Questionnaire concerning the practical operation of the 1980 and 1996 Conventions

RESPONSE BY THE DELEGATION OF THE NETHERLANDS[1]

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Part I: RECENT DEVELOPMENTS

1. Recent developments in your State

1.1.

Recent developments legislation: Bill of law amending the Implementation Act on Child Abduction (implementing the 1980 Convention) and the Implementation Act on Child Protection (implementing the 1996 Convention and Brussels IIbis).
Proposed is:

- As a rule, a first instance return order can only be enforced once it can no longer be changed by ordinary legal challenge: the execution of the return order is stayed once an appeal is lodged. However a first instance return order can be executed immediately by the first instance judge if so requested or on his own initiative, if the best interest of the child so requires.
- Only one level of ordinary legal challenge is available against return orders. A return order of the appellate court can no longer be challenged at the Supreme Court. An appeal in cassation will still be possible "in the interest of the law". This is not an ordinary challenge: the outcome has no effect on the outcome of the decision of the appellate court. The aim is to clarify the explanation of the 1980 Convention and/ or the implementation law.
- Concentration of jurisdiction on return orders at the Hague Court of First Instance. This leads to a concentration of jurisdiction of the appellate procedure at the Hague Appellate Court.
- The Central Authority will no longer represent (left behind) parents in cases of international child abduction (1980 Convention) and international child protection (1961 Convention/ 1996 Convention/ Brussels IIbis). Both parents are referred to lawyers for court representation.

The bill was discussed in the House of Representatives the 13th of January 2011 and is now dealt with by the Senate.

Recent developments procedural rules:
In international child abduction cases, the return procedure as we know it can – under certain circumstances – take up a lot of time, sometimes even years.
If that is the case, the principle of immediate return of the Hague Child Abduction Convention was experienced as too rigid by a majority of Parliament, because some of the children involved had been in the Netherlands for several years. For that reason, the Minister of Justice promised in 2009 that he would look for options to speed up the procedure, whereby sufficient attention is focused on the child's best interests when reaching a settlement.

[1] Questions 5.4, 6.4, 7.3c, 7.4, 7.5, 21.1., 21.2, 22.1are answered by the Dutch Bureau of Liaison Judges referred to as BLIK.

Between November 2009 and April 2010, a pilot project has taken place, involving – in particular – the Central Authority, the District Court of The Hague, the five Courts of Appeal and the International Child Abduction Centre. During this pilot project, the return procedure in principle didn't take up more than 18 weeks: 6 weeks preparatory phase at the Central Authority, 6 weeks for the court proceedings before the District Court of The Hague (exclusive jurisdiction), and 6 weeks for the appeal proceedings before a Court of Appeal. During the preparatory phase at the Central Authority and the proceedings before the District Court, the parents were offered mediation services, which are to take place during a short period of time. The envisaged procedure is informally referred to as the 'pressure cooker procedure'. This pilot project was assessed very positive and the procedure is continued.

(→) See the attached translation of the current Implementation Acts on Child Abduction and Child Protection.

1.2

- Court of First Instance Utrecht, 10 December 2010, LJN: BP1552: After a return order of the Dutch judge, a mother returns with the child to a country in South America. Within three months she comes once again with the child to the Netherlands. Can the first return order (once again) be enforced? No, a new, second return procedure has to be started.

- Supreme Court, 1 October 2010, LJN: BN6126: Acquiescence as meant in article 13, par. 1a, can only be accepted under strict conditions. All individual circumstances of the case need to be taken into account. The actual (active and passive) behaviour of the left behind parent needs to be examined, and not the way others interpreted this behaviour.

- High Court Leeuwarden, 24 June 2010 (not published): When a pregnant woman travels to another country, the 1980 Convention is not applicable. Article 4 of the 1980 Convention says that the Convention shall apply to any child who has habitually residence in a Contracting State immediately before any breach of custody or access rights. Considering this text and taking into account the purpose of the 1980 Convention, an unborn child is not to be considered a child as meant by the Convention.

- Supreme Court, 23 May 2008, LJN: BC 8102 (execution dispute): Settlement of a child in its new environment due to the fact that the abducting parent frustrated the execution of the return order is, barring extremely special circumstances, insufficient to accept an intolerable situation that hinders the execution of a return order.

- Supreme Court, 25 April 2008, LJN: BC8942: The extent to which a judge is bound to the findings of an article 15 declaration can only be judged in the light of the individual circumstances of a case. A declaration dealing with the rule of law will generally outweigh a declaration that deals with a judgment of facts/ circumstances. For a judgment of facts and circumstances it could be important whether a declaration is given in a defended action.

- Supreme Court, 20 October 2006, LJN: AY7937: A person or institution that is not actually bringing up a child, but shows - according to the rights of custody - to care about the interests of a child by supervising the compliance of the actual care taker of agreements concerning the upbringing of a child, can be considered as actually exercising rights of custody as meant in article 3, par. 1b, and article 13, par. 1a of the 1980 Convention.

1.3
See the response given to question 1.1.

2. Issues of compliance
2.1
On the whole we believe the network of Hague Central Authorities operates well. In some cases however we have noticed some difficulties in co-operation. This pertains to a difficulty in communication, such as the contacting by telephone or fax of the employees and case-workers at a Central Authority but also includes a lack of clear or frequent case-updates. It appears some Central Authorities lack the proper funding to have enough staff available, but it is also a matter of knowledge of the workings of the HC of 1980. It would greatly help if all Central Authorities had (experienced) Legal staff in house or available to them.

It would be appreciated if the addressed CA would acknowledge receipt of an application or requests for an update. The topic of translation of correspondence and important Legal documents is also one that should be addressed. Far too often the Dutch Central Authority (DCA) receives incoming applications that are incomplete, both in terms of facts and Legal (supporting) documents.

In some States it appears that the proper implementation legislation or law is not – yet – in place. From the questionnaire made for the SC 2006 we recognize that the difficulties we had with Brazil and Thailand are recurrent, making it an issue of a more structural nature. However, in 2010 the Dutch CA intensified contacts with the CA in Brazil, receiving a delegation in The Hague in the spring of 2010. That has greatly improved mutual understanding and the methods of working together, but has – obviously – not solved the issue of slow Legal proceedings.

In some incoming cases we were confronted with ongoing Legal proceedings in the country of the requesting parent/State, and those proceedings had a negative effect on the Hague return case. If the requesting State had been able to supply us with the relevant Legal decisions at an earlier stage, the DCA could have prevented said negative effect.

2.2
It must be noted that there are situations where the Legal process simply takes longer than expected due to complicating factors or due to specific circumstances surrounding the children. If it is in the best interest of the children to take more time investigating matters, delays may be acceptable. However, it is sometimes frustrating to see how timely applications for return lose momentum by the slow Legal proceeding in other Hague States. A few examples include a denied return due to the filing of the Hague petition at the wrong court, without this being noticed or corrected within the one-year-term. In another case the Foreign Central Authority (FCA) waited too long with addressing the prosecutor, allowing for the one-year-term to pass without any Legal proceedings being initiated. Our monthly and (later on) weekly reminders could not prevent this.

In some States we have noticed that the Judges treat the Hague case more or less like a 'regular' (domestic) custody procedure, taking into account who would make for the better parent, requesting social rapports or other information to help them decide on the custody over the child(-ren). This goes outside of the realm of the Convention and – in some cases – prevents the Convention from doing its job. Some proceedings are delayed by the refusal of the taking parent to appear in court. In one case this took over 8 months of waiting, before the case was even heard on its merits.

Part II: THE PRATICAL OPERATION OF THE 1980 CONVENTION

3. The role and functions of Central Authorities designated under the 1980 Convention

3.1

It is sometimes difficult to contact Central Authorities by telephone. The availability of English speaking receptionist or support staff would help a lot. If all else fails, using e-mail or fax works well enough to be able to establish contact within a day or so.

3.2

The duties expected fall under the competence of the DCA and we strive to comply with all the duties described. In the event that the DCA must rely on other authorities we are dependent on their output and judgment.
It is sometimes felt that requesting parents expect more from the DCA than it can offer, for instance in terms of obtaining (immediate) advice or rapports (on child developmental issues) from the Board of Child Protection, setting protective measures in place and offering immediate protection to children in the Netherlands on the whole.

In terms of locating minors, the DCA has noticed that in certain States the act of locating children can take months or even seem impossible. Also, some States appear to not have the proper authority (or access to the authorities) to influence the enforcement of return decisions.

3.3

We notice more and more often that courts in the country of the habitual residence are also requested to hand down a decision pursuant to the Hague Convention (usually by the parent that stays behind). Whether or not the Dutch court still has jurisdiction after such decision has been handed down is a question to which the courts provide differing answers.
We have noticed that in a growing number of cases, the District Courts allow requests for a decision or determination pursuant to Article 15 of the Hague Convention 1980. In such cases, the Dutch Central Authority (hereinafter: the DCA) is instructed to request an explanation on specific questions on the interpretation of the foreign law. The question is whether or not the scope of Article 15 can be widened that much.

3.4

No, no delays. As the DCA offers the service of in-house Legal representation, there is no need to file for Legal aid. Where parents wish to apply for Legal Aid for the cost of entering into Cross- border Mediation the Board for Legal Aid decides within two weeks.
In other States we have encountered some delays when it comes to awaiting the outcome of a request for Legal aid. Some parents want to wait with moving forward with their return petition until they are certain that Legal aid will be provided. This may take several months, making the removal and subsequent return more complicated, especially from the child's point of view (rooting continues during waiting time). In some States the lawyers require a rather large retainer fee, such as $ 15,000.- or more.

3.5

Sometimes the communication between the 'foreign' lawyer and the left-behind parent is difficult. Some parents tell us they are unable to get the lawyer on the Phone, or the information that the lawyer is able (or willing) to provide is marginal. In one case the lawyer refused to speak English, leaving no common language between them.

Perhaps it would be helpful if there was a registry or listing per State of how the Legal representation of the Left-behind parent is organized. For instance, is the case brought to court by the Public prosecutor, a Public lawyer, a private lawyer and so forth.

3.6

No. In incoming cases, the DCA has sufficient measures to locate the minors.

For example, the DCA can search all municipal base administrations in the Netherlands. Moreover, assistance can be sought from the National Public Prosecutor's Office or the contact at the Public Prosecutor's Office in The Hague. If individuals are not officially registered, but the DCA has information on the actual or presumed whereabouts of the individuals in question, the Public Prosecutor can instruct a police officer to check out that address and the surrounding area.

In outgoing cases, we have noticed that locating individuals (in particular those without a known address) constitutes a problem. This is especially the case in countries which do not have such a system like our municipal base administration or some other form of registration, or where the Central Authority has not been given the power to do searches in that way. Sometimes, data protection legislation limits the forms of assistance on offer by the requested Central Authority. This can cause significant delays in the hearing of the request for a return order.

3.7

Yes, as explained in answer 3.6 above, the DCA can easily take advantage of the various search methods. Where a request for localization of a child is made, it helps if the presumed whereabouts are given. If the persons sought are not listed in the municipal base administration, it is necessary that certain clues are present before the Public Prosecutor can be requested to instruct the police to search a particular address or a particular area in the Netherlands. These clues can relate to an address of a relative or acquaintance, or some other clue relating to work or previous jobs.

3.8

Yes, within the Schengen area, citizens of EU Member States have the right of free movement; hence there is no longer any border control. If a global alert has been issued in respect of the parent and child, they will only be found if the parent that has abducted a child or children leaves or enters the country concerned via an airport. If they travel by car or train, they can cross the border without being noticed, as there is no passport control.

3.9

Yes. If a child is not found in the Netherlands, the DCA will immediately report that to the Central Authority of the Requesting State. Its report will also enclose information on the search method and the databases searched. That will make it clear which means to obtain information have already been exhausted, making it possible to identify other search options.

3.10

Yes, see answer 3.6. We take advantage of the municipal base administration, and the services of the Public Prosecutor and the police. In some cases, the Public Prosecutor requests Interpol to issue a global alert (a yellow notice), on the basis of a missing person's report by the parent who has stayed behind.

Good practice tips:

> In cases in which a child is not initially found when searching the databases, later searches of the databases at regular intervals is recommended.

> We have seen cases whereby parents had initially 'gone underground', but after a number months had passed, had registered themselves and the children after all.
> If the DCA manages to identify the whereabouts of the parent and a child, but is requested to keep it secret, or if it turns out to be a safe house/women's shelter, the DCA will observe secrecy. The address will therefore not be passed on to the Central Authority of the Requesting State and the other parent. If a petition is filed with the court, the extracts showing the address will only be revealed to the judge hearing the case, in the context of protecting the missing person's privacy and to prevent any abuse of our search options.

3.11
If the DCA receives queries from other Central Authorities, those queries are generally answered. Thanks to its in-house counsel, the DCA in the Netherlands occupies an exceptional position, and as a result has built up a lot of knowhow on the effect of the Hague Convention 1980. The DCA welcomes the opportunity to share that specific knowhow and expertise with other Central Authorities. Apart from giving answers to written questions, ranging from a few questions to complete questionnaires, the DCA also receives foreign delegations. The foreign delegations are given a presentation (power point) on the role and working method and experiences of the DCA, and they have the opportunity to ask questions. In the past few years, the DCA has received delegations from Sweden and Brazil, and it so far has welcomed officers of the prospective Member State Japan three times.

3.12
The DCA seeks to encourage contact with collaborating Central Authorities whenever possible. To the extent that the workload permits it, visits are paid to other Central Authorities. Over the past two years we have paid visits to the Central Authorities of Turkey and Switzerland. We also attend the EJN meetings and any legal seminars in the field of the Hague Convention of 1980 and that of HC 1996. An appointment has been made with Belgium for a work visit.

3.13
Definitely. Meetings with staff of other Central Authorities are always beneficial for present and future collaboration. Activities such as making contacts and sharing expertise, as well as obtaining underlying information and an understanding of each other's legal systems, are clearly of great importance in achieving the optimal effectiveness of the Hague Convention 1980. The more criticism we receive from the outside, the more it becomes necessary to ensure that the Convention works properly. Thanks to the annual EJN meetings, we see a number of our fellow Central Authorities on a regular basis. However, quite a large number of the other Member States do not attend those meetings.

3.14
Unfortunately the time that is needed to enter into INCASTAT all the cases handled by the DCA on a yearly bases goes beyond the capacity of the DCA.

3.15
See the responses given above (3.1-3.13).

4. Court proceedings

4.1

Concentration of jurisdiction: Cases of international child abduction can now be dealt with by judges of the Hague Court of First Instance on a temporary basis (by Order of Designation, 9 February 2009, published in the Staatscourant, 20 February 2009, the Hague Court of First Instance is designated as a branch - a so called "nevenzittingsplaats" - of the requested Court of First Instance in international child abduction cases) .
The judges of the Hague Court of First Instance then act as were they part of the requested regional court. A definite concentration of jurisdiction is proposed in a bill of law amending the Implementation Law on Child Abduction and the Implementation Law on Child Protection (see answer 1.1).

4.2

Procedural rules return proceedings: There are procedural rules in place to deal with return proceedings. The court of first instance needs to assign priority to the return application (art. 13.2 Implementation Law 1980 on Child Abduction). Appeal against a first instance return order needs to be lodged within two weeks of the date of that decision(art. 13.6 Implementation Law on Child Abduction).The time limit for appeal against an order of the Appellate Court is four weeks of the date of order. These procedural rules allow the court of first instance and the appellate court in general to reach a decision within six weeks.
The Court of First Instance and the Appellate Court have made a great effort last year to implement a mediation process within their court proceedings on return applications . This leads to a consolidated procedure of administration of justice and mediation with a positive effect on the time frames, these applications are dealt within. Delays on return proceedings are not related to a lack of sufficient procedural rules.

5. Domestic violence allegations and Article 13 (1) *b)* of the 1980 Convention

5.1

Yes, in a significant amount of cases (less than half) some mention is made of the home situation, as a reason for the sudden move (removal/abduction). In most cases it does not amount to more than an unhappiness or dissatisfaction with the relationship with the other parent (both marital and post-divorce). It is only on rare occasion that proof is found of actual domestic violence or abuse. However, the mention of abuse of violence is always taken seriously and sufficient attention and opportunity is offered for this matter to be investigated.

5.2 a

The general rule is (by domestic law as well as in Hague cases) that the party who claims something, must deliver the proof. The same goes for the existence of a ground for refusal under the HC 1980. The standard of proof is for evidence to be convincing, factual and objective and can be delivered in writing or in person. The more reliable the source of the proof, the more weight the judicial authority can appoint to that piece of proof. In the case of domestic abuse the Judge would look for proof in terms of written depositions of police officers, doctors, social workers, school or other 'objective' observers. If none of these are available proof can be presented by the taking parent and his or her family/friends. This type of proof of course needs to be looked at with extra scrutiny, as these persons may have an interest in the outcome of the return case, which may (intentionally or unintentionally) influence or bias their statement.
If there is no proof available other than the claim of the taking parent, it is up to the court to decide how convincing that statement is rendered, in conjunction with what the requesting parent has to say on this matter.
Another element is the matter of where the child will reside after the return.

If the child is not returning to the abusive parent, and the taking parent will not be confronted with the abusive parent but have their own housing, a fresh start, so to speak, the negative experiences of the past do not pose an 'automatic' ground for refusal. All the facts need to be taken into the decision.

5.2b
In the Legal procedure the party who claims one of the grounds for refusal must bring the supporting evidence before the court as soon as possible, at the latest at the time of the hearing. Since a taking parent is always approached at the onset of an application, to consider an amicable solution, they have several weeks to prepare their case.
From the time of filing the return application in court and the final hearing, there are another 2-3 weeks, so sufficient time is available to obtain evidence to support the claim. In the ideal situation a taking parent has brought the evidence with them, knowing it would be of paramount importance in the time to come.
Due to the obligation to handle a return case expeditiously the court nor the DCA allow for delays, such as additional time (in addition to weeks mentioned before) to prepare for evidence to support claims. Parents who do not come prepared have several weeks to do so. Only in highly exceptional cases (two in 5 years) did the court grant extra time to get an expert opinion in the country of Habitual Residence.

5.2c
A parent is free to offer evidence in whatever way one sees fit. Affidavits or written statements are used most, but a parent may offer to have the court hear certain witnesses. This is upon the decision of the court, and the 'regular' hearing of the case will be used for these witnesses. It is not very common, though. The court does hear children once they are over 8 years old, and in some cases even younger.

5.3
If a minor also reports on the domestic abuse, and this minor is of the age and level of maturity to have its opinion be taken seriously, this rapport may be used as additional proof as to the claim of the taking parent. The statement (and possible anxiety of this child about the return) may be grounds for refusal as the child resists the return. However, the courts are extra cautious in allowing the opinion and statement of a minor to have a major influence on the return case. For one a child should be kept outside of the dispute between the parents and should not feel responsible for the outcome of the case, either way the decision falls. Also, children who are taken by one of their parents, tend to choose sides with the parent that is – currently – taking care of them. It is a natural phenomenon and this should be taken into account when weighing the opinion of the minor.

5.4
It depends on the individual circumstances of the case which tools are used. Apart from the examples given in the question, the court might also ask the Central Authority in the Netherlands, being a party in return proceedings, to contact the Central Authority in the State of the child's habitual residence in order to research the degree of protection which can be secured for the child and to inform the court or it might ask the Child Protection Board in the Netherlands to do such research and inform the court.

5.5
Yes. In the Netherlands the Regulation Brussels II-bis is in effect. After 2005 the amount of cases that were handled under the Regulation, in conjunction with the HC 1980, has been increasing, but only slowly. In some cases the Regulation was used to underline the continued interest of States in upholding the HC of 1980. The Regulation supports the HC and in some areas, such as child abduction, even enhances the effect.

Only a few cases have actually been handled under article 11 of the Regulation (denied return decision; asking opinion of competent judge in country of HR). The DCA believes that those cases came to a satisfactory conclusion but are not always informed of the final outcome.

5.6
Similarities must be the way in which each State takes allegations of domestic abuse seriously. Inconsistencies may be in the (high) level of (restricted means of) proof some States expect. One cannot exclude cases that have not (yet) lead to a criminal or other type of conviction, as the delicate nature of domestic abuse relationships may not always follow the formal route. Also there are differences in legal systems that will make a claim more difficult. In some cases it is hard (or impossible) to obtain transcripts from the police record (i.e. about the police visiting a domestic violence scene). Then 'hard' proof is not possible, and this should be taken into the decision of the court that has to rule on the Hague case.

5.7
The DCA hopes that with the increased knowledge about the HC of 1980 and the increased awareness among taking parents (due to internet and websites on the matter of child abduction) that parents make arrangements for the relevant documents to be available to them, once those are needed in the Hague case. Best would be of course if they turned to the court of HR and ask for permission to relocate. This would prevent the abduction and would make the gathering of evidence for legal proceedings much easier.

6. Ensuring the safe return of children

The implementation of previous Special Commission recommendations
6.1
See the response given to question 1.1.
Besides that, a protocol has been drawn up concerning the enforcement of a return order. The protocol is the result of cooperation of all parties involved (police, the Public Prosecutor, Child Protection Board, Central Authority) and contains a 'practical script' in case of an involuntary enforcement.

6.2
Due to matters of privacy the DCA does not interfere in the private lives of parents and children after they have returned to their State of HR . The authority of the DCA to act is restricted to the matters as described in our HC 1980 Implementation Law. Once the return has been secured, the authority to act (and interfere) ends. The Foreign/requesting Central Authority may be informed about certain concerns and it must be held to be their responsibility to ensure the safety of minors returning to their State. If other authorities must be involved, i.e. those specialized in child protection, the requesting CA must make sure those – domestic – possibilities are acted upon and ensured.

Methods for ensuring the safe return of the children
6.3
If during the return procedure there are concerns about the wellbeing of the minor(s) after return, these concerns may be transmitted to the FCA.
If there are agreements about a safe return, possibly the court that decides on the Hague case may include those agreements in the return decision. If arrangements were made out of court, after the judicial decision, the DCA will make sure that the requesting FCA is made aware of these. If any arrangements can be made before the return, the DCA will strive to have that done before the date of departure.

In some cases, where the arrangements were actively being worked on, by the authorities and parties (and their lawyers) involved, the DCA has allowed for the judicial return date to be postponed by a few days. This is done in the best interest of the child, so this is held to not be in breach of the overall goal of the Convention.
In some cases the assistance of the Liaison Judge can be used to obtain information about the (legal) measures available upon/after return.

Direct judicial Communications
6.4
The Dutch liaison Judge was requested once to answer some procedural questions concerning Dutch law of a deciding judge in a return procedure in another Contracting State of the 1980 Convention. The questions were answered in an e-mail in general terms in order to provide the judge the necessary information.

Use of the 1996 Convention to ensure a safe return
6.5
The Netherlands is Party to the 1996 Convention, but the Convention will enter into force as of 1 May 2011. The implementation law has been in force since May 2006.

Other important matters
6.6
Yes. In the past few years we have seen about four (4) cases in which the taking parent, also being the caring parent, choose not to return with the child. In two of those cases the parent had a new partner/family in the Netherlands; in two cases the mothers stated they did not want to return because they could not support themselves there or they could obtain more gainful employment in the Netherlands, compared to the country of HR of the child.
In one case the caring parent was unable to return, due to a criminal case pending against her. During the time the Hague case was pending in the Dutch courts, the State of HR requested the Dutch State to extradite the mother on the basis of the criminal (abduction) charges against her. After the return of the child the Public Prosecutor refused to drop the case against the mother, making it impossible for her to visit her child in the country of HR and enforce her right to access. The father in turn does not allow for the child to visit the mother in the Netherlands, resulting in a breach of contact between the caring mother and the minor, which is nearing two years now and seems unacceptable. So far no intervention (DCA, DA, FA or other diplomatic means) has obtained the desired result: mother and child having contact in person again.

These cases are only a very small portion of all of the cases handles. In most cases the parents reach some form of agreement of at least the taking parent accepts the return decision and returns the child, to then enter into domestic custody (or relocation) procedures.
However few, the cases mentioned above do cause for negative publicity surrounding the Hague Convention of 1980. This in itself is unfortunate, not to mention the outcome and effect these cases have on the children involved.

6.7
When matters of custody – or changes in Parental responsibility - are brought into the Hague case, they are explored by the Judge making the return decision. If the procedure in the country of HR is still pending, parents are advised to seek legal advice and – if needed – become involved in those pending cases that may be of influence on the custody arrangement between the parents. Especially if the taking parent is also the caring parent. If the taking parent does not have legal representation the FCA will be asked to be of assistance, or obtain advice, as they know the domestic legal system.

6.8
If the privacy of parents and child is taken into account, as well the time frame within which follow-up information can be requested and provided after the return of the child, the Netherlands would support a recommendation.

7. The interpretation and application of the exceptions to return

In general
7.1 and 7.2
In general written proof needs to be provided by the abducting parent to prove any of the exceptions under article 12, 13 or 20 of the Convention are applicable. Only in rare cases will the courts allow oral evidence, since providing oral evidence will often delay a ruling (except as far as the exception of article 13, section 2, is concerned). In general the Dutch court system is characterized by the preparation of cases by an exchange of written documents. In the subsequent hearing only a short oral explanation is given in addition to the papers submitted by the parties. These hearings take on average 1 to 1,5 hours.

Article 13 (2) and hearing the child
7.3 a, b
Children who have reached the age of 12 years or older are heard as a matter of principle. Children of this age are (according to Dutch law) considered to have reached an age and degree of maturity at which it is appropriate to take account of its views as meant in Article 13 of the Convention. The children's judge is however able to also hear a child of the age of 9, 10 or 11. If the judge believes this child has reached a degree of maturity equal to that of a 12 year old, he may base a decision to refuse the return of the child on the child's opinion only.

The child/children are heard (alone) by the children's judge in his private chambers to ensure the child/children feel secure enough to express their honest opinion. In the court proceedings no oral statements of the children are revealed by the children's judge. The court only reports briefly about what has been discussed with the child. If a child strongly objects to giving an oral statement, he/she is allowed to give a written statement as well.
With respect to the final decision on the petition for return; current practice is that if a child of twelve years and older does not want to return and puts forward reasonable grounds, its opinion will lead to a refusal of the return. In general, siblings are not separated. So when the return of the older brother or sister is dismissed on the present exception, the younger children are allowed to remain in the Netherlands as well.

7.3. c
It depends on the circumstances of the case if the court finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. Factors which have been taken into account in relation to the maturity of a child are the capability of the child of expressing its feelings, the consistency and sincerity of the statement of the child, the capability of the child of overlooking the consequences of its statement and its objection to being returned. In relation to the objection of the child the firmness and consistency of the child's objection have been taken into account and courts have examined if the child's objection to being returned exceeds the ordinary wish to stay with the parent who has removed the child (see for example the decisions published at rechtspraak.nl: LJN BK4284 High Court s'-Gravenhage 17 November 2009, LJN BK5519 Court of First Instance 's-Gravenhage 10 September 2009).

7.4
We are not sure what is meant with “other international or regional instruments”. According to our survey no international or regional instruments affected the manner in which the child’s voice is heard in return proceedings. The Brussel IIbis Regulation is applied (more specific, article 11(2)).

7.5
There is no undue delay: the hearing of the child usually takes place just before the hearing of the parties in return proceedings.

Article 20
7.6
No.

Any other comments
7.7
See the response given to question 13.1.

8. Article 15 of the 1980 Convention
8.1
The opportunity created by Article 15, to obtain additional information about the Law of the country of HR, is a very helpful tool in the application of the convention. Additional legal information may enhance the – correct – application of the Convention. Especially when the division of parental authority is a point of dispute between the parents, it is good to have the availability of an Article 15 declaration. Said declaration may allow the Judge in the return case to weigh the case on all its merits.
However, the fact that the HC offers this – relatively simple - opportunity, may cause for unnecessary requests for additional information, even if the information provided in the original application is sufficient and complete.

8.2
Over the past two or three years the DCA has encountered an increase in the use of Article 15 declarations. Very often the taking parent claims that the custodial and even parental rights are not shared (with the left-behind parent). As the Convention offers the possibility of Article 15, Judges seem prone to request an additional declaration on the Law, to be able to judge the claim on its full merits.
Obtaining an Article 15 through a FCA can bring a lot of work for the CA. Often complicated legal claims and issues are to be solved, so the request for an Article 15 declaration takes some time to draft. Once the request is sent out, it appears that in some States the procedure to obtain the declaration is not clear, or takes a long time.
In some cases the DCA was confronted with a judicial declaration about the ‘criminal context of the removal’ or a statement that the taking parent was free to remove the child. Both these declarations did not answer the question(s) asked, but raised some difficulty in the rest of the Hague return case.

When the DCA is requested to give an Article 15 declaration, the DCA drafts an Affidavit about the general rule of Family Law in the Netherlands. If specific questions are asked about the pending case, those are answered subsequently. Depending on the amount and complexity of the questions, the drafting of an Affidavit may take some time. In most cases the questions require specialist legal expertise.

8.3
Not really. In one case the DCA was informed by the FCA that the judicial authority in need of the Article 15 information did not accept the Affidavit as drafted by the DCA.

They required a declaration from a judicial authority, a Judge. Even though the Dutch system is set up differently, the Foreign Judge did not accept the Affidavit. By means of exception the Liaison Judge in The Hague granted the request for additional Article 15 information, writing a declaration for the Foreign Judge to use.

9. Immigration, asylum and refugee matters under the 1980 Convention

9.1

Every so often the matter of re-admittance or visa renewal occurs. In some cases the removal of the child or the break-up of the relationship between the parents causes for immigration issues. In almost all cases the child can return to the left-behind parent, often holding a similar nationality to both parents. For the taking parent the departure from the country sometimes means that visa's or residence permits are ended or revoked. In those cases the DCA obtains information from the FCA to establish if and how the returning parent can re-enter the country of HR.
Some States offer the same status as the parent had before the removal, some States offer some form of visa, to allow the parent to re-enter and i.e. enter into custody proceedings. The DCA can not apply for re-admittance on behalf of the returning parent, so that is up to the returning parent taking action. If the taking/returning parent cannot return, and the child would be sent back without the caring parent, the exception of article 13b may come into view. In the past few years one return was denied on the basis that the taking/caring mother could not re-enter the country of HR and the child (3 years old) had not been in the care of the requesting father for almost 2 years.

If more time elapses between the removal and the Hague case being brought to court, some other complication may occur. In one case the taking father had re-emigrated to his native country with the child, and had then denounced the Dutch nationality for both himself and the child. Also, in cases with Non-Hague States we often notice that the parent with parental rights needs to give written permission for a child to leave the country. A foreign return order is not enough for a child to be brought out of the country.

9.2

The DCA has encountered a few cases in which a requesting of taking parents had gained (political) asylum in the Netherlands. In one case a parent and three children had gained admittance to the Netherlands as a refugee. The left-behind parent filed an application for return. It was established – both in the immigration file as well as the Hague case – that there was serious concern about the wellbeing of the children returning to the requesting parent and (non-Hague) State. The return was therefore denied.
There is currently a similar case pending, and it will be up to the court decision as to the – possible – clash between the refugee status (granted by the State) and a return under the Hague convention. These cases are very rare and the HC 1980 offers sufficient provisions to solve these cases in a matter that best suits the best interest of the minors involved.

9.3

No.

9.4

No.

10. Newly acceding States to the 1980 Convention

10.1.

Not applicable.

10.2
Every accession of a new State Party is considered briefly, before being accepted.

10.3
The Netherlands has never refused any new State Party, because the accession – that opens a possibility to mutual calling to account for compliance with Convention obligations – is generally preferred over a non-formal relationship.

11. The Guide to Good Practice under the 1980 Convention

11.1
The Guides to Good Practice have been an important inspiration for the measures mentioned under 1.1. en 6.1.

11.2
Yes. In discussions and conferences with organizations, the Central Authority mentions regularly the Guide to Good Practice and the website of the Hague Conference.

11.3
No comments.

11.4
No, not at this moment.

11.5
No comments.

12. Relationship with other instruments

12.1
1989 Convention: In parliament the relation between the 1989 Convention and the 1980 Convention is regularly discussed over the last four years. In the House of Representatives the question was raised if the 1980 Convention should not be updated. This question was based on the importance attached to the relationship of the abducted child with his caring (abducting) parent. The question was whether a return of a child to his country of his habitual residence is always automatically considered to be in his best interest and thus corresponding with article 3 of the 1989 Convention, if difficulties were to be expected for the caring parent in the country of the child's habitual residence .

ECHR: A recent judgment of the European Court of Human Rights (6 July 2010, Neulinger and Shuruk vs. Switzerland appl. No. 41615/07) has led to questions in articles in Law Journals concerning the scope of the test – factors that need to be taken into account before a return of a child can be ordered – that needs to be applied before a return order is awarded. ECHR, 2 November 2010, Van den Berg and Sarri versus the Netherlands (appl. No. 7239/08), however points out that the Dutch return order was granted in accordance with article 8 and (taken in conjunction with) article 6 of the ECHR.

12.2
No comments.

13. Publicity and debate concerning the 1980 Convention

13.1
The following subjects have given rise to motions of Members of Parliament that were being adopted by our Parliament:

- the interest of the child in international child abduction cases (relation between the UN Convention on the Rights of the Child and the 1980 Convention). The interest of the child should be taken into account before a return order is granted ;
- the establishment of an international supervision instrument on the practice of central authorities;
- the importance of prevention of criminal charges against abducting parents;
- the agreement on parental access needs to reached *before* the return of the child;
- the stay of the execution of a return order of the Court of First Instance, once an appeal is lodged;
- the possibility of appeal in cassation should only be possible in exceptional cases.

The motions are addressed by the proposed bill of law and the mediation-process (see answer question 1.1) and by asking international attention for the prevention of criminal charges against abducting parents. The Netherlands has looked if other countries within the EU support an international supervision instrument.

13.2
Information about international child abduction and about our Central Authority is given at the general website of the Ministry of Security and Justice; www.rijksoverheid.nl/ministeries/venj. The Dutch Central Authority also maintains a brochure containing information about international child abduction.
Furthermore the Ministry of Security and Justice financially supports the International Child Abduction Centre to give information to everyone who encounters (the threat of) international child abduction, whether as part of their professional or personal lives.

PART III: THE PRACTICAL OPERATION OF THE 1996 CONVENTION

14. Implementation of the 1996 Convention
14.1 a-c
The Netherlands signed the 1996 Convention as early as 1997. An Act authorizing the ratification of the Convention by the Netherlands has passed the national Parliament. It will enter into force 1 May 2011.

14.2
See answer to question 14.1.

15. The role and functions of Central Authorities designated under the 1996 Convention
15.1
a. No difficulties were encountered with assigning a Central Authority. The Central Authority for the 1996 Convention was placed with the Central Authority for the 1980 Convention.
b.-d. The Netherlands has no experience yet with the 1996 Convention, as it will enter into force 1 May 2011).
e. Yes, we acknowledge the positive effect of having standard model forms. It helps in processing and presenting the information and limits translation costs, as a standard form only needs to be translated once. The DCA would benefit from standard forms, as would other parties involved, such as the parents, attorneys, Judges and other authorities involved.

(→) Under the Implementation Act on Child Protection, the tasks and tools of the Central Authority for the Netherlands are much the same as under the 1980 Hague Convention.

The bill of law that is currently discussed in parliament will change the Implementation Act on Child Protection (see answer question 1.1). As far as the legal representation of the requesting parent in child protection cases is concerned, the Central Authority will not represent the requesting parent, after this bill becomes law. The requesting parent will be referred to specialized lawyers in cases of international child protection.

16. Publicity concerning the 1996 Convention

16.1

The DCA offers information in individual matters in writing and by telephone. When the DCA informs organisations about the 1980 Convention and the role of the Central Authority the 1996 Convention is also included in the presentation. In light of the ratification of the 1996 Convention as of 1 May 2011 publicity will be intensified.

16.2

Defence for Children International
Postbus 11103
2301 EC Leiden
Phone number: +31 (0)71 5160980
www.defenceforchildren.nl

International Social Service Netherlands
Kruisstraat 1
5211 DT 's-Hertogenbosch
Phone number: +31 (0)73 6911450
www.issnetherlands.nl

17. Relationship with other instruments

17.1

The Netherlands has no experience with the 1996 Convention yet, as it will enter into force 1 May 2011.

The Netherlands would however like to draw attention to the relation between the 1980 Convention and the 1996 Convention with regard to the jurisdiction, recognition and enforcement of settlement agreements on for example the habitual residence of a child or parental access reached within the context of child abduction cases. If a return of a child is ordered after a child abduction, parents can request the judge who is ordering the return to include their settlement agreement in his judgment. However, this judge doesn't exercise jurisdiction on the basis of the 1996 Convention, because he is not the judge of the habitual residence of the child. Exceptions on the general rule of jurisdiction are possible but limited.

To guarantee parents involved in child abduction cases that settlement agreements can be included in judicial decisions of the State of refuge, and that these decisions are recognizable and enforceable in the State of the habitual residence of the child, the Netherlands would like to discuss if additional international agreements in this regards might be useful.

PART IV: TRANSFRONTIER ACCESS/ CONTACT AND INTERNATIONAL FAMILY RELOCATION

18. Transfrontier access/ contact

18.1

No. The most significant change is that cross-border mediation has become a standard service that is offered in all Hague cases.

18.2

No.

18.3 a-b

The interpretation of Article 21 differs from State to State. Some States do not take an application if the request only pertains to (non-)compliance of an access agreement between parents. The will only process applications for 'new' requests for access. In non-compliance cases the FCA will sometimes ask the parent(s) to try to resolve the access issues through mediation or amicable agreement. If this is unsuccessful, the requesting parent is sent to a private attorney to seek a compliance decision under domestic law. From our practical experience it seems that in most international access cases compliance is the issue (not the lack of an access agreement). We expect that with the HC 1996 entering into force more can be done for these parents in terms of receiving help in gaining compliance.

18.3 c

No.

18.4

The principles in the Guide to Good practice on Trans-frontier Contact confirmed the practice that has been developed by the DCA. In a few cases the DCA deemed it necessary to point out the principles of the Guide to a State that appeared to not be handling an application according to the recommended good practice principles.
The Guide seems to cover all element and thus no further principles are recommended.

19. International family relocation

19.1

A parents requires permission of the other parent to relocate internationally with a child, if the other parent exercises the legal custody (gezag) of a child (either alone or together with the parent who wishes to relocate). A parent requires permission of the relevant State authorities, if the child is placed under supervision of Bureau Jeugdzorg (Family Guardianship Institution) and Bureau Jeugdzorg has given the parent a written instruction concerning the habitual residence of a child.

19.2

No there is no specific procedure in the Netherlands which applies when a parent wishes to seek the relevant authority's permission to relocate internationally.
Every citizen of the Netherlands has the right to relocate to a foreign country. Inhabitants of the Netherlands are registered in a municipal personal records database (GBA). When someone relocates to a foreign country for eight months or more, you have to be deregistered by filling an emigration form or visiting a local government office.

19.3

Not that we are aware of. However, those procedures take place outside of the Hague Convention and thus are not (necessarily) brought to our attention in incoming cases.

In the past years we have however been informed of cases that we handled by the Dutch court, where a return was ordered and the taking parent returned to the HR State and successfully completed a custody and/or relocation case. In at least two of those cases the parent (mother) and child returned to the Netherlands, to settle here permanently.

19.4
No comments.

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

20. Non-Convention cases and non-Convention States
20.1
Any case in which a child is unable to have a normal, significant bond with a fit parent is troubling. Especially is the bond between the child and one of the parents is broken due to legal matters (criminal prosecution), or financial matters (lack of affordable legal counsel).
On the whole we believe the HC offers a sufficient amount of safe-guard, i.e. in the grounds for refusal, to prevent troubling cases from developing. However, we have seen some parents left in the aftermath of an international dispute over where their child shall reside, with little contact or none at all and with no (financial) means to correct this. The lack of affordable legal counsel in some States poses a threat to the future of some parent and child relationships. Participating States should strive to take away any of said barrier in order to best serve the best interest of the Child.
In cases where children are abducted to non-Hague States the rate of successful return (or an amicable agreement on access) is very low. We have cases where mothers have not had any serious form of contact with their children for 7 or more years, with no hope of a solution soon.

Under the HC of 1996 we seem to find other Hague States (member to the HC 1980) quite willing to assist in getting the proper attention to cases of child protection. As the HC 1996 has not fully entered into force yet, we have no case examples of troubling cases (as of yet).

20.2
Countries with more than one return case pending are: Surinam, Algeria, Tunisia, Egypt and until recently Morocco. Also we have cases with Jordan and Libya. It appears to be mostly countries around the Mediterranean Sea and we look to our contacts established during the Malta Process to at least move these cases a little towards a positive final goal; a significant relationship between the child and both parents.

20.3
See 20.2; mostly the countries with an Islamic Family Law system.

20.4 a
No.

20.4 b
No.

20.5
Any of the States mentioned in the answers above.

The "Malta Process"
20.6 a-c
The "Malta process" is considered to be of great importance. The process promotes international co-operation in matters that concern the wellbeing and protection of children.

As the HC 1980 offers a fast approach to solving matters concerning wrongful removal of children, the HC of 1996 offers to same for matters concerning (all) other areas of parental authority over minors. In meeting with foreign officials from both Hague States and Non-Hague States, information and expertise can be shared, to further enhance the work of the Convention. The Malta Conference offers many opportunities, both in the legal context as well as in a social context, to build connections with officials or Judges from Non-Hague States. These networks may be used in solving ongoing or new abduction and child protection cases and all other matters concerning children and parents.
The Malta process is also used to create a greater role for cross-border mediation. The most recent Malta Conference lead to a recommendation on mediation structures and networks. The working group set out to explore the possibilities is about to rapport on their findings. As mediation seems to be the positive way forward, the Malta process can also prove very effective to find further ways in co-operating and solving cases with the help of mediation.

PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORTS PROVIDED BY THE PERMANENT BUREAU

21. Training and education

21.1

BLIK[2]: Seminars and conferences at the national, regional and international level are considered to be very useful, in order to, amongst others, exchange experiences in return proceedings and to discuss the interpretation of the conventions and for network purposes. According to the Bureau Liaisonrechter Internationale Kinderontvoering (BLIK) in the Netherlands the conclusions and recommendations of the international seminars and conferences have contributed, amongst others, to better cooperation of the Contracting States, a more uniform interpretation of the 1980 convention or at least more understanding of legal culture and knowledge of case law in other Contracting States.

DCA[3]**:** The seminars mentioned are of great value to the functioning of the HC 1980. These gatherings enhance the knowledge and understanding of the Convention, as other experts share their views and experiences. Some States for instance have so few cases that they do not have a lot of practical examples to work with. Other States have taken on active roles in exploring certain areas of the Convention. In these international seminars these experiences are shared to the advantage of the other States present. Also, the contacts and networks that are built during these seminars can be of great importance in dealing with individual cases or in offering help in the future.

21.2

BLIK: Dutch judges are trained, amongst others, in profound courses on the 1980 and 1996 conventions, the Brussel IIbis Regulation and Dutch law concerning international child abduction. These courses do not only concern the content and application of the 1980 and 1996 conventions and case law, but also the daily practice of the Central Authority.

DCA: Over the past 4 years several seminars, training session and conferences were held on the topic of cross-border Family mediation in child abduction cases. At all of these international guest and experts were invited and present. The sharing of expertise is of great importance. The Ministry of Foreign affairs hosted a training seminar on Child Abduction for members of their Consular posts in the Middle East/Maghreb countries. This was very interesting two-day conference, both for the DCA as well as the diplomats who are there in the field, dealing with the cases in Non-Hague States.

[2] BLIK = Bureau Liaison Judges International Child Abduction.
[3] DCA = Dutch Central Authority.

22. The tools, services and supports provided by the Permanent Bureau (including through the International Centre for Judicial Studies and Technical Assistance)

In general
22.1
a.
BLIK: The existence of INCADAT is highly appreciated, although the accessibility of the database should be improved (it is for example difficult to use keywords, since in most abduction cases the same keywords must be used).

DCA: This data-base is used when questions of interpretation of the convention may arise.

b.
BLIK: The Judges Newsletter is considered to be useful.

DCA: The Judges Newsletter is received in hard-copy and is considered interesting and useful in getting a better view of what is going on at an international level.

c.
BLIK: If necessary, the website of the HCCH is used, more specific, the Child Abduction Section.

DCA: The information on the website is considered helpful, concise, clear and interesting. Parents also tend to visit the site and find the information helpful, if somewhat overwhelming and legal.

d-e
BLIK: The Court of First Instance (rechtbank) and the Bureau Liaisonrechter Internationale Kinderontvoering are not familiar with INCASTAT, nor iChild.

DCA: d. This database is not used.
22.1 e. At one point the Netherlands participated in the pilot scheme. Due to the vast amount of information that needed to be processed into the system and the fact it did not offer reliable statistics, the whole program has been postponed. The DCA would not recommend implementing it in its (previous pilot) form.

f-g
BLIK: The Court of First Instance (rechtbank) and the Bureau Liaisonrechter Internationale Kinderontvoering have no experience with the mentioned technical assistance and training, nor with the mentioned referrals and advices.

DCA: f. The DCA applauds this form of practical assistance and training to new States and offers assistance, such as presentations for members of the Foreign Central Authority, when asked by the PB. g. This is a good function of the PB.

h.
BLIK: The Dutch liaison Judge has encouraged wider ratification or accession to the conventions, including educating those unfamiliar with the 1980 and 1996 conventions through activities such as visiting countries like Egypt and Morocco and organizing courses and meetings between judges.

i.
BLIK: This is not a duty of the Court of First Instance (rechtbank), nor the Bureau Liaisonrechter Internationale Kinderontvoering.

Other

22.2 a-c

The Netherlands would recommend all proposed measures and suggests a stronger position of the Permanent Bureau to accomplish these, taking into account the differences in the way States secure the implementation of the objects of the Convention.
Regarding b. and c. the assistance to States in meeting their Convention obligations and the evaluation whether serious violations of Conventions obligations have occurred, the Netherlands recommends to strengthen the existing work of the International Centre for Judicial Studies and Technical Assistance of the Hague Conference in giving technical assistance and training to States in relation to the 1980 Hague Convention on International Child Abduction and the 1996 Hague Convention on Child Protection, taking into account the experiences of the Technical Assistance Programme for intercountry adoption (ICATAP).

PART VII: PRIORITIES AND RECOMMENDATIONSS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS

Views on priorities and recommendations for the Special Commission

23.1 and 23.2

As agreed at the meeting of the Working Party on Civil Law Matters (General Questions) on 12 January 2011 delegations of the EU Member States are requested to send any comments they may have to question 23 of the questionnaire on the practical operation of the 1980 and the 1996 Hague Conventions to the Council Secretariat in Brussels. On the basis of the comments received, a common reply to question 23 of the questionnaire will be drawn up.

Any other matters

24.1

No comments.