hold seminars, training sessions or workshops on the Adoption Convention in your State? Would you welcome participants from other countries? Would you find it helpful if there was a consistent way to announce such activities to other States? Do you have suggestions?

Staff in the Maltese Central Authority attend international conferences and training sessions

19. In the current negotiations for a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, an Administrative Co-operation Working Group has been established to examine and report on practical problems and issues of administrative co-operation between authorities. Would you favour the establishment of a similar group for the 1993 Convention?

Yes

20. Please indicate which topics you consider priority issues for the Special Commission in September 2005, and their degree of importance.

a. accreditation & licencing

b. improving co-operation between Central Authorities

c. workshops to discuss problems with regard to application of local laws, vis-a-vis intercountry adoption

d. **a system for the tracing of birth parents once the child reaches the age of majority**

21. Any other suggestions, comments and observations are welcomed.

N/A