

# Questionnaire concerning the Practical Operation of the 1996 Child Protection 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 Child Protection 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:<sup>2</sup>

England and Wales

NOTE: Judiciary responses in this document cover England and Wales. Central Authority (the International Child Abduction and Contact Unit or ICACU) responses cover England. Please see separate submission from Wales for their Central Authority response.

## PART I – FOR CONTRACTING PARTIES

### 1. Recent developments in your State

1. 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 and the results achieved in practice.

- No  
 Yes

Please specify:

Judiciary

The United Kingdom left the European Union. The transition period ended at 11pm GMT on 31 December 2020. Following that date, for new cases the 1996 Hague Convention is now used between the United Kingdom and EU Member States.

The 1996 Hague Convention has been incorporated into English domestic law by the Private International Law (Implementation of Agreements) Act 2020.

The structure of the 1996 Hague Convention is similar to the EU Council Regulation 2201/2003, known as Brussels IIa (BIIa). The provisions concerning stay and lis pendens, transfer, recognition and enforcement, placement and co-operation are similar as between BIIa and the 1996 Hague Convention. It has however, not constituted a like for like replacement.

In particular, the 1996 Hague Convention contains no principle of perpetuatio fori by reason of Art 5(2). This is dealt with in more detail below.

With respect to recognition and enforcement, it should be noted that the 1996 Hague Convention does not, in contrast to BIIa, make provision for automatic enforcement of contact orders without the need to seek recognition. Whilst legal aid is available on a

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<sup>2</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

means tested basis for recognition and enforcement (and appeals against the same) under BIIa (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch. 1, para. 17(1)(c)), legal aid is not available for the same type of cases involving applications for recognition and enforcement (or related appeals) under the 1996 Hague Convention (other than via an application under the Exceptional Case Funding scheme).

Other Hague Conventions have also assumed greater significance since the exit of the United Kingdom from the European Union. In particular:

(a) Taking of evidence is now governed by the 1970 Hague Taking of Evidence Convention. This does not provide for “expedition”, unlike Article 9 of BIIa.

(b) The 1965 Hague Service Convention is now effective with all EU Member States.

A new rule has been inserted in Part 12 of The Family Procedure Rules 2010 as Chapter 6A, to provide a procedure for dealing with international child abduction return cases with a linked asylum claim; Chapter 6A covers returns under the 1980 Hague Convention, under the inherent jurisdiction and under section 8 of the Children Act 1989: <https://www.legislation.gov.uk/ukSI/2010/2955/part/12/chapter/6A>.

2. Please provide the three most **significant decisions concerning the interpretation and application of the 1996 Convention** recently rendered by the relevant authorities<sup>3</sup> in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
London Borough of Hackney v P [2022] EWHC 1981 (Fam)	Family Division	High Court	The 1996 Hague Convention applies to determine the English court's jurisdiction including where the alternative jurisdiction is a non-Contracting State.  In the absence of the principle of perpetuatio fori in the 1996 Hague Convention, the date on which habitual residence falls to be determined for the purposes of Art 5 of the 1996 Convention is the date of the current substantive hearing.
Derbyshire CC v Another [2022] EWHC 3405 (Fam)	Family Division	High Court	Adopting a purposive interpretation of the 1996 Hague Convention, the date on which habitual residence falls to be determined for the purposes of Art 5 of the 1996 Convention is the date that the court is seised of the proceedings.
H v R [2022] EWHC 1073 (Fam)	Family Division	High Court	Where a child ceases to be habitually resident in England during the course of proceedings, by reason of a move to a non-Contracting State, Art 5 of the 1996 Hague Convention ceases to apply and the issue of jurisdiction is

<sup>3</sup> 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 Contracting Parties such “authorities” will be courts (i.e., judicial), in some Contracting Parties administrative authorities remain responsible for decision-making in Convention cases.

			governed by our domestic law. This provides that the relevant date for determining habitual residence for the purposes of jurisdiction is the date the court became seised (s.3 Family Law Act 1986).
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3. Please provide a brief summary of **any other significant developments** in your State relating to international child protection, including any regional instruments or bilateral agreements that have been negotiated or which your State has signed and ratified or acceded to (e.g., Memorandum of Understanding on the placement of children abroad):

Please insert text here

**2. Scope of application (Arts 2, 3 and 4, and C&R No 29 of 2017 SC)**

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the 1996 Convention (e.g., which measures of protection fall within the scope of the 1996 Convention)?

- No
- Yes

Please specify:

Judiciary

Following the exit of the United Kingdom from the European Union, a question arose as to whether the 1996 Hague Convention now provides the jurisdictional framework for public law child protection proceedings in relation to children, in place of BIIa. In London Borough of Hackney v P [2022] EWHC 1981 (Fam), the High Court determined that care orders under Part IV of the Children Act 1989 fall within the scope of the 1996 Hague Convention and that the 1996 Hague Convention is now the jurisdictional framework for public law child protection proceedings under the 1989 Act.

An issue has arisen as to the proper scope of Article 11. This is referred to further below.

ICACU

Article 2: the ICACU continues to receive outgoing co-operation requests from local authorities (social welfare authorities) (a local authority is a competent authority) in England arising out of child protection concerns about an unborn child (for example where the local authority has held a pre-birth child protection conference and may be considering issuing care proceedings once the child is born). The ICACU is not able to transmit these requests to the other central authority as there is not yet a child; the ICACU will try to put the local authority in touch with the competent authorities in the requested State and/or notify the requested central authority that a request for co-operation will be made once the child is born and that the request will be urgent.

From experience, the term 'measures of protection' appears open to quite wide interpretation and the ICACU has had to make decisions about scope.

By way of illustration on outgoing requests, the ICACU has been asked by the local authority (competent authority) to seek information from other central authorities with regard to unaccompanied asylum seeking young people currently residing in England. In these cases, the local authority has already established the child's age to be over 18 but the young person has disagreed with that assessment and maintained that they are a child; on balance it was felt that such requests were not within scope

primarily because the focus was not one of child protection but rather obtaining reports/evidence to confirm the young person's legal age in order to challenge their asylum application and/or to support the local authority's defence to an application for judicial review of their decision-making brought by the young person.

### 3. Jurisdiction to take measures of protection

#### Habitual residence (Art. 5 and C&R No 31 of 2017 SC)

5. Have competent authorities in your State experienced any challenges when determining the habitual residence of the child in cases falling within the scope of the 1996 Convention?

- No  
 Yes

Please specify:

Judiciary

One of the key challenges with respect to determining the habitual residence of subject children has been the question of ascertaining the date for determining habitual residence for the purposes of Art 5 of the 1996 Convention. That question is currently the subject of conflicting decisions in the High Court (see above).

#### International child abduction (Arts 7 and 50)

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in **making a determination whether to exercise jurisdiction** in cases of wrongful removal or retention of the child?

- No  
 Yes

Please specify:

Judiciary

The English court has considered the issue of a wrongful "repudiatory" retention and how it is established: *Re C (Children) (Rev 1)* [2018] UKSC 8 (14 February 2018). The court decided, at [50], that repudiatory retention is possible in law. How it is established is set out, at [51]. It was decided that there "must ... be some objectively identifiable act or statement, or combination of such, which manifests the denial, or repudiation, of the rights of custody of the left-behind parent. A declaration of intent to a third party might suffice, but a privately formed decision would not, without more, do so". It was also decided that it was not necessary that "the repudiation must be communicated to the left-behind parent". The court considered the relationship between such a wrongful retention and the acquisition of habitual residence and the potential effect on the application of the 1980 Convention: e.g [14].

The court appreciated that there was a tension between the date of any repudiatory retention and the question of habitual residence. As expressed in a text book: "It is possible that if the identified date of repudiatory retention is later, the children may have already acquired habitual residence in the destination State, in which case, the retention will not be wrongful under Article 3. On the other hand, if the identified date is earlier, it is possible that the children may have become settled earlier if proceedings are not brought within the 12-month period set out in Article 12".

The issue has arisen of the relationship between the 1951 UN Refugee Convention (and the relevant European Union Directives) and the 1980 Abduction Convention: *G v G* [2021] UKSC 9 (19 March 2021) and *G (A Child: Child Abduction)* [2020] EWCA Civ 1185 (15 September 2020). These cases considered the effect of an asylum claim by the taking parent and/or the child on an application under the 1980 Hague Convention. The Supreme Court decided, at [130], that a child "who can objectively be understood as being an applicant [for refugee status or other international protection] is entitled to rely on article 7 of the Procedures Directive which ensures non-refoulement of a refugee who is awaiting a decision so that a return order cannot be implemented pending determination by the Secretary of State". The Court of Appeal decided, obiter, that the grant of asylum created a bar to returning a child under the 1980 Convention: see [118]-[127]. [MoJ Note: In the extract above, the reference to "the Secretary of State" is to the Home Secretary (Interior Minister).]

### Pending divorce or legal separation of the child's parents (Art. 10)

7. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise **jurisdiction** in cases where there is a pending divorce or legal separation of the child's parents (**Art. 10**)?

- No  
 Yes

Please specify:

Please insert text here

### Transfer of jurisdiction (Arts 8 and 9)

8. How often have competent authorities in your State experienced cases of transfer of jurisdiction under **Articles 8 and / or 9** of the 1996 Convention?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

Judiciary

The court has more experience of transfers of jurisdiction under Article 15 of BIIa: e.g. *Re N (Children)* [2016] UKSC 15 (13 April 2016).

Incoming and Outgoing Requests under Articles 8 and 9 occur regularly but not frequently. Precise statistics are not available.

An older example of an outgoing request under Article 9 is: *M and L (Children)*, 1996 Hague Convention [2016] EWHC 2535 (Fam).

An example of a request under Article 8 is: *Re A and another (children) (transfer of proceedings to Romania) (No. 1)* [2021] EWHC 3703 (Fam) and *Re A and another (children) (transfer of proceedings to Romania) (No.2)*[2021] EWHC 3702 (Fam).

An example of an incoming request is: *Child and Family Agency of Ireland v other* [2021] EWHC 1774 (Fam).

An example of the problems which can occur is: *Re Y (A Minor) (Brussels II Revised: Jurisdiction after Article 15 Transfer)* [2021] EWFC 107.

9. Has your State developed any **good practices, procedures, guidelines or protocols** to facilitate the transfer of jurisdiction?

Yes

Please specify and provide the links to relevant documents whenever possible:

#### Judiciary

Guidance (brief) has been issued by the President of the Family Division in April 2016:  
[https://www.familylaw.co.uk/docs/pdf-files/Judicial\\_guidance\\_-\\_cross-border\\_transfer.pdf](https://www.familylaw.co.uk/docs/pdf-files/Judicial_guidance_-_cross-border_transfer.pdf)

Incoming requests from Contracting States are typically routed through our Central Authority and then passed to the High Court Judge responsible for international family justice, who deals with the application in accordance with the provisions of The Family Procedure Rules 2010 governing those applications. Outgoing requests are also typically sent through our Central Authority.

The Family Procedure Rules 2010 Part 12 Chapter 6 provide specific procedural rules for applications relating to the 1996 Hague Convention.  
 (see <https://www.legislation.gov.uk/uksi/2010/2955/part/12/chapter/6/made>)

The following statutory instrument also applies: Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (SI 2010/1898). It contains provisions requiring an outgoing application under Article 9 by a Local Authority to be made through the court (Regulation 4) and permits a court to withdraw a request under Article 8 (Regulation 3).

In the case of *Re A and another (Children)(Transfer of Proceedings to Romania)(No.1)* [2021] EWHC 3703 (Fam) the High Court examined the operational provisions of the 1996 Hague Convention in respect of transfer and their relationship with the domestic provisions of the Family Procedure Rules 2010. The judgment considers the nature and scope of the evidence required to determine an application to request another Contracting State to assume jurisdiction.

From experience, expeditious determination of a request is critical.

In addition, if the child is not in the State requesting, or which is being requested, to assume jurisdiction experience shows that, if jurisdiction is assumed, arrangements will probably need to be made for the child to move to that jurisdiction. In other words, difficulties can be caused if the child is not in the State in which proceedings are taking place.

#### ICACU

There have been requests for transfers of jurisdiction to deal with matters relating to the property of the child. Generally these requests focus on jurisdictional issues where the child concerned is habitually resident in England and the property is in the requesting State. In one case where there were no England and Wales proceedings in which such a request could be dealt with, ICACU referred the case to a Hague Network Judge who arranged a hearing of the court's own motion and made the necessary order.

No

Please specify any reasons:

Please insert text here

## 4. Special types of measures of protection

**Urgent measures of protection (Art. 11)**

10. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11** (e.g., the definition of "urgency"; scope, nature and duration of measures)?

No

Yes, in cases of international child abduction.

If possible, please provide more details about the experience of your State using Article 11 in cases of international child abduction:

Judiciary

The Supreme Court considered whether a summary return order to a non-1980 Convention State was within article 11: J (A Child) (Rev 2) [2015] UKSC 70 (25 November 2015). It was decided, at[38], that "It would be extraordinary if, in a case to which the 1980 Convention did not apply, the question of whether to order the summary return of an abducted child were not a case of "urgency" even if it was ultimately determined that it was not "necessary" to order the return of the child".

Questions have arisen as to what measures fall within the scope of Article 11 in particular in the context of return orders under the 1980 Child Abduction Convention. Is an undertaking to the court in England and Wales capable of being a measure within Article 11? Must the measure be one which is within the scope of the 1996 Convention such that it will not include, for example, a provision in respect of maintenance or the provision of accommodation.

Yes, in other situations.

Please describe in which other situations a competent authority in your jurisdiction has applied Article 11:

Judiciary

In Derbyshire CC v Another [2022] EWHC 3405 (Fam) (see above) the court made an interim care order under Article 11, giving care of the children to the state Local Authority, in respect of children present in England. The situation was considered to be urgent and the children to be in need of protection because one of the children had sustained an unexplained stab wound while in the care of their parents in England.

**Provisional measures (Art. 12)**

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 12** (e.g., definition as to what may constitute a "provisional character"; scope, nature and duration of measures)?

No

Yes

Please describe:

Please insert text here

**5. Applicable law (Chap. III)**

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the applicable law rules provided by **Articles 15, 16 and 17** of the 1996 Convention?

No

Yes

Please describe:

Please insert text here

## 6. Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in relation to the **recognition of measures of protection**, from the perspective of the requested State?

- No  
 Yes

Please describe:

Judiciary

Not under the 1996 Convention but issues have arisen under BIIa when a substantial period of time has elapsed between the date of the order and the application for recognition/enforcement. Should the court enforce the order or conduct a substantive welfare assessment? Is the latter option a review of the merits? There is a tension between the two options which can be significantly affected by the length of time since the order was made.

Examples under BIIa are: E (Bia: Recognition And Enforcement) (Rev 1) [2020] EWCA Civ 1030 (04 August 2020); and A (A Child), Re (Enforcement of A Foreign Order) [2022] EWCA Civ 904 (01 July 2022).

### Advance recognition (Art. 24)

14. How often have competent authorities in your State experienced cases of requests for **advance recognition**?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

Judiciary reply: Never

ICACU :There may be instances of this, but these would usually form part of a wider 1980 Hague case and so are not separately recorded and nor would the ICACU necessarily know about them.

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

- Yes, but there have been no changes since the last SC meeting  
 Yes, with changes since the last SC meeting.  
 Please specify:  
 Please insert text here  
 No

### Declaration of enforceability or registration for the purpose of enforcement (Arts 26, 27 and 28)

16. In relation to the **simple and rapid procedure** for declaring enforceable or registering for the purpose of enforcement of measures of protection taken in another Contracting Party (Art. 26), what is the practice in your State?

- a) Which authority declares enforceable or registers a measure of protection taken in another Contracting Party? Please specify:

The court.



b) What time frames are applied to ensure that the procedure is rapid? Please explain:

No specific time frame.

c) Is legal representation required? Please explain:

No.

17. Are you aware of any challenges, or have questions arisen, in applying **Articles 26, 27 and / or 28** in your State?

- No  
 Yes

Please describe:

Judiciary

Not of a general nature save for the issue of delay and the lapse of time which has arisen under BIIa, as referred to above, and can be expected to arise under the 1996 Convention as well

Another issue which has arisen under BIIa and can also be expected to arise under the 1996 Convention is when the order which is being enforced contains provisions which have no equivalent in English domestic law and/or contains provisions which are not enforceable. An example of the latter is: *In re M (Children) (Contact: Enforcement of Foreign Order)* [2017] EWCA Civ 891. The court decided, at [70], that the English court had no power to order "a competent child welfare authority of the Kingdom of Great Britain" to supervise contact as required by the Estonian court order.

## 7. Cooperation (Chap. V)

### Central Authority practice

18. 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:

ICACU

The ICACU has acquired more experience of working under the auspices of the 1996 Hague Convention as more countries have joined and additionally as a result of greater reliance on the Convention following the UK's exit from the EU.

Following on from the response given in 2016, the absence of timeframes for providing a response to a request for co-operation still makes it difficult for the ICACU to manage the expectations of competent authorities here and abroad. For example, the ICACU receives many requests for co-operation from English local authorities for information from another State because there are care proceedings about the child. In England, there is a statutory requirement that care proceedings must be concluded within 26 weeks of the date of issue of the proceedings. The Family Court can extend that time limit but only where it is necessary to enable the court to resolve the proceedings justly; an extension of time is an exception to the general rule.

The ICACU continues to reap the benefits of its co-operation request form which most of the competent authorities in England are now familiar with and use. This has resulted in more focused/relevant requests and has helped with turnaround and throughput. Despite this, the ICACU has found a general reluctance of competent authorities to refer to the accompanying guidance and they therefore include questions in the request form that are outside the scope of the Convention (e.g. a request for criminal record checks). This can lead to delay.

The ICACU notes that there are differences between Contracting States as to what information can be shared under the 1996 Hague Convention (e.g. seeking copy reports from child protection proceedings in another State might be classed by some States as a request under the Hague Evidence Convention whereas other Contracting States will assist). Assistance and level of co-operation will vary from State to State.

**Services available**

19. If your State answered the 2016 Questionnaire, please indicate whether since then there have been any changes in relation to the services provided by your Central Authority:

- No. Please proceed to question No 22
- Yes. Please continue answering the following questions

20. 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.

Matter	Service(s) provided
a) A request to organise or secure effective exercise of <b>rights of access</b> in another Contracting Party (requested State) <sup>4</sup>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 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 <input type="checkbox"/> 7. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 10. Provision of regular updates on the progress of the application <input type="checkbox"/> 11. Other, please specify: <a href="#">Please insert text here</a>
b) A request to secure the return to your State of a child	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention

<sup>4</sup> 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).

<p>subject to <b>international abduction</b> where the 1980 Convention is <u>not</u> applicable</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained</li> <li><input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child</li> <li><input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue</li> <li><input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services</li> <li><input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 14. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 15. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>c) A request to secure the return to your State of a <b>runaway child</b> (see <b>Art. 31(c)</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child</li> <li><input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 10. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 11. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 12. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 13. Other, please specify: <a href="#">Please insert text here</a></li> </ul>
<p>d) A request for a <b>report on the situation of a child</b> habitually resident in another Contracting Party (e.g., a child returned as a result of child abduction proceedings or a</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> </ul>

<p>child who has moved as a result of a relocation) (see <b>Art. 32(a)</b>)</p>	<p><input type="checkbox"/> 6. Other, please specify: Please insert text here</p>
<p>e) A request that the competent authorities of another Contracting Party decide on the <b>recognition or non-recognition</b> of a measure taken in your State (see <b>Art. 24</b>)</p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input type="checkbox"/> 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  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 6. Assistance in obtaining private legal counsel  <input type="checkbox"/> 7. Regular updates on the progress of the request  <input type="checkbox"/> 8. Other, please specify: Please insert text here</p>
<p>f) A request that the competent authorities of another State Party <b>declare enforceable or register for the purpose of enforcement</b> measures taken in your State (see <b>Art. 26</b>)</p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input type="checkbox"/> 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  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 6. Assistance in obtaining private legal counsel  <input type="checkbox"/> 7. Regular updates on the progress of the request  <input type="checkbox"/> 8. Other, please specify: Please insert text here</p>

21. 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 were to arise.

Matter	Service(s) provided
<p>a) A request to organise or secure effective exercise <b>of rights of access</b> in another Contracting Party (requested State)<sup>5</sup></p>	<p><input type="checkbox"/> 1. None  <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention  <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State  <input type="checkbox"/> 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  <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State  <input type="checkbox"/> 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</p>

<sup>5</sup> 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).

	<ul style="list-style-type: none"> <li><input type="checkbox"/> 7. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State</li> <li><input type="checkbox"/> 9. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 10. Provision of regular updates on the progress of the application</li> <li><input type="checkbox"/> 11. Other, please specify: Please insert text here</li> </ul>
<p>b) A request to secure the return to your State of a child subject to <b>international abduction</b> where the 1980 Convention is <u>not</u> applicable</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained</li> <li><input type="checkbox"/> 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child</li> <li><input type="checkbox"/> 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue</li> <li><input type="checkbox"/> 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 10. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 12. Assistance in obtaining private legal counsel or mediation services</li> <li><input type="checkbox"/> 13. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input type="checkbox"/> 14. Regular updates on the progress of the application</li> <li><input type="checkbox"/> 15. Other, please specify: Please insert text here</li> </ul>
<p>c) A request to secure the return to your State of a <b>runaway child</b> (see <b>Art. 31(c)</b>)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. None</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention</li> <li><input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 6. Assistance in discovering the whereabouts of a runaway child</li> <li><input type="checkbox"/> 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child</li> <li><input type="checkbox"/> 8. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child</li> <li><input type="checkbox"/> 10. Assistance in obtaining private legal counsel</li> <li><input type="checkbox"/> 11. Referral to other governmental and / or non-governmental organisations for assistance</li> </ul>

	<input type="checkbox"/> 12. Regular updates on the progress of the application <input type="checkbox"/> 13. Other, please specify: <a href="#">Please insert text here</a>
<p>d) A request for a <b>report on the situation of a child</b> habitually resident in another Contracting 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 <b>Art. 32(a)</b>)</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Other, please specify: <a href="#">Please insert text here</a>
<p>e) A request that the competent authorities of another Contracting Party decide on the <b>recognition or non-recognition</b> of a measure taken in your State (see <b>Art. 24</b>)</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: <a href="#">Please insert text here</a>
<p>f) A request that the competent authorities of another Contracting Party <b>declare enforceable or register for the purpose of enforcement</b> measures taken in your State (see <b>Art. 26</b>)</p>	<input type="checkbox"/> 1. None <input type="checkbox"/> 2. Assistance in obtaining information on the operation of the 1996 Convention <input type="checkbox"/> 3. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 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 <input type="checkbox"/> 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 6. Assistance in obtaining private legal counsel <input type="checkbox"/> 7. Regular updates on the progress of the request <input type="checkbox"/> 8. Other, please specify: <a href="#">Please insert text here</a>

**Mediation, conciliation or similar methods (Art. 31(b))**

22. 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:

Judiciary

The Family Procedure Rules 2010, Part 3, contains provisions dealing with non-court dispute resolution. These include a duty on the court "to encourage and facilitate the use of non-court dispute resolution": rule 3.2.

Reunite runs a mediation scheme in appropriate international parental child abduction cases in the Family Division of the High Court.

ICACU

If the matter is in the family court under the 1996 Hague Convention, whether the parties could mediate is usually considered as part of private law proceedings. The ICACU has no direct involvement with mediation.

### Placement and provision of care abroad (Art. 33)

23. Have authorities in your State experienced any challenges, or have questions arisen, in relation to:

- a)  the **scope of application of Article 33** (e.g., in case of placement with relatives, migrant children)

Please provide further details, if possible:

Judiciary

Following the previous Special Commission we have adopted the approach that all placements, save for a placement with a parent, are potentially within the scope of Article 33, unless we are informed otherwise by the relevant authority in the other State.

ICACU

Where English local authorities (competent authorities) are seeking information with a view to potentially placing a child overseas, they are encouraged to ask when they make their initial request for co-operation whether the placement (if positively assessed) is in scope of Article 33 and what the process is (to obtain consent) if the Family Court decides that the placement is in the best interests of the child. The ICACU does/will from time to time remind its competent authorities that it is a matter for the requested state to advise on whether consent to place the child in their jurisdiction is needed/has been given and that depends on the view taken by the requested state of the nature of the proposed placement, not the view taken by the requesting state.

- b)  **time frames** of consultations under Article 33

Please provide further details, if possible:

ICACU

Local authorities are encouraged to make requests for consent as soon as practicable in view of 26 week statutory timeframe for care proceedings here in England (and Wales). If an Article 33 request is received by ICACU, it is transmitted to the relevant local authority to make a decision on consent but the ICACU cannot require the local authority to respond within a specified time.

- c)  the availability of **equivalent measures** of protection in the other Contracting Party or differences in the applicable domestic legislation

Please provide further details, if possible:

Judiciary

This can arise. For example, a Special Guardianship Order under section 14A of the Children Act 1989, which gives parental responsibility to an adult other than a parent, sometimes has no direct equivalent in other jurisdictions.

- d)  **financial costs** involved in the placement / provision of care abroad

Please provide further details, if possible:

Please insert text here

- e)  other **practical issues** arising from the placement / provision of care abroad (e.g., documentation, immigration matters)

Please provide further details, if possible:

Judiciary

Resolving immigration issues can cause difficulties. As part of judicial training, judges are requested to address all issues, including immigration, as early as possible in the proceedings.

ICACU

The ICACU is aware that immigration issues and issues about the provision of travel documents may arise but is unable to assist with resolving such issues. In such instances local authorities are referred to the relevant consular authorities for assistance. The local authority may also seek their own legal advice about resolution of such issues.

- f)  other issues relating to Article 33.

Please specify:

Judiciary

We have experience of a small number of cases in which courts and other authorities have not complied with the requirements of Art 33 in respect of outgoing placements. This is being addressed as a ongoing judicial training issue.

24. Have **judicial or administrative procedures, guidelines, or protocols** been adopted in your State to deal with the placement procedure under Article 33?

- No  
 Yes

Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:

Judiciary

The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010, regulation 13 requires a Local Authority to provide a report as required by Article 33.

<https://www.legislation.gov.uk/uksi/2010/1898/regulation/13/made>

The Family Procedure Rules 2010 deal with incoming requests in rule 12.69 and outgoing requests in rule 12.70.

[https://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_12](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_12)

ICACU

In 2012 the Department for Education (England) issued non-statutory advice to local authorities in England: 'Cross-border child protection cases: the 1996 Hague Convention Departmental advice for local authorities, social workers, service managers and children's services' lawyers The advice is available in English at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/280834/The\\_1996\\_Hague\\_Convention.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/280834/The_1996_Hague_Convention.pdf)

It includes advice for local authorities about handling Article 33 requests.

The Family Procedure Rules 2010, rules 12.69 and 12.70 make provision in respect of Article 33 requests. They are available in English here:

[https://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_12#IDAQZV1](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_12#IDAQZV1)

25. After the placement of the child abroad to another Contracting Party, does your State seek **follow up information on the situation** of that child?

- No  
 Yes



Please describe:  
Please insert text here

### Reports (Arts 32, 33 and 34)

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

- No  
 Yes

Please describe:  
ICACU

From experience, the ICACU has found it useful for the requesting state to make it clear in its initial request that it may be seeking consent in the event of a favourable report being received (to avoid unnecessary delay). Further discussion and clarity around what constitutes 'consent' would be helpful (e.g. that a favourable report in itself does not provide a 'green light' for placement)

Art 32b can present difficulty because under English law, a child's property is held in trust. When the ICACU receives a request about a child's property the ICACU will suggest that the requesting authority seeks their own independent advice from a legal practitioner in England. Request numbers remain low.

The ICACU has found that the term 'Measures of protection' can have a fairly wide interpretation (e.g. incoming requests where a non-custodial parent appears to be trying to circumvent the traditional legal channels for gaining access to a child/ren in England by requesting welfare checks from our public authorities when it is not clear what the child protection concerns are and where the primary aim appears to be to re-establish contact with the child/ren (more common where there have perhaps been 1980 Hague return proceedings or earlier custody proceedings)).

The ICACU is sometimes challenged by incoming requests where unaccompanied asylum seeking children have escaped the country to which they have been relocated under the European relocation scheme and that country then seeks information/assistance in locating the child. More generally the ICACU is unable to assist without clear location identifiers as England does not have a recognised means of logging its residents (e.g. there is no population register).

Some of our competent authorities indicate that there are possible practical and resource difficulties in obtaining for the purpose of responding to an Article 43 request where the child's habitual residence is in the requesting state and the child is not present in their area.

27. 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):

Please insert text here

### Assistance from the authorities of another Contracting Party

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

- No  
 Yes

Please describe:  
 But see 17 above.

29. 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)::

Judiciary

Direct Judicial Communications have been used both to consider the operation of the 1996 Convention generally and to consider its operation in specific cases.

These have included: transfer of jurisdiction; the application of article 33; information about proceedings including the scope of proceedings, any orders which have been made and evidence from the proceedings; information about how to procure the recognition/enforcement of an order.

A recent example is between England and Greece which concerned a parental responsibility order made by a Greek court. The basis of jurisdiction was not clear because the children are habitually resident in England and Wales. The following information was requested:

(a) Whether the understanding of the English court that the court of first instance in Greece has exercised a concurrent interim jurisdiction in respect of the children based on urgency and had granted interim relief was correct.

(b) The current stage reached in proceedings before the court of first instance in Greece.

(c) Whether the matter has been listed for further hearing in Greece, and if so the date and purpose of that hearing.

(d) The anticipated timescale for the determination of the proceedings.

A response was received giving comprehensive answers to each of these questions.

## 8. General provisions

### Article 40 Certificates

30. How often have competent authorities in your State issued **Article 40 certificates** indicating the capacity in which a person having parental responsibility or entrusted with the protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

31. Has your State experienced any challenges, or have questions arisen, in relation to **requests under Article 40**?

- No  
 Yes

Please describe:

[Please insert text here](#)

### Issues in relation to the property of the child (Arts 55 and 60)

32. How often have competent authorities in your State dealt with **measures for the protection of the property of the child by using the framework of the Convention**?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

[Please insert text here](#)

## 9. Special topics

### International family relocation

33. Has your State adopted specific procedures for international family relocation?

- Yes

Please describe such procedures, if possible:

[Please insert text here](#)

- No

Please describe how the authorities deal with international family relocation cases, if possible:

Judiciary

As with all decisions with respect to the upbringing of a child, the child's welfare is the court's paramount consideration: section 1(1) Children Act 1989.

The court takes into account all relevant factors, in particular those set out in section 1(3) of the Children Act 1989.

34. Are you aware of any use being made of Article 24, which provides for advance recognition, in lieu of or in connection with international family relocation?

- No  
 Yes

Please explain:

[Please insert text here](#)

35. Are you aware of any use being made of other 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:  
It may be that use is being made of article 11.

### Children subject to international abduction

36. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention (e.g., Art. 50) in cases of child abduction where the 1980 Convention was not applicable (see Questions 20(b) and 21(b) above)?

- No  
 Yes  
Please describe:

Judiciary

See Re J, referred to in answer 10 above,

The relationship between the 1996 Convention and the English court's inherent jurisdiction was considered in Re I-L (children) (1996 Hague Child Protection Convention: inherent jurisdiction) [2019] EWCA Civ 1956. It was decided that, when the 1996 Convention is applicable, the court could not exercise its inherent jurisdiction unless that was permitted by the 1996 Convention and it was not in that case.

37. 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 (e.g., Art. 50) in addition to or instead of provisions of the 1980 Convention?

- No  
 Yes  
Please specify the provisions and explain:

Judiciary

The court has made use of the provisions of Article 11, as referred to above, when making a return order under the 1980 Convention.

The court considered the relationship between the 1980 Convention and the 1996 Convention in Uhd v McKay (Abduction: Publicity) [2019] EWHC 1239 (Fam). The court made a return order under the 1980 Convention but considered, at [75], that "the 1996 Convention provides an alternative source of relief for the father" through the enforcement of an order made by the Australian court.

In Re S (a child) (abduction: Hague Convention or BIIa) [2018] EWCA Civ 1226, whilst, at [39], acknowledging that it would be "unwise to be unduly prescriptive", it was considered, at [47], that "absent a good reason to the contrary, the better course is for the court to defer making a return order until an application under the 1980 Convention has been determined in the other Member State" (for the reasons given at [48]). This was in respect of BIIa but it might also be applied to a case under the 1996 Convention.

However, it may well be that the court in England and Wales has made a summary return order under the 1996 Convention for the return of children to England but, at present, we cannot provide a reported example

38. In cases of child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the cooperation 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:  
 Not known

39. In cases of 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?

- No  
 Yes  
 Please explain:  
 Judiciary

Yes, in many cases the court has included measures in a return order on the basis that they are within Article 11. As referred to above, these have included undertakings.

#### Unaccompanied and separated children<sup>6</sup> and emergency situations (Art. 6)

40. How often have competent authorities in your State dealt with **cases involving refugee children, internationally displaced children, or children whose habitual residence cannot be established** by using the framework of the 1996 Convention?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

If possible, please provide supplementary information:

Judiciary

We do not have statistics but there are many cases in which public law care proceedings are commenced by a Local Authority under the Children Act 1989 in respect of unaccompanied minors.

41. Where the **habitual residence of a child present in your State could not be established**, have authorities in your State used any of the cooperation provisions of the 1996 Convention in determining the child's place of habitual residence?

- No  
 Yes  
 Please specify:  
 Not known

42. Have competent authorities in your State had experience with providing assistance to **discover the whereabouts of children** that went missing due to disturbances occurring in their State of habitual residence by using the framework provided by the 1996 Convention?

- No

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<sup>6</sup> In relation to this section of the Questionnaire, see [Prel. Doc. No 7 of February 2020](#), "The application of the 1996 Child Protection Convention to unaccompanied and separated children".

- Yes  
Please specify:  
Not known

43. Have **procedures, guidelines, or protocols** been adopted in your State to deal with the protection of unaccompanied or separated children in the context of the 1996 Convention?

- No  
 Yes  
Please describe and also provide a link or attach any relevant documents, preferably translated into English or French:  
Not under the 1996 Hague Convention

44. In emergency situations, such as a humanitarian crisis, have authorities in your State experienced any challenges, or have questions arisen, in regard to the **exchange of information** among authorities of the Contracting Parties, in particular taking into account Articles 36 and 37 of the 1996 Convention?

Please insert text here

45. Are you aware of whether **Preliminary Document No 7 of February 2020, “The application of the 1996 Child Protection Convention to unaccompanied and separated children”**, has been brought to the attention of the competent authorities in your State?

- No  
 Yes  
Please specify:  
Please insert text here

### International access / contact cases involving children

46. Should your State also be a Contracting Party to the 1980 Convention, 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?<sup>7</sup>

- No  
 Yes  
Please explain:  
ICACU

Generally access is progressed under Article 21 of the 1980 Hague Convention, one reason being that legal aid is available for such cases. Once an Article 21 case is referred to a solicitor, the solicitor will take instructions from the applicant to progress the case and the ICACU would not necessarily be sighted on all steps in progression of the case.

### Practical Handbook

47. Do you have any observations or comments to share concerning the **Practical Handbook** on the Operation of the 1996 Child Protection Convention?

- No  
 Yes

<sup>7</sup> The Explanatory Report (Lagarde) on the 1996 Convention notes that cooperation under Art. 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 Art. 21 of the 1980 Convention. Explanatory Report, para. 146 (1997).

Please specify:

Judiciary

It is an excellent and invaluable guide to the operation of the 1996 Convention.

ICACU

We consider this to be a useful resource tool especially for any state parties that have recently acceded to the Convention but consider that some of the illustrative examples are rather removed from the reality of practical operation of the Convention. The majority of the ICACU's case work under the Convention arises out of child protection proceedings or concerns rather than out of private law proceedings between parents..

### Agenda items for the next SC meeting

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

Judiciary

1. The relevant date for determining whether the court has jurisdiction. Is it the date when the court is seised or the date when the court is making a substantive order? What happens when the child's habitual residence changes between those dates? How does this fit with the lis pendens provisions under Article 13 which refer to "at the time of the commencement of the proceedings"?

2. The application of Article 11 and its scope. Does it apply to undertakings? What measures are and are not within its scope?

3. The relationship between the 1980 Convention and the 1996 Convention. Is it better for the issue of return to be determined under the 1980 Convention, when both Conventions apply, or is such deference not appropriate? Does it depend on the particular case including, for example, the ability of the left-behind parent to enforce an order in the other State?

4. The issue of timeliness/expedition in dealing with requests under Articles 8 and 9 and other issues relevant to their operation including whether the child moves if a transfer is accepted and the provision of information/evidence.

5. The issue of timeliness/expedition generally.

6. The effect of delay on the enforcement of an order, in particular when a substantial period of time has elapsed between the making of the order and the application for enforcement in the State where the child has become habitually resident (and which, therefore, has substantive jurisdiction).

7. How to make full use of the International Hague Network of Judges, through meetings, direct judicial communications and otherwise, to support the effective operation of the 1996 Hague Convention in general and for the determination of specific cases.

ICACU

1) How other countries interpret Article 30

2) Any feedback on the ICACU co-operation request form and its usefulness from the perspective of the requested State

3) A discussion on the interplay between the co-operation chapters of Hague 1996 and Article 7 of the 1980 Hague Convention (during abduction/access proceedings) might be fruitful - in particular, when or if it would be more appropriate to use Hague 1996 instead of Article 7 1980 Hague? The ICACU has concerns about seeking further information/protective measures under the 1996 Hague - especially if this is ahead of a 1980 application - as this might give the taking parent advance notice and lead to further flight.





## PART II – FOR NON-CONTRACTING PARTIES

49. Is your State currently considering **signing and ratifying or acceding to the 1996 Child Protection Convention**?

- Yes  
If possible, please provide further information:  
[Please insert text here](#)
- No  
If possible, please provide further information:  
[Please insert text here](#)

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

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

51. Are there any **particular issues** that your State would like the SC meeting to discuss in relation to the 1996 Child Protection Convention?

- No
- Yes  
Please specify and list in order of priority:  
[Please insert text here](#)

52. Do you have any observations or comments to share concerning the **Practical Handbook** on the Operation of the 1996 Child Protection Convention?

- No
- Yes  
Please specify:  
[Please insert text here](#)