

QUESTIONNAIRE

sur le fonctionnement pratique de la Convention de La Haye du 29 mai 1993 sur la protection des enfants et la coopération en matière d'adoption internationale

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on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

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*Document préliminaire No 1 de juillet 2000
à l'intention de la Commission spéciale de novembre/décembre 2000
sur le fonctionnement pratique de la Convention de La Haye du 29 mai 1993*

*Preliminary Document No 1 of July 2000
for the attention of the Special Commission of November/December 2000
on the practical operation of the Hague Convention of 29 May 1993*

QUESTIONNAIRE

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Introduction

The Permanent Bureau is making preparations for the Special Commission to review the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, which is to be held in The Hague from 28 November to 1 December this year.¹ It is intended that the Special Commission will provide the opportunity for States Parties to the Convention (as well as States which are considering or preparing for ratification/accession) to exchange experiences, to compare practices, and to consider any difficulties in respect of the implementation and the practical operation of the Convention. In order to make the maximum use of the time available in the Special Commission, the Permanent Bureau is gathering information with a view to its circulation for use by the Special Commission. ***We would be very grateful for your co-operation in this exercise, and we hope that you will be able to send us your replies by the end of September 2000.***²

As regards Member States of the Hague Conference which are not yet Parties to the Convention, we would welcome any comments in respect of any items in the Questionnaire which are considered relevant (for example, where implementing legislation is under preparation). The same applies to non-Party, non-Member States and international organisations invited to attend the Special Commission.

1 In the first place we would like to receive some basic statistical information about the operation of the Convention in your country/state. In so far as is possible we would like data on:

- the number of intercountry adoptions (and the other countries concerned) completed under Convention procedures in recent years;
- the number of intercountry adoptions (and the other countries concerned) completed under non-Convention procedures in the same years;
- the number of domestic adoptions in the same years;
- in the case of Convention and non-Convention adoptions, the ages of the children involved and the average time taken to complete the adoption. (The period between the receipt by the adoptive parents of information concerning the child and the making of the adoption is of particular interest).

¹ N.B. A Special Commission on the Implementation of the Convention was held from 21-24 October 1994. The report of this meeting was published, in English and French, in *Hague Conference on Private International Law Proceedings of Eighteenth Session (1996)*, Tome I, *Miscellaneous Matters*, and also appears on the Website of the Hague Conference <http://www.hcch.net>. The report has four annexes:

Annex A: 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* (attached) plus *Report on the Recommendation* (not attached).

Annex B: Model form for the Statement of Consent to the Adoption (attached).

Annex C: Model form for the Certificate of Conformity of Intercountry Adoption (attached).

Annex D: Checklist of questions which may be usefully examined with a view to implementing the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (attached).

Annexes A, B and C are also available in Spanish and can be obtained from the Permanent Bureau.

² You will find up to date information on the Convention, on the website of the Conference at <http://www.hcch.net>, in particular under the headings, "Conventions", "Status" and "Authorities".

2 We would like to receive a full account of any difficulties of which you are aware in relation to the implementation and the practical operation of the Convention. Some specific issues are raised in the more detailed questions, which appear below. You should feel free to indicate what in your view constitute the more serious problems. You may, with regard to the implementation of the Convention, find the checklist (Annex D to the Report of the Special Commission of October 1994 – see attachment) useful as a reference.

3 We would like to receive a full account of any practices under the Convention, or aspects of its implementation which, in your view, constitute “good practice”, and may be of interest to other States. (In this context we would be grateful to receive from you copies of or extracts from your own implementing legislation and regulations, as well as any informational notes or brochures concerning the operation of the Convention in your country).

4 With regard to the **scope** of the Convention are you aware of any difficulties that have arisen in the implementation or application of Articles 2 and 3 (see also Articles 36 and 37)?

5 Central Authorities, Accredited Bodies or authorities, and other bodies or persons³

With regard to your Central Authority please specify:

- its composition;
- its powers and duties;
- the number and experience/qualifications of its staff;
- the extent to which it performs directly any of the functions under Chapter IV of the Convention.

With regard to Authorities or bodies accredited under Chapter III of the Convention, please specify:

- the number of such Authorities or bodies granted accreditation in your country;
- the process by which accreditation is granted or renewed;
- the criteria applied;
- the process by which the competence of accredited bodies is kept under review;
- have there been any problems of communication/co-operation between the Central Authority and the accredited bodies?

With regard to the “Bodies or Persons” mentioned in Article 22, paragraph 2 (*i.e.* only if your State has made the appropriate declaration). Please specify:

- the number of such bodies or persons permitted to act;
- the process by which they are approved;
- the criteria applied;
- the process by which their activities are kept under review.

³ Please check if the details concerning these bodies on the Hague Conference Website <http://www.hcch.net> are correct.

6 Some fundamental principles (Chapter III)

- *For States of Origin*

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 (see Article 4, sub-paragraph *b*) and Preamble, paragraphs 1-3).

Please specify any conditions, in law or practice, which render a child unadoptable (see Article 4, sub-paragraph *a*)).

Please specify the procedures in place to ensure that the requirements concerning consents (including the consent of the child) are complied with (see Article 4 sub-paragraphs *c*) and *d*)).

Has use been made of the recommended model form for the statement of consent to the adoption by your country?

Please specify any particular procedures applying to the adoption of refugee children or other Internationally displaced children.

- *For Receiving States*

Please specify any conditions, which in law or in practice, render persons ineligible to adopt (see Article 5 sub-paragraph *a*)).

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

7 Some procedural aspects (Chapter IV)

Please indicate any difficulties which have arisen in relation to the preparation and transmission of reports on the applicants (Article 15) and the child (Article 16). Please comment in particular on whether the reports contain sufficient information and whether that information is reliable. The Special Commission is likely to pay special attention to the subject of reports on the child's medical history.

Please specify the bodies or authorities (and their number) competent to give approvals or agreements under Article 17, sub-paragraphs *b*) or *c*), and comment on any difficulties experienced in the operation of Article 17.

Do you have any comments on the speed with which Convention adoptions are processed, or on any circumstances in which unjustified delays appear to have occurred?

Are you aware of any difficulties in respect of translation requirements (Article 34)?

Have you experienced any difficulties with regard to legalisation requirements or similar formalities?

If your country is not yet a Party to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, are you considering ratifying or acceding to it?

Are there any cases in which it has been necessary to take measures under Article 21 (Break down of placement before an adoption taking place in the receiving country)?

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

8 Improper financial or other gain. Costs and expenses

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, paragraph 1).

Please quantify the costs and expenses charged or paid in your country in respect of specific adoptions (Article 32, paragraph 2).

Are you aware of any problems arising from the charges or payments made in your country or in other countries with which you co-operate?

Do you have any comments on the practice in some countries of requiring a contribution to the support/development of child protection services in such countries?

9 Recognition and enforcement

Have you experience of any difficulties in the process of certification provided for by Article 23, paragraph 1?

Is the use of the recommended model form for the certificate of conformity of intercountry adoption required by your country?

Have you experience of any Convention adoption being refused recognition under Article 24?

In the case of a Convention adoption which does not have the effect of terminating a pre existing legal parent child relationship, how are its effects determined in your jurisdiction? (See Article 26).

How frequently, and in what circumstances if at all, is the conversion procedure provided for by Article 27 employed in your country?

Is the use of the recommended consent form within such procedure required by your country?

10 Post adoption

What post adoption services are available in your country and who is responsible for providing them (see Article 9, sub-paragraph c))?

Have you made or received from other Central Authorities any general evaluation reports about experience with intercountry adoption (see Article 9, sub-paragraph d))?

In your experience, have the Convention's safeguards and procedures contributed to improving the quality and success rate of intercountry adoptions?

11 Preservation of and access to information

Please specify the measures taken to ensure compliance with the duty (under Article 30, paragraph 1) to preserve information concerning the child. (For example, on whom does the duty rest, and for how long must records be preserved?)

What are your rules concerning access by the child or his or her representative to such information?

12 Children in especially difficult circumstances

Do you have experience with, or have you developed any special programmes for:

- 1 older children;
- 2 handicapped children;
- 3 siblings;
- 4 refugee children;
- 5 other children.

Has effect been given/notice been taken in your country of the *Recommendation Concerning the Application to Refugee Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption adopted on 21 October 1994*?

13 Avoidance of Convention safeguards

Are you aware of any practices which constitute "avoidance" or which threaten to undermine Convention safeguards?

Has Article 33 been applied in your country?

14 International placements not covered by the Convention

Are you aware of any placements of children, not covered by the Convention, taking place from/to your country?

Have you had occasion to apply the 1961 Convention on Protection of Children (if your country is a Party to that Convention) to such cases and/or have you considered becoming a Party to 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*, with a view to having a legal regime in place to protect such children?

15 Hague Project for International Co-operation and the Protection of Children

The Permanent Bureau has taken the initiative of establishing the Hague Project under the Patronage of H.E. Mary Robinson, UN High Commissioner for Human Rights (see Annex). Any comments or suggestions would be welcome, also for fundraising.

16 Other suggestions, comments, observations

Since this Special Commission will be the first on the practical operation of the Convention, any suggestions, etc. will be most welcome.