

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE 1996 CONVENTION

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 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.

Name of State or territorial unit: ¹	The Netherlands
<i>For follow-up purposes</i>	
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PART I – FOR STATES PARTIES

Recent developments in your State

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 protection? Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice.

No

Yes, please specify:

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, Treaty Series 1997, 229 (The Hague Convention on the Protection of Children "HCPC" entered into force for the Netherlands on 1 May 2011. Since then a close collaboration has been established with all partners involved. Together with the partners well thought procedures were set up. The guidelines and principles which are stipulated in the HCPC and the Brussels IIa Regulation were leading. The consequence of setting up a system with regard to the HCPC was an enormous increase of cases that were handled by the Central Authority. There has not been any new or adjusted legislation.

2. Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1996 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities² in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and other relevant instruments:

Since 2011/2012 the following significant court decisions have been issued on the interpretation and application of the HCPC.

Dutch Supreme Court, 31 October 2014; article 9(1) in connection with article 8(2) HCPC.

"3.6.2 However it follows from article 9(1) in connection with the introduction to and subparagraph (a) of article 8(2) HCPC that the Dutch Court - being a court of a Contracting State of which the child is (also) a national - may under certain conditions be authorized to exercise jurisdiction to take the protective measures it deems necessary. Firstly, it is required that the Dutch Court is of the opinion that in this particular case it is better placed to assess the best interest of the child (article 9(1) HCPC). Secondly, it is required that the authority of the Dominican Republic - the Contracting State of the child's habitual residence - accepts the request of the Dutch Court that it be authorized to exercise jurisdiction to take the protective measures it considers to be necessary (article 9(3) HCPC).

In view of this allocation of jurisdiction, a Dutch Court may consult the competent authority of the Dominican Republic, if necessary with the assistance of the Central

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

² The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 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.

Authority of that State (article 9(1) HCPC).

If these requirements are met, then pursuant to article 9 HCPC a Dutch Court can exercise jurisdiction to take the protective measures it deems necessary, including granting substitute authorization for the application of a passport on behalf of the child as referred to in article 34(2) of the Dutch Passport Act.

Court of Appeal of The Hague, 19 December 2012; article 7 HCPC; applicability of the HCPC.

11.

Given that Council Regulation (EC) no. 2201/2003 (the "Brussels II (bis) Regulation") cannot be strictly applied in this case, or at least its application would not lead to a sensible result, the Court has to resort to the HCPC.

12. However, jurisdiction cannot, in principle, be based on the HCPC either, as this convention does not apply to proceedings that were instituted before its entry into force in the Netherlands on 1 May 2011, and in which a decision is to be given after the date of its entry into force. Nevertheless, the Court is of the opinion that in this case it is not realistic to take the view that the court of the State from which the child was abducted retains its jurisdiction for years to end. Therefore, the analogous application of article 7 HCPC seems to be a logical solution, as this article provides a clear arrangement for the continuation and termination of jurisdiction in the event of the child's abduction to another State which is not a Member State within the meaning of the Brussels II (bis) Regulation.

13.

Pursuant to article 7(1) HCPC in the case of the wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention, keep their jurisdiction until the child has acquired a habitual residence in another State. This means that the Court has to establish whether the minor has, in the meantime, acquired habitual residence in Bolivia. The Court finds that it has not, or at least not adequately, been stated or established that the minor had acquired habitual residence in Bolivia, and also that the conditions as set out in article 7(1)(a) or (b) HCPC are satisfied. Consequently, the Court concludes that it has jurisdiction to render a decision in this case.

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

Within the EU, child protection matters are primarily governed by Regulation (EC) No 2201/2003 (the Brussels IIa Regulation), which contains rules on jurisdiction, cooperation between Central Authorities and the recognition and enforcement of judgments in matters of parental responsibility. To a large extent, the rules of the Regulation are modelled on those of the HCPC but there are also some differences. In the application by the courts of EU Member States, the rules of the Regulation on jurisdiction and co-operation prevail over those of the HCPC for children who are habitually resident in the territory of an EU Member State (Article 61(a) of the Regulation; Article 52(2) of the HCPC). With regard to the recognition and enforcement in an EU Member State of judgments from other EU Member States, the rules of the Regulation prevail over those of the HCPC even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the Convention (Article 61(b) of the Regulation; Article 52(2) of the HCPC). As the rules of the Regulation are more generous with regard to the recognition and enforcement of judgments, this reflects the general approach in Hague Conventions that the most favourable recognition and enforcement regime may be applied.

On 30 June 2016 the European Commission adopted a proposal for a recast of the Brussels IIa Regulation. In particular, the proposal includes measures to improve the cooperation among Central Authorities, and between Central Authorities and other competent authorities in their own State, in the application of the Regulation. To this effect, the proposal seeks to eliminate some of the differences between the Regulation and the HCPC. It also suggests more detailed and specific wording for the cooperation provisions, and introduces deadlines for requests and applications (e.g. for a social report, for consent to a cross-border placement of a child etc.) to be answered. In order to facilitate the application of both the Regulation and the HCPC, some clearer wording for the provisions governing the relationship between the Regulation and the HCPC has been proposed. With regard to the recognition and enforcement in an EU Member State of judgments given in another EU Member State, the proposal suggests the abolition of exequatur for all

judgments in matters of parental responsibility. Currently, only judgments granting access rights and certain judgments ordering the return of an abducted child (given in the Member State of (former) habitual residence of the child after the courts of another Member States have refused under Article 13 of the 1980 Hague Child Abduction Convention) do not require an exequatur any more, provided that the State of origin has issued a certificate under the Regulation.

The examination of the Commission's proposal by the EU Member States started on 19 July 2016 and is still on-going. The final version of the recast Regulation may be therefore different from the original Commission's proposal described above.

Scope

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 2** (meaning of "child")_or **Article 3** (meaning of "protective measures")?

- No
 Yes, please specify:

Jurisdiction

5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction under **Articles 5, 6, 7 or 10**?

- No
 Yes, please specify:

Court of Appeal of The Hague, 19 December 2012; article 7 HCPC (see above).

Dutch Supreme Court, 23 December 2016; article 10(1) HCPC.

In part I of the complaints, the appellant submitted that the Court of Appeal's judgment in para. 4.6 was based on an incorrect reference date as the Court considered that the father's 'motion for special relief' of April 2013 and his request to change the child's custody, dated 4 September 2013, should both be regarded as having been filed within the context of the divorce proceedings, initiated by the mother in 2011. According to part I.1 of the complaint the fact that the same case number was used was due to administrative reasons. Therefore, this should not be the only reason upon which to base a decision as to whether the father's request pertained to an ancillary measure or was in fact a separate application. Part I.2 of the complaint submitted that the Court of Appeal should have used the autonomous concept of 'lis pendens'. Part I.3 of the complaint explained this in more detail.

3.3.2

The complaints fail. To the extent that in part I.1 it is submitted that the Court of Appeal based the contested judgment solely on the use of the same case number, this lacks any factual basis. In fact, the Court of Appeal referred to paragraph 16 of the decision of the Court of Common Pleas of 1 December 2014, which stated that it replaced all previous child custody orders issued in this case. The Court of Appeal's decision was thus based on its interpretation of the judgment of the Court of Common Pleas of 1 December 2014 and as such was of a factual nature. That decision is not incomprehensible, not even in light of the reference made to the Memorandum preceding that decision, "The subject litigation commenced on September 4, 2013". It is perfectly conceivable that within the context of divorce proceedings multiple requests will be filed on various dates which will result in separate court decisions.

Part I.2 of the complaints also fails, because this case does not involve jurisdiction within the EU context.

Hence, part I.3 of the complaints also fails.

3.4.1

Parts II and III of the complaints dispute the Court of Appeal's decision that the jurisdiction of the Court of Common Pleas was based on grounds that were generally acceptable by international standards. Part II of the complaints is directed at the decision on the concept of *perpetuatio fori*, while paragraph III pertains to prorogation of jurisdiction (acceptance of jurisdiction) as a ground for jurisdiction.

3.4.2

The Court of Appeal was right to take, as a starting point that, in assessing whether the jurisdiction of a foreign court is based on a ground that is generally acceptable by international standards, notice must be taken of the relevant international conventions and regulations, since what is set out in them, provides indications as to what is deemed to be acceptable by international standards. In this case, as the Court of Appeal pointed out, the Brussels II (bis) Regulation and the HCPC were relevant. The Netherlands is a party to the HCPC. The United States signed the HCPC, but has not ratified it.

3.4.3

Both the Brussels II (bis) Regulation and the HCPC have as a main rule that in relation to parental responsibility or measures for the protection of the person or property of the minor, the courts of the State in whose territory the minor has his or her habitual residence have jurisdiction (article 8(1) Brussels II (bis) Regulation and article 5(1) HCPC). This rule is based on the notion that the judge of the State in which the child resides is best equipped to assess the requested measures and the interest of the child in this respect. The habitual residence of the child is therefore a ground for jurisdiction that is generally acceptable by international standards.

3.4.4

In addition, the Brussels II (bis) Regulation and the HCPC confer international jurisdiction on the court which decides on the parents' divorce to also decide on cases in relation to parental responsibility at the parents' request (prorogation).

Pursuant to article 10 HCPC the divorce court has jurisdiction if (a) at the time of commencement of the proceedings, one of the parents habitually resides in that State and one of them has parental responsibility in relation to the child, and (b) the jurisdiction of this divorce court to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and this is in the best interests of the child. The jurisdiction ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

A similar provision is set out in articles 12 (1) and (2) Brussels II (bis) Regulation, on the understanding that the jurisdiction of the divorce court must have been accepted at the time of filing the divorce application with the court. The divorce court has jurisdiction to decide on matters relating to parental responsibility until a decision on this has become final.

3.4.5

Since both the Brussels II (bis) Regulation and the HCPC acknowledge the jurisdiction of the divorce court in cases relating to parental responsibility on the basis of prorogation, provided that one of the parents habitually resides in that State and has parental responsibility in relation to the child, and provided it is in the best interests of the child, prorogation has to be regarded as a ground for jurisdiction which is generally acceptable by international standards.

3.4.6

Since part I of the complaints fails, consequently this case involves a measure taken within the context of the divorce proceedings. Therefore, the complaints in part III that are based on part I are unfounded.

To the extent that it was submitted in part III of the complaints that the requirements of article 10(2) HCPC had not been met, since the decisions for which recognition was sought were rendered after the divorce was pronounced, this also fails. The complaint fails to recognise that the HCPC does not apply here, but only provided an indication as to whether prorogation to the divorce court was a ground for jurisdiction which was generally acceptable by international standards. The purpose of the limitation of jurisdiction of the divorce court as set out in article 10(2) HCPC, i.e. that there must be a connection between the divorce proceedings and the requested measures, would also be satisfied if the request for such measures had been filed before the divorce had been pronounced (see introduction and subparagraph (b) of article 12(2) Brussels II (bis) Regulation). In accordance with this, the Explanatory Report on the HCPC by Paul Lagarde in 'Actes et Documents de la dix-huitième session (1996), Tome II Protection des enfants, 1998', states that after the divorce has been pronounced, no new request in relation to the child may be filed with the divorce court (p. 565).

The complaint that the Court of Appeal failed to take the interest of the children into account in its decision is also unfounded. The decision of the Court of Appeal showed that the interest of the children was served by the court in Pennsylvania deciding on the

requested measures. Given the absence of statements to the contrary by the parties and given that the documents in the case file, including the extensively motivated decision of the Court of Common Pleas of 1 December 2014, do not suggest that the assessment by that court, of the measures requested by the father, was not in the interest of the children, the Court of Appeal did not have to provide further justification for its decision on this matter.

3.4.7

Since the decision of the Court of Appeal was based on two separate grounds and since part III of the complaint is directed at one of these grounds and, given the foregoing, fails, part II of the complaints which is directed at the other ground can be disregarded.

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in implementing and / or applying **Articles 8 and 9**?

- No
 Yes, please specify:

7. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Articles 8 and 9**?³

- No
 Yes, please describe them and also provide a link or attach them, preferably translated into English or French:

Article 24 of the Dutch International Child Protection Implementation Act sets out how, in the Netherlands, requests as referred to in article 8 HCPC are transferred. To this end, the Dutch Council for the Judiciary appointed a Liaison Judge who is responsible for facilitating contacts between Dutch judges who are hearing HCPC cases and their foreign counterparts who have jurisdiction and vice versa. It has been stipulated in Dutch law that in order to adequately fulfil his duties, the liaison judge may make use of an interpreter. The liaison judge may also ask the Central Authority for assistance. Engaging the Dutch liaison judge is only mandatory in the event of a transfer of jurisdiction. In all circumstances, a Dutch court must let the parties know about this prior to the intended consultation with the Liaison Judge and report back to the parties about the results of the consultation.

8. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 11**? (See also Question No 35.)

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied Article 11:

9. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11**?

- No
 Yes, please describe:

10. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 12, 13 or 14**?

- No
 Yes, please describe:

Applicable law

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 15, 16, 17 or 18**?

- No
 Yes, please describe:

Article 15: please refer to the judgment of the Dutch Supreme Court of 23

³ See, e.g., Direct Judicial Communications - [Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications \(2013\)](#).

September 2016, described above.

Article 16: please refer to the judgment of the Dutch Supreme Court, described above.

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

- No
 Yes, please describe them:

Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** from the perspective of the requested State?

- No
 Yes, please describe:

14. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 24**?

- No
 Yes, please describe and also provide a link or attach them, preferably translated into English or French:

15. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 24** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No
 Yes, please describe:

16. Please describe the "simple and rapid procedure" (see **Article 26(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

- a) Which authority declares enforceable or registers a measure of protection taken in another State Party?
- b) What time frames are applied to ensure that the procedure is rapid?
- c) Is legal representation required?

Please explain:

In the Netherlands the fast-track procedure is set out in articles 15-17 of the Dutch International Child Protection Implementation Act. Pursuant to these articles the court hearing applications for interim measures in whose territory the person against whom enforcement is sought habitually resides or where the child to whom the measures pertain has his or her habitual residence has jurisdiction. The court hearing applications for interim measures must give its decision without delay. The order for enforcement of the judgment should be immediately enforceable, thus notwithstanding any appeal, by operation of law.

Only the parties may appeal against the order for enforcement that has been issued. The appeal must be lodged within one month after service of the decision granting the enforcement. If the party against whom enforcement is sought has his or her habitual residence abroad, the time limit for lodging an appeal is two months from the date of the service on him or her in person or at his address. This time limit cannot be extended. The court hearing the appeal may, on request, stay the exequatur proceedings if an ordinary appeal is lodged in the State where the decision originated or if the time limit for lodging an ordinary appeal has not yet expired.

Legal representation is required.

17. Are you aware of any challenges, or have questions arisen, in applying **Article 26** in your State?

- No
 Yes, please describe:

18. Are you aware of any challenges, or have questions arisen, in applying **Article 28** in your State?

- No
 Yes, please describe:

Co-operation

19. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (*e.g.*, in relation to the timeliness of responses to requests)?

- No
 Yes, please describe:

the NL Central Authority is setting up close collaborations with the States they work closely with by visiting them and have bilateral meetings where possible. The NL Central Authority is of the opinion that a close collaboration is helpful for the quality and speed of the procedures. Sharing information is of the utmost importance. However, national legislation, capacity of other Central Authorities, other responsibilities or spoken language can make a constructive collaboration challenging.

20. In your view, would it facilitate the task of Central Authorities under **Article 30(2)** if States Parties provided information as to their laws and available services in relation to the practical implementation of the 1996 Convention, *e.g.*, in the form of a Country Profile or a similar tool published on the HCCH website?

- No
 Yes, please describe the type of information that would be useful to include (*e.g.*, information with respect to the availability of certain protective measures under internal law (*e.g.*, in relation to **Article 3(e)**), or the procedures applied under, *e.g.*, **Articles 23, 24, 26, 31 or 33**, or information on Central Authority services provided):

- applicable legislation
 - responsibilities of the Central Authority
 - information about protective measures which are applicable in that specific State
 - an overview of the youth care system

21. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies? Please explain:

The NL Central Authority is not involved and does not facilitate or mediate in such matters

22. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (*e.g.*, has your State been requested to accept a child under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the Requested State)?

- No
 Yes, please describe:

Many times the NL Central Authority was confronted with Kafallah orders before the NL Central Authority could give consent for the placement of the child. It also occurs that a placement of a child has been done before the NL Central Authority could agree with the placement. In such cases an investigation to make sure the foster family is suitable to foster a child has to be done afterwards. That is certainly not desirable. However, it is understandable that there may be situations where immediate action needs to be taken for an adequate and speedy protection of the child.

23. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Articles 32, 33 or 34**?

- No
 Yes, please describe:

Normally the NL Central Authority receives the reports as requested. However, uniformity regarding the social reports is desirable. There is a difference in the quality or the extent of the reports.

24. Do authorities in your State use a standard template when providing a report on the (situation of the) child under **Article 32 or 33**?

- No
 Yes, please attach the template to your response (preferably translated into English or French):

There is no uniformity in templates when a report on the situation of the child is drawn up. However, in each report the same sort of information is provided.

25. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No
 Yes, please describe:

26. Does your State impose charges, as provided under **Article 38(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No
 Yes, for the following types of services (e.g., translation, legal assistance):

When there is an incoming request for a fostercare placement the NL Central Authority states that the sending State is responsible for compensation of the foster parents. The costs for the investigation and other activities which are performed by the fostercare organizations in the Netherlands are paid by the organizations themselves.

27. Have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 38(1)**?

- No
 Yes, please describe:

there are no fixed agreements when it comes to costs which are involved in fostercare placements. Situations occur where there is no clarity who is responsible for taking care of the costs.

28. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals** habitually resident in your State who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

a) A request to organise or secure effective exercise of **rights of access** in another State Party (requested State)⁴

1. None
 2. Assistance in obtaining information on the operation of the 1996 Convention
 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
 7. Assistance in providing or facilitating the provision of legal aid and advice
 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State
 9. Referral to other governmental and / or non-governmental organisations for assistance
 10. Provision of regular updates on the progress of the application
 11. Other, please specify:

Assistance is provided under the 1980 Hague Child Abduction Convention.

⁴ See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

- b) A request to secure the return to your State of a child subject to **parental abduction** where the 1980 Convention is not applicable

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child
- 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 10. Assistance in providing or facilitating the provision of legal aid and advice
- 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 12. Assistance in obtaining private legal counsel or mediation services
- 13. Referral to other governmental and / or non-governmental organisations for assistance
- 14. Regular updates on the progress of the application
- 15. Other, please specify:

Assistance is provided under the 1980 Hague Child Abduction Convention. The Dutch Implementation Act on international child abduction contains a provision in which the NL Central Authority is obliged to handle cases of international child abduction to or from non contracting States as if they are contracting States.

- c) A request to secure the return to your State of a **runaway child** (see **Article 31 c)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a runaway child
- 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 8. Assistance in providing or facilitating the provision of legal aid and advice
- 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 10. Assistance in obtaining private legal counsel
- 11. Referral to other governmental and / or non-governmental organisations for assistance
- 12. Regular updates on the progress of the application
- 13. Other, please specify:

Referral to the police.

- d) A request for a **report on the situation of a child** habitually resident in another State Party (*e.g.*, a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Other, please specify:

Not on the request of individuals, but only at the request of a child protection organization involved with the child.

- e) A request that the competent authorities of another State Party decide on the **recognition or non-recognition** of a measure taken in your State (see **Article 24)**

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:

The Netherlands Central Authority will first request information about the enforcement in the other State. Subsequently, only when necessary, the NL Central Authority will send the request for the enforcement of the measure to the Central Authority of the other State.

- f) A request that the competent authorities of another State Party **declare enforceable or register for the purpose of enforcement** measures taken in your State (see **Article 26)**

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:

The NL Central Authority will request information in the other State and provide information to the individual(s) concerned about the procedure which is to be followed by the individual(s) concerned.

29. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the

following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation was to arise.

a) A request to organise or secure effective **exercise of rights of access**

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- 5. Assistance in obtaining private legal counsel or mediation services available in your State
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:
Assistance under the 1980 Hague Child Abduction Convention.

b) A request to secure the return to the State of habitual residence of a child subject to parental abduction where the 1980 Convention is not applicable

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 4. Assistance in taking provisional measures of protection to prevent further harm to the child
- 5. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 6. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 7. Assistance in providing or facilitating the provision of legal aid and advice
- 8. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 9. Assistance in obtaining private legal counsel or mediation services
- Referral to other governmental and / or non-governmental organisations for assistance
- 10. Regular updates on the progress of the application
- 11. Other, please specify:

Assistance is provided under the 1980 Hague Child Abduction Convention. The Dutch Implementation Act on international child abduction contains a provision in which the NL Central Authority is obliged to handle cases of international child abduction to or from non contracting States as if they are contracting States. In such situation the application will be sent to the Dutch Ministry of Foreign Affairs. This Ministry will send the application to the responsible authorities in the State concerned.

c) A request to secure the return of a runaway child (see **Article 31 c)**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a runaway child
- Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 5. Assistance in obtaining private legal counsel
- 6. Referral to other governmental and / or non-governmental organisations for assistance

7. Regular updates on the progress of the application
8. Other, please specify:
Referral to the police

d) A request for a report on the situation of a child habitually resident in your State (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

1. None
2. Providing information on the operation of the 1996 Convention and / or on the relevant laws in your State
3. Preparing and transmitting the requested report
4. Transmission of the request to the competent authorities in your State
5. Other, please specify:

The report, mentioned under 3. will be made up by the Dutch Child Care and Protection Agency.

e) A request that the competent authorities of your State decide on the recognition or non-recognition of a measure taken in another State Party (see **Article 24**)

1. None
2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
3. Transmission of the request to the competent authorities in your State
4. Assistance in obtaining private legal counsel
5. Other, please specify:

f) A request that the competent authorities of your State declare enforceable or register for the purpose of enforcement measures taken in another State Party (see **Article 26**)

1. None
2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
3. Transmission of the request to the competent authorities in your State
4. Assistance in obtaining private legal counsel
5. Other, please specify:

30. Where the habitual residence of a child present in your State cannot be established, have authorities in your State used any of the provisions of **Chapter V** in determining the child's place of habitual residence?

- No
- Yes, please specify:

31. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No
- Yes, please describe:

Questions regarding the national privacy law, regarding foster care, Kafalah and localization of the child.

32. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No
- Yes, please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child):

General provisions

33. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 40** for the delivery of a certificate indicating the capacity in which a person having parental responsibility or entrusted with protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- No
 Yes, please describe:

34. Which authorities in your State are competent to issue such certificates? Please specify:

The certificate as referred to in article 40 HCPC has been introduced into Dutch law. This certificate shall be issued by a civil-law notary. The procedure is set out in article 25 of the Dutch International Child Protection Implementation Act. The certificate of the civil-law notary is issued on the basis of the model form adopted by Decree of 29 June 2007. The certificate provides a refutable presumption (i.e. in the absence of proof to the contrary) that the capacity and powers indicated in the certificate are presumed to be vested in that person. The civil-law notary will only issue the certificate if the child has his or her habitual residence in the Netherlands or if a protective measure in relation to the child has been taken in the Netherlands. The certificate shall be issued to the person with parental responsibility or to the person entrusted with the protection of the person or property of the child.

Special categories of children

Children subject to international parental abduction

35. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention in cases of child abduction where the 1980 Convention was not applicable (see Question Nos 28 b) and 29 b) above)?

- No
 Yes, please describe:

36. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention in addition to or instead of provisions of the 1980 Convention?

- No
 Yes, please specify the provisions and explain:

In case of a return request under article 32 where a child protection organization has worries about the wellbeing of the child.

37. In cases of parental child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the co-operation provisions in **Chapter V** of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No
 Yes, please explain:

but more regularly article 7 of the 1980 Child Abduction Convention is used.

38. In cases of parental child abduction, have competent authorities in your State taken measures of protection under **Article 11**, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child? (See also Question No 5.)

- No
 Yes, please explain:

Children subject to international relocation

39. Are you aware of any use being made of provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

- No
 Yes, please explain:

International access / contact cases involving children

40. Are you aware of any use being made of provisions of the 1996 Convention, including those under **Chapter V**, in lieu of or in connection with an application under **Article 21** of the 1980 Convention?⁵

- No
 Yes, please explain:
[It is possible.](#)

Unaccompanied, separated, and internationally displaced children

41. Are you aware whether authorities in your State have used the provisions of the 1996 Convention in relation to the protection of internationally displaced children (such as refugee children, trafficked children, sexually exploited children, or unaccompanied children) and / or children whose habitual residence cannot be established?

- No
 Yes, please specify:
[Dutch Immigration authorities through the NL Central Authority.](#)

Miscellaneous

42. Is there any other comment that your State wishes to make relating to the practical operation of the 1996 Convention? If so, please specify:

[Unification of forms would be desirable, as well as unification of provisions regarding translation and foster care \(costs\) and guardianship.](#)

PART II – FOR NON-STATES PARTIES

43. Is your State currently considering signing and ratifying or acceding to the 1996 Convention?

- No
 Yes

44. In considering how your State would implement the 1996 Convention, have you encountered any issues of concern?

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

PART III – FOR BOTH STATES PARTIES AND NON-STATES PARTIES

45. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

[The unification of forms and unification of provisions regarding translations and foster care \(costs\) and guardianship.](#)

46. Do you have any observations or comments to share concerning the Practical Handbook on the Operation of the 1996 Child Protection Convention? Please specify:

[No.](#)

⁵ The [Explanatory Report](#) (Lagarde) on the 1996 Convention notes that co-operation under Article 35(1) between authorities of States Parties with respect to rights of access “serves in a certain way to complete and reinforce the co-operation, which is not always effective, provided for the same purpose between Central Authorities” under Article 21 of the 1980 Convention. Explanatory Report, paragraph 146 (1997).