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Objective	To provide general information on ISS and the response of ISS to the Questionnaire concerning the practical operation of the 1996 Child Protection Convention (Prel. Doc. No 2 of October 2022)
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	N/A
Related Documents	Prel. Doc. No 2 of October 2022 – Questionnaire concerning the practical operation of the 1996 Child Protection Convention



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International Social Service (ISS)

Response to the Questionnaire on the Practical Operation of the 1996 Child Protection Convention Prel. Doc. No 2 of October 2022; for the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (October 2023)

February 2023

Background (ISS)

The International Social Service (ISS) is an international NGO which was founded in 1924. Today, ISS is a network of more than 120 national entities across the globe with a focus on cross border social work to support children and families across borders.

ISS's vision is to unite families across borders. ISS supports and helps close to 75,000 families around the world each year. Our General Secretariat is based in Geneva, Switzerland and includes the International Reference Centre (IRC) for the rights of the children deprived of their family.

ISS provides specialist intercountry child protection casework services internationally. We provide these services to families, child protection authorities and the courts within the scope of the 1996 Child Protection Convention. Practically, this includes assessments and background checks of prospective carers and the exploration of family placements, without discrimination of any kind, to achieve the best long-term outcomes for children. It also includes the referral of child protection alerts to the appropriate protection services as well as the referrals of requests for reports on a child's best interest in child protection cases. Over the last decades, ISS has developed a mediation-based methodology to casework, allowing to deal with cross-border cases in their multifaceted dimension (e.g. the parental conflict or interruption of personal relations with the children). This holistic methodology, as a complement to administrative or judicial procedures, facilitates amicable agreements between parents, rebuild and maintain contact with a child, and foster coparenting, where safe and possible.

Response to the Questionnaire on the Practical Operation of the 1996 Child Protection Convention Prel. Doc. No 2 of October 2022

As ISS is not a state jurisdiction or central authority, we will not answer the survey questions individually, as these questions have been mostly directed towards state central authorities (notwithstanding that a few ISS international network members are central authorities). However, considering the Networks' broad international experience and expertise, we do wish to make some general observations and remarks about the operation of the 1996 Child Protection Convention as follows.



The Importance of Social Work

1. While the 1996 Convention is a legal document focused around international judicial cooperation more attention needs to be given to the role social work plays in resolving many international cross-border child protection matters and family disputes. When drafting, reforming and providing information about the 1996 Convention consideration should be given to this important role. Social work is an effective and complimentary tool to the courts and central authorities in the child protection and family social services area.
2. Social work is also required to 'fix' or 'solve' problems which occur post 1996 Convention decision-making such as ensuring orders are followed, practically supporting the relocation or repatriation of children and families, dealing with runaways and so forth. More guidance on these practical international child protection matters is needed in these social work-related areas.

ISS: A competent body for partnership

3. ISS is a global network that conducts intercountry child protection casework services including as related to the 1996 Child Protection Convention (*the 1996 Convention*). ISS works with child protection authorities to assist with the care and protection of children.
4. ISS's cross-border casework utilises a social work mediation-based approach to assist in all kinds of cross-border cases as well as formal international family mediation services to assist with cross-border family issues and disputes and in finding solutions for family issues and disputes across borders.
5. ISS can be of particular help internationally if expert assistance is required by states and central authorities around cross-border child protection case work services. This includes potential international kinship care placements.
6. While recognising the legal requirements of the 1996 Convention, ISS also focuses on a social work and child-centric approach which prioritises the safety, well-being and permanency of a child in need of care. The ISS network will work with children beyond court orders to ensure the child is safe and settled over the longer term.
7. ISS will fully explore family and kinship placement options (including internationally) before other alternative care placement options such as foster care, kafala and adoption are considered. ISS believes that in most cases children thrive best when placed with their kinship relatives.
8. The 1996 Convention is a multilateral treaty defining the duties and obligations in intercountry child protection matters, describing these as tasks to be undertaken by Central Authorities, either directly or through public authorities or other bodies.
9. ISS is a competent 'other body' which can work with central authorities. Official Hague Conference documents (for example the *Lagarde Explanatory Report and 1996 Hague Convention Practical Handbook*) states that 'central authorities

would have recourse to bodies of such uncontested competence as that of International Social Service'.¹

10. Additionally, ISS can also work on cases involving non-1996 Convention signatories or in where the convention is not yet in force. Here we work around the principle of ensuring that the appropriate communication and cooperation between stakeholders in the two countries supports the safety, wellbeing and permanency of a child.
11. Furthermore, Article 36 requires that, *'in any case where a child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, inform the authorities of that other State about the danger involved and the measures taken or under consideration.'* This mandatory duty on competent authorities exists even if a child moves to a non-Contracting State. ISS can assist competent authorities with this form of co-operation in cases involving non-Contracting States.
12. Article 31b specifically relates to *'Central Authorities, public authorities and other bodies taking appropriate steps to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child'*.

The Important Option of International Family Mediation

13. ISS's cross-border casework utilises a social work mediation-based approach as well as formal international family mediation services to assist with cross-border family issues and disputes and in finding solutions for family issues and disputes across borders.
14. ISS recognises international family mediation as often being a highly effective intervention tool. This empowers family members to resolve disputes and make agreements for children and their families, and can often prevent parents from involvement in sometimes arduous, high- conflict or costly court proceedings.
15. International Family Mediation can also take a child-centred approach using qualified mediators and child consultants who focus on the best interests of the child. This can be of great benefit to children and families alike.
16. Where possible, and where safe to do so and where legal time considerations allow, international family mediation should be properly explored and considered as an option for resolving international family child care arrangements before any court proceedings take place. Central authorities should support international family mediation services financially wherever possible.

The Changing Nature of Habitual Residence

17. The 1996 Convention use of the term 'habitual residence' needs to be carefully considered in a legal context. ISS' recent experience is that many families are now 'cross-border' families, particularly in regions such as the European Union

¹ 1996 Hague Convention, Lagarde <https://assets.hcch.net/docs/5a56242c-ff06-42c4-8cf0-00e48da47ef0.pdf> page 591, paragraphe 140

(or Australia and New Zealand) which allow for unlimited and open cross-border travel.

18. This can lead to outcomes where parties again try to bring a case to court as soon as possible in order to determine jurisdiction according to their wishes in the hope of a legal advantage in any international child custody disputes. This issue needs to be considered carefully as international movement and travel becomes more commonplace in the 21st century.

The Malta Process

19. When reviewing the 1996 Convention consideration should also be given to the Malta process. This can be a very effective tool in international child protection matters for some countries who are not contracting states and fall outside of the 1996 and 1980 Conventions. Central Contact Points in practice turn out to be a tool also to provide first counselling to persons in situations which fall under these two Conventions. The Malta Process and the Central Contact points in practice can assist in preventing international child abductions and minimise court proceedings in family conflict situations in general. The Eight meeting could give consideration to this often underutilised and unrecognised process which has complementary goals to the 1996 Convention.

Conclusion: ISS an enduring and competent partner for central authorities

20. ISS's cross-border casework promotes a 'two-track model' where authorities can utilise complementary social work services which can be facilitated or delivered by ISS. Importantly, ISS will ensure that central authorities are involved with and fully consulted around our casework as ultimately legal child placement procedures rest with the State Central Authority in their jurisdiction.
21. ISS advocates for every country's child protection system to explore all potential placement options that enable a child to remain within their extended family and cultural systems, including the exploration of any potential family placement options overseas, when deemed in the child's best interest.
22. ISS is experienced in facilitating and conducting effective international kinship care practices, including assessment reports with statutory checks, transitions plans and post-placement support, specialised legal and immigration advice to ensure the child is able to safely travel and legally remain in their prospective new country.
23. ISS encourages central authorities to be aware of and where it is of assistance to utilise our services.
24. ISS has extensive operational and practical experience in international child protection casework, with a child focused approach, expertise in the facilitation of international kinship care placements, and expertise around international family mediation.
25. ISS can be utilised as an 'other body' of uncontested competence in the delivery of 1996 Convention casework services.

Geneva, February 3rd, 2023