

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION
DES ENFANTS ET LA COOPERATION EN MATIERE
D'ADOPTION INTERNATIONALE**

établi par le Bureau Permanent

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**QUESTIONNAIRE ON THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION
OF CHILDREN AND CO-OPERATION IN RESPECT
OF INTERCOUNTRY ADOPTION**

drawn up by the Permanent Bureau

Reply by Austria

NAME OF COUNTRY OR ORGANISATION:
AUSTRIA

A EXPLANATIONS AND QUESTIONS

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

1. Description

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

Reply: **Receiving State**

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

Reply: **Not applicable (n.a.)**

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

Reply: **Yes**

2. Good practice

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

- (a) In relation to any aspect of intercountry adoption, what examples of good practice can you report, (i) from your own country or (ii) from another country?
- (b) Please indicate what topics you would suggest for future chapters in the Guide to Good Practice (in addition to "Implementation", "Central Authority Practice" and possibly "Accreditation").
- (c) Have you experienced any major concerns or problems (i) in your State and (ii) in another State, associated with implementation of the Convention, such as a lack of implementing legislation, inadequate staffing or funding issues?

Reply to (ii): **Turkey has not nominated a Central Authority; despite of the fact that Turkey is a contracting State no applications can be sent to Turkey !! There is some reluctance of foreign Central Authorities to co-operate with Austrian Central Authorities directly without any accredited bodies as intermediaries.**

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

Reply: **n.a.**

3. Questions concerning scope

Please specify any difficulties you have experienced in determining whether certain

situations do or do not come within the scope of the Convention.

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

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

Reply: **No problems regarding lit. a and b**

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

Reply: **Sometimes problems with India; at the time when the prospective adoptive parents living in Austria are appointed guardians of the Indian child by the Indian court the competent Austrian Central Authority is not involved**

4. General principles for protection of children

- (a) What are the different types of care available to a child in need of care and protection in your State?
- (b) Please specify the procedures or other measures in place to ensure that due consideration is given to the possibilities for placement of the child within the State of origin before intercountry adoption is considered (the principle of subsidiarity - see Article 4 *b*) and Preamble, paragraphs 1-3).
- (c) What are your procedures to establish if a child is adoptable?
- (d) What procedures are in place to ensure that consent to an adoption is given in accordance with Article 4 *c*) and *d*) of the Convention?
- (e) Do you make use of the Model Form for the "Statement of consent to the Adoption"? See < www.hcch.net >, "Intercountry Adoption", "Practical Operation Documents", "Annex B to the Special Commission Report of October 1994".
- (f) Have you applied the "Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption"? See Annex A to the Special Commission Report of October 1994.

Reply to lit. a to f: **n.a.**

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

Reply: **The personal, financial and economic situation of the prospective adoptive parents and their health status (physical and mental) is checked by the competent youth welfare authority, which is a department of the administrative authority of the first instance. If they are found to be suitable an extensive home study is prepared by a social worker of this authority. In the course of these investigations exploratory discussions concerning the motivation to adopt a child take place.**

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

Reply: **A broad information about legal and other aspects of an international adoption is given to prospective adoptive parents. In some of the Austrian states it is obligatory to pass a seminar – often during two or three week-ends - dealing with all implications of an adoption. Information meetings with other parents who already have adopted a child from abroad are organised.**

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

Reply: **The participation in the relevant education and training programmes is a condition for transmitting the application of the prospective adoptive parents by the competent Austrian Central Authority to the Central Authority of the state of origin.**

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

Reply: **Post-adoption services are provided by the youth welfare authorities. If requested by states of origin post-adoption reports can be made a social worker or by a private organisation entrusted to do so by the competent youth welfare authority.**

5. Central Authorities

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

Reply: **With the exception of the State of Vienna all other Austrian Central Authorities performed their functions themselves. Investigations and enquiries in individual cases (see previous para.4) are performed by the youth welfare authorities which are acting under the authority and according to the instructions of the competent state government (= Central Authority).**

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

Reply: **The personnel resources in the Austrian Central Authorities (= state governments) are very small; in general only one person – as a maximum - deals with international adoptions. Usually these persons have to perform also other tasks in the area of youth/child welfare services.**

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

Reply: **n.a.**

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

Reply: **n.a.**

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

Reply: **One Central Authority reported about problems with the Central Authority of Peru. This Central Authority requests documents which differ from case to case. The provision of a list of all documents needed in all cases would be desirable.**

6. Accreditation

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

Accredited bodies

- (1) Please indicate whether your country uses or intends to use accredited bodies in intercountry adoption. If so, please provide details on the topics (a) to (m) below.
- (a) Please provide details (including powers and resources) of the authority or authorities which grant accreditation.
- (b) How many bodies have been accredited by your country? Federal States may provide the number for each state or province. If possible, please indicate how many bodies have been refused accreditation.
- (c) Please give a brief outline of your accreditation criteria, guidelines or legislation.
- (d) What is the process by which accreditation is granted?
- (e) If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.
- (f) How is the supervision of accredited bodies carried out in your State (Article 11 c))? Are there regular reporting requirements (including financial reporting) by the accredited body to the supervising authority?
- (g) How is the performance of the accredited body assessed or evaluated?
- (h) Has the competent supervisory authority encountered any difficulties in relation to (f)?
- (i) Are you aware of any acts or behaviour by accredited bodies or approved bodies or persons that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?
- (j) What are the conditions for renewal of accreditation?
- (k) Have you experienced any difficulties in obtaining assistance or cooperation from other Central Authorities in regard to accredited bodies?
- (l) Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

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

Reply: Only the Central Authority of the State of Vienna has accredited two bodies ("Family for You" and "Eltern für Kinder Österreich"). Before granting accreditation the Central Authority of Vienna has checked the organisational and budgetary structure, the qualification of the staff and the premises of the two bodies. The two accredited bodies are under the supervision of the Central Authority and there are controls in regular intervals (at least every 3 years). Yearly activity reports are requested, including the costs that adopters have to pay for the services of the accredited body.

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

- (a) What steps are involved in the process of authorisation?
(b) What supervision of foreign authorised bodies occurs?
(c) Have you experienced any difficulties regarding a body accredited in one State and authorised to act in another State?

Reply: No

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

Reply: The Austrian states have the necessary infra-structure to perform the functions of Central Authorities with the assistance of the local youth welfare authorities. The use of accredited bodies is therefore not necessary.

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

Reply: n.a.

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

Reply: No

Approved bodies and persons

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

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

(f) Has your country made a declaration under Article 22(4)?

Reply: **No**

7. Procedural aspects

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

- (a) obtaining accurate and sufficient health and social information on the child;
- (b) obtaining accurate and sufficient information on prospective adoptive parents;¹
- (c) obtaining an accurate estimate of fees to be paid by adoptive parents prior to adoption and / or travel to collect the child;²
- (d) documentation requirements, including requirements for legalisation or authentication of documents, or the acceptance of documents by the other country;
- (e) obtaining the agreements required in Article 17;
- (f) receiving post-placement reports from adoptive parents or Central Authorities;³
- (g) translation requirements;
- (h) time taken to process Convention cases.

Reply: **Some Austrian Central Authorities have complained that the information on the child is sometimes very short and includes on health information. The foreign Central Authority (or foreign accredited body) often contacts directly the prospective adoptive parents concerning the identification of the concrete adoptable child and neglects Art. 16 para. 2 of the Convention. Concerning the adoption of children from India the transmitting Austrian Central Authority is usually not informed before the competent Indian court entrusts the prospective adoptive parents with the guardianship of the child and permits the moving of the child to Austria.**

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

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

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

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

"The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention [the 1961

¹ The Convention, Articles 15 and 16.

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

³ See the Convention, Article 20.

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

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

Convention Abolishing the Requirement of Legalisation for Foreign Public Documents]. *In light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter.*⁶

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

Reply: Yes. Austria had recommended during the preparation of the Adoption Convention not to require any legalisation of documents being transmitted by a Central Authority but this proposal was not accepted.

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

Reply: No experience exists.

8. Private international law issues

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

- (a) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the jurisdiction of the authorities to grant or amend / revoke an adoption?
- (b) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the law or laws to be applied to the conditions governing, or the effects of, an adoption?

Reply: No

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

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

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

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

9. Recognition and effects

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

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

⁶ See paragraph 6.

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

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

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

Reply to paras. 1 to 4: **No**

10. Payment of reasonable charges and fees

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

Reply: **Concerning the two accredited bodies in Vienna there are fixed fees of 4,600 Euro (including the costs for seminars, home-study and post-adoption reports)**

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

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

Reply: **Mandatory contributions to child protection services in general seem to be against the aim of the Convention. If voluntary contributions are made by adoptive parents they should be clearly separated from the costs of the adoption proceedings (and not a condition for identifying an adoptable child).**

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

(5) Are you aware of any instances of disparity between professional salaries or fees charged for adoptions compared to other forms of legal work? (For example, large legal fees may be charged for adoption, while standard or lower fees are paid for other family law matters such as divorces – see Article 32(3).)

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

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

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

Reply: **See reply to para.3**

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

11. Improper financial gain

- (1) Please indicate the laws (including criminal sanctions), measures and procedures in place to give effect to the principle that no one shall derive improper financial or other gain from an activity related to an intercountry adoption (Article 32(1)).
- (2) Are you aware of any instances of success in enforcing penalties to discourage improper financial gain?
- (3) Are you aware of any difficulties in the enforcement of laws or regulations or in prosecution of criminal activity?
- (4) Apart from the measures referred to in Question 11(1) above, have any other preventive measures been taken in your country to combat improper financial gain?
- (5) Please provide details of any measures taken to prevent solicitation (e.g. through inducements to consent) of children for adoption (Articles 8 and 29).
- (6) Have you experienced any difficulties in obtaining co-operation or assistance from other States in eliminating practices that lead to improper financial gain?

Reply: **According to the legal provisions of the Austrian states it is punishable – but not as crime – if an adoption is organised without a permission or for financial gains or if advertisement is made in this respect (fines up to 2,200 Euro).**

12. Relative adoptions

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

Reply: **Because there is no special regime for inter-family adoptions the Convention has to be applied to these categories of adoptions. Surprisingly the Indian Central Authority (CARA) informed one Austrian Central Authority in an individual case of a relative adoption that they do not handle such adoptions. This aspect should be clarified in the next Special Commission meeting.**

13. Children with special needs

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

Reply: **n.a.**

14. Other forms of cross-border child care

International foster care, transnational *kafala* and other forms of child care with a cross-border element are not covered by the 1993 Convention, but by the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*: See for example its Articles 3 e) and 33(1).

- (1) Is your country involved in international placements of children other than for purposes of adoption?
- (2) Are you aware of any difficulties concerning such placements?

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

Reply: **Yes**

15. Avoiding the Convention

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

Reply: **Yes; in the past we had such cases, but the Supreme Court has clearly stated – in 3 decisions – that the procedures provided in the Convention have to be respected vis-à-vis other contracting States. If the mechanism of the Central Authorities has been disregarded an Austrian court may not grant an adoption.**

16. Additional safeguards and bilateral arrangements

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

Reply: **No additional safeguards etc**

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

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

- (a) with non-Contracting States? Are Convention safeguards applied?
- (b) with Contracting States? Do they improve the operation of the Convention? Have they caused any difficulties?

Reply: **No such agreements exist. Austria is strongly against making bilateral agreements with non-contracting States because every state is free to accede to the Convention.**

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

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

Reply: **No restrictions exist**

B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

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

Reply: **Only internal information meetings of representatives of all the Austrian Central Authorities.**

19. In the current negotiations for a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, an Administrative Co-operation

Working Group has been established to examine and report on practical problems and issues of administrative co-operation between authorities. Would you favour the establishment of a similar group for the 1993 Convention?

Reply: **No**

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

Reply: **No specific proposals**

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