

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF  
THE 1980 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 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.

<b>Name of State or territorial unit:</b> <sup>1</sup>	the Netherlands
<i>For follow-up purposes</i>	
Name of contact person:	Jan Vroomans
Name of Authority / Office:	Central Authority International Children's Issues
Telephone number:	+31 (0)70 3706252
E-mail address:	kinderontvoering@minvenj.nl

**PART I: RECENT DEVELOPMENTS<sup>2</sup>**

**1. Recent developments in your State**

1.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No  
 Yes, please specify:

With the Act of November 10, 2011 the following Acts were amended:

\* the Act of May 2, 1990 implementing the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children concluded on 20 May 1980;

\* the Act of May 2, 1990 implementing the Convention on the Civil Aspects of International Child Abduction concluded in The Hague on 25 October 1980, and implementing general provisions regarding applications for assistance in the return of abducted children across the Dutch border and its execution (Bulletin of Acts and Decrees 202).

\* With this amendment general provisions were implemented regarding applications for assistance in the return of abducted children across the Dutch border and its execution.

the Implementation Act international child protection was amended with regard to:

- the abolishment of competence of the Central Authority to act as legal representative in legal proceedings relating to international child abduction and child protection, as well as, in proceedings relating to the return of abducted children;
- the concentration of the administration of justice;
- the introduction of the court's authority to suspend the operation of decisions under appeal;
- the extension of the possibilities to appeal to the Supreme Court in individual cases.

For development at European level, I refer to the joint reaction of the European Union to the present questionnaire (letter dated May 3, 2017, reference nr. 8761/17).

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

<sup>2</sup> This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and 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* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities<sup>3</sup> in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

Since the Special Commission in 2011/2012 some important court decisions have been issued. A number of these decisions will be discussed below.

- District Court of The Hague, 11 september 2014 (ECLI:NL:RBDHA:2014:11580); ground for refusal as referred to in article 12 of the 1980 Hague Convention on International Child Abduction (HCCA).

Application for the return to Germany was denied as the child had settled in the new environment.

For the one year term is decisive the date the return application is filed with the Court, and not, as the mother stated, on the date a request is made to the German Central Authority. The Court refers to the ratio behind the one year term, which is to find a balance between a reasonable period for tracking down the minor and the best interest of the child connected to its settlement in a new environment.

The minor (aged six) had been in the Netherlands for more than two years, had attended school here since she was four years old, spoke Dutch and has social contacts with her fellow classmates, the boy next door and her cousins. The minor had no social attachment to Germany any more, apart from her mother. At the time of her retention, the minor was too young to develop social relations on her own, and so these were not developed, since contact with her mother always took place in the Netherlands and the minor had not or not adequately mastered the German language. The Court found that the child had settled in the Netherlands.

- District Court of The Hague, 5 February 2015 (ECLI:NL:RBDHA:2015:1628); ground for refusal as referred to in article 13(1)(b) HCCA.

Application for the return of a minor to Poland filed by the father. The minor was staying with his mother, his elder half-brother and stepfather in the Netherlands. The half-brother had been diagnosed with an autistic disorder, for which he was being treated and for which the whole family was given extra care and counselling. The minor was very much attached to his mother and half-brother. It was not possible for the half-brother to return to Poland due to his disorder. Hence, it was not possible for the mother to return to Poland either. The minor's return to Poland would mean separation from his mother and half-brother. The Court found that that would place the child in an intolerable situation as referred to in article 13(1)(b) HCCA. Pursuant to article 11(4) of the Brussels II (bis) Regulation, the return of a child may not be refused on the basis of article 13(1)(b) HCCA if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. Such adequate arrangements were not possible in this case since the intolerable situation would be the result of breaking up the family system, as it was not possible for the other family members to join the minor and return/go to Poland. Thus, no adequate arrangements could be taken in Poland to avoid that intolerable situation. Therefore, the return application was denied.

- District Court of The Hague, 27 January 2015 (ECLI:NL:RBDHA:2015:1822); no ground for refusal, provisional custody order pursuant to article 13(4) Dutch International Child Abduction Implementation Act.

Application for the return of a minor to Bulgaria filed by the father. The minor, who was eight years old, was staying with his mother in the Netherlands. Taking into account the mother's defence and the minor's statements during the child interview, the Court requested the Child Care and Protection Agency to carry out an investigation (into the minor's degree of maternity, serious risk of physical or psychological harm/intolerable situation and the presence of adequate arrangements).

The Court found that the minor had been wrongfully retained in the Netherlands. As none of the grounds for refusal put forward by the mother were established (acquiescence,

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<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 1980 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

intolerable situation, minor's objection), the Court ordered the minor's return.

Since the Court was of the opinion that there was a risk of retention, the father's application for provisional custody based on article 13(4) of the Dutch International Child Abduction Implementation Act was granted. As it was not desirable for the minor to be put into care during his stay in the Netherlands (as a result of the provisional custody order) all authority in connection with the minor's person and property, with the exception of the minor's authority to leave his mother's place of residence, was transferred to the West Haaglanden Child Protection Foundation.

The Court was of the opinion, as was the Child Care and Protection Agency, that both during and after the child's return professional care should be given in order to eliminate any threats to the minor's development. However, upon the minor's return to Bulgaria the provisional custody order based on article 13(4) of the Dutch International Child Abduction Implementation Act would no longer be operative. Consequently, this provisional custody measure could not adequately guarantee the continuation of care.

The Court found that there were grounds for issuing a supervision order as referred to in article 255(1) of Book I of the Dutch Civil Code. It was expected that, after completing the counselling programme, the parents would be able to care and raise the minor by themselves again, hence all the other conditions for issuing a supervision order were also satisfied. The supervision order was issued for the duration of one year. The Court assumed that the Child Care and Protection Agency would do its utmost to transfer this child protection measure, via the Central Authority, to the competent Bulgarian authorities.

- Decision on Appeal, 18 March 2015 (ECLI:NL:GHDHA:2015:586);  
there is a ground for refusal as referred to in article 13(1)(b) HCCA.

The decision of the District Court of The Hague, mentioned above, was quashed and the father's return application was denied. The Court of Appeal followed the Child Care and Protection Agency's opinion that the minor's return to Bulgaria would amount to an intolerable situation as referred to in article 13(1)(b) HCCA. The Court of Appeal concluded that it had not been established that adequate arrangements were made to secure the protection of the child after his return, as provided in article 11(4) of the Brussels II (bis) Regulation.

- District Court of The Hague, 4 and 11 March 2015; habitual residence; no violation of article 8 of the European Convention on Human Rights (ECHR) and article 3 of the Convention on the Rights of the Child.

The parties as well as the minors were born and raised in the Netherlands. Subsequently, they emigrated to Portugal in September 2014. The mother returned to the Netherlands with the minors on 19 December 2014. The mother argued that there was no unlawful removal since the minor's habitual residence at the time of their departure from Portugal, was still the Netherlands (because they were not registered in the Portuguese Municipal Record's Database and had not settled in Portugal).

Taking into consideration all the circumstance of the case, the District Court of The Hague was of the opinion that the parties had terminated their activities in the Netherlands and that they had taken steps to permanently establish the centre of their interests in Portugal. Therefore, despite the relatively short stay in Portugal, the minor's habitual residence when they were removed from Portugal to the Netherlands was in Portugal and, consequently, they were wrongfully retained in the Netherlands. The District Court found that none of the grounds for refusal that the mother had argued (intolerable situation, violation of articles 8 ECHR and 3 CRC) applied.

A mirror agreement was concluded during mediation. This agreement was, after an interim order in which the return of the minors was ordered, incorporated into the final court decision of 11 March 2015.

- Decision on Appeal, 15 April 2015 (ECLI:NL:2015:917);

The afore mentioned decision of the District Court was upheld, although a different date was set for the return.

- District Court of The Hague, 15 June 2015 (ECLU:NL:RBDHA:2016:6848); Supervision Order; the parents, in their battle in relation to the habitual residence of the minors, had taken such entrenched positions that communication between them proved impossible. As a result, the minors had had virtually no contact with their father for an extensive period of time. A supervision order was necessary in order to normalise the

parent's relationship and to guarantee contact between the minors and both of their parents, both during the time they remained in the Netherlands and when they returned to France. It was also thought important that a certified institution assist the minor's return to France, in order for it to go well, with a possible transfer of the child protection measure to a French child protection authority.

- District Court of The Hague, 16 June 2016 (ECLI:NL:RBDHA:2016:6960); 'outgoing' case

Application for the return of a minor from Syria to the Netherlands. Syria is not a party to the HCCA. Therefore, it was not possible to file a return application based on the HCCA in Syria. Neither was it established that the Syrian legal system - also in view of the war in Syria - provided for a fast judicial procedure similar to that of the Convention. The interest of both the father and the minor in getting a decision in the short term on his return application was given, in light of the information gathered from the file and provided in the hearing. The Court found that the Convention did not preclude the Dutch Court from hearing the return application. It based its jurisdiction on article 3 of the Dutch Code of Civil Procedure, since neither the Brussels II (bis) Regulation nor the 1996 Hague Child Protection Convention (HCPC) applied. The Court issued a return order, since none of the grounds for refusal applied.

- District Court of The Hague, 25 July 2014 (ECLI:NL:RBDHA:2014:9327); settlement agreement.

After the pre-trial review the parties reached a settlement on the child's habitual place of residence and contact arrangements by way of cross-border mediation. The arrangements between the parties were set out in a settlement agreement which, at the parties' request, was incorporated into the court decision. The return application was withdrawn by the father.

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

In June 2013 a Cooperation protocol regarding mandatory enforcement of return orders in international abduction cases was established. When the Court orders the return of the child and the taking parent does not cooperate voluntarily, the lawyer of the left behind parent can contact the Public Prosecutor. The Public Prosecutor will then coordinate the mandatory enforcement of the return order with the assistance of the police and the Child Care and Protection Agency.

## 2. **Issues of compliance**

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

No

Yes, please specify:

multiple appeals, no assistance in access cases (art. 21), problems with enforcement of return orders.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

No

Yes, please specify:

denial of assistance in access cases (art. 21).

## PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

### 3. **The role and functions of Central Authorities designated under the 1980 Convention**<sup>4</sup>

*In general*

<sup>4</sup> See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No  
 Yes, please specify:

The Netherlands Central Authority experiences problems in the communication with several Central Authorities of States in South America as well as with the Central Authorities of Spain and Belarus. This concerns mainly a lack of information about the state of affairs of specific cases and/or a lack of prompt responses to raised questions...

3.2 Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

- No  
 Yes, please specify:

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

- No  
 Yes, please specify:

In spite of what is mentioned in article 23, some States require legalization, sworn translations and sworn affidavits of documents regarding the procedure for the return of the child.

#### *Legal aid and representation*

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)-(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with?

- No  
 Yes, please specify:

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?<sup>5</sup>

- No  
 Yes, please specify:

#### *Locating the child*

3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

- No  
 Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

Localization of the child, as meant in article 7 under a. has in some States a low priority and sometimes leads to the exceeding of the one year term within which a court

<sup>5</sup> See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of 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* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the "[Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#)" (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Special Commission meetings").

procedure can be started for the return of the child.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

No

Yes, please share any good practice on this matter:

As a requesting State The Netherlands has encountered challenges with States where localization takes such an amount of time that it sometimes leads to exceeding the one year term.

The Netherlands Central Authority has very good experiences in its cooperation within the Netherlands with the Public prosecutors office and the police in promptly discovering the whereabouts of children due to its good contacts and short lines with both partners.

#### *Information exchange, training and networking of Central Authorities*

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?<sup>6</sup>

No

Yes, please specify:

The Dutch Central Authority regularly receives delegations from Central Authorities of others states with whom experiences are shared and exchanged.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

LEPCA and the Malta Conference.

#### *Statistics<sup>7</sup>*

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

#### *Prompt handling of cases*

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

No

Yes, please specify:

In the Netherlands a system is in use where the handling of the application for the return of a child by the Central Authority will take no longer than six weeks. Subsequently the procedure before Court and the procedure before the Supreme Court will take no longer than six weeks either.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

Incomplete application form or a lack of necessary documents

## **4. Court proceedings & promptness**

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (i.e., concentration of jurisdiction)?<sup>8</sup>

<sup>6</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

<sup>7</sup> See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).

- Yes  
 No, please indicate if such arrangements are being contemplated:

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No  
 Yes, please explain:

Both the procedure at the Court of First Instance and the Court of Appeal will take no longer than six weeks.

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No, please explain:  
  
 Yes, please explain:

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

- No, please explain:  
  
 Yes, please explain:

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

- Yes  
 No, please explain:

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

- Yes  
 No, please explain:

4.8 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

## 5. **Ensuring the safe return of children**<sup>9</sup>

*Methods for ensuring the safe return of children*<sup>10</sup>

<sup>8</sup> See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

<sup>9</sup> See **Art. 7(2) h)** of the 1980 Convention.

<sup>10</sup> Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings<sup>11</sup> regarding the safe return of children are implemented?

As a start, the taking parent is urged to cooperate in the voluntary return of the child, if needed with the help of cross border mediation. During the preliminary hearing in the Court of first instance mediation is also offered.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

Use the 1996 Convention and/or the Brussel IIa Regulation to request the Central Authority of the requesting State to alert the appropriate bodies for protection of the child.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

Use the 1996 Convention and/or the Brussels IIa Regulation to share these concerns with the Central Authority in the requested State and request for protective measures for the child.

*Use of the 1996 Convention to ensure a safe return*

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

- No  
 Yes, please explain:

*Protection of primary carer*

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please explain and provide case examples where possible.

In case the taking parents will not be in the position to return with the child to the requesting State, there is the possibility for the left behind parent to come to the Netherlands to pick up the child.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

No

*Post-return information*

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a

<sup>11</sup> See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.



recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

No, the Netherlands' authorities do not attempt to monitor. After the return of the child, the Netherlands' authorities are no longer competent, so it is considered not right to monitor in those cases.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No  
 Yes, please explain:

## 6. **Voluntary agreements and mediation**

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

When an application for the return of a child is received, the taking parent receives a letter from the Central Authority in which he/she is urged to voluntarily cooperate in the return of the child. For this purpose the possibility of cross border mediation is offered.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"<sup>12</sup> for the purpose of implementing the 1980 Convention in your State? Please explain:

The measure, mentioned under 6.1, was already in place before the Guide of Good Practice on Mediation was established.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?<sup>13</sup>

- No, please explain:

The Netherlands has already established such contact point, which is the Center for International Child Abduction, P.O.Box 2006, 1200 CA Hilversum, the Netherlands.

- Yes, please explain:

## 7. **Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?<sup>14</sup>

- No  
 Yes, please describe:

In cooperation with the International Child Abduction Centre and the Royal Military Police such travel form has been developed and is in use for some years

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

<sup>12</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

<sup>13</sup> As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

<sup>14</sup> See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

- Yes  
 No, please explain:

## **8. The Guide to Good Practice under the 1980 Convention**

8.1 In what ways have you used the Parts of the Guide to Good Practice<sup>15</sup> to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

- a. Part I on Central Authority Practice. Please explain:

Part I of the Guide to Good Practice was gratefully used in 2011 when orientating on the new role of the Central Authority. This was because representation of the left behind parent in Court by the Central Authority was abolished and transferred to the bar of lawyers.

- b. Part II on Implementing Measures. Please explain:

Part II served as source of inspiration with regard to the decision to concentrate jurisdiction in cases of international child abduction as well as international child protection in the Court in The Hague. Besides this the Court's authority was introduced to suspend the operation of decisions under appeal. Thirdly the recommendation was followed to limit the possibilities of appeal to only open appeal.

- c. Part III on Preventive Measures. Please explain:

Part III inspired the Netherlands Central Authority to support the Center for International Child Abduction to develop information for the purpose of preventing child abduction and to assist parents in their efforts to prevent child abduction.

Further the Center was provided with means to develop a system of cross border mediation. Thirdly cooperation between the Center, the Central Authority and the Royal Military Police resulted in the development of a form for consent for a parent to travel with a child.

- d. Part IV on Enforcement. Please explain:

With regard to Part IV of the Guide to Good Practice, legal instruments are in place to protect the child during the return proceedings. Secondly the Cooperation protocol regarding mandatory enforcement of the return order in international child abduction cases was developed.

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

By informing them of the existence of the Guide.

8.3 Do you have any other comments about any Part of the Guide to Good Practice?

No

## **9. Publicity and debate concerning the 1980 Convention**

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

- No  
 Yes, please indicate the outcome of this debate or discussion, if any:

There was positive publicity with regard to the establishment of the Mediation Bureau as well as to the instrument of the 'Pressure Cooker system, that was introduced in the Netherlands in 2012.

Further there is a Dutch TV-programme, called 'Ontvoerd' (in English: 'Abducted') in which during a few years, including 2017, attention was paid to individual cases of international child abduction. In a few of these cases the child was taken back to the Netherlands by the left behind parent with the help of the reporters of this programme.

<sup>15</sup> All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

By publishing documentation and annual reports about the functioning of the Convention in the Netherlands on the government website.

<b>PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION</b>
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**10. Transfrontier access / contact**<sup>16</sup>

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No  
 Yes, please explain:

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

not applicable

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;  
Sometimes no assistance is provided by the Central Authority of the other State.
- b. the effective exercise of rights of access; and  
The parent then has to go to Court immediately.
- c. the restriction or termination of access rights.  
Sometimes a very strict definition of legal father is given, leaving no room for access.

Please provide case examples where possible.

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"<sup>17</sup> to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

No

**11. International family relocation**<sup>18</sup>

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

<sup>16</sup> See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

<sup>17</sup> Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under "Child Abduction Section" then "Guides to Good Practice".

<sup>18</sup> See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

There have been no (significant) changes in legislation or case law. A new development is the availability of cross-border mediation to the parents in those cases.

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

### **12. Non-Convention cases and non-Convention States**

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

The Central Authority of the Netherlands refers in this respect to the joint response of the European Union to the present questionnaire.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

See the response to question 12.1

*The "Malta Process"*<sup>19</sup>

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?<sup>20</sup>

The Central Authority of the Netherlands refers in this respect to the response of the European Union to the present questionnaire.

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

- No  
 Yes, please explain:

See the response to question 12.2.a.

- c. What is your view as to the future of the "Malta Process"?

The Netherlands supports the Malta Process.

## **PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU**

### **13. Training and education**

<sup>19</sup> The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

<sup>20</sup> The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

Annual LEPCA meetings are attended, as well as annual lectures provided by the Center for International Child Abduction, meetings organized by Court and training sessions.

#### **14. The tools, services and support provided by the Permanent Bureau**

*In general*

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

- a. The Country Profile available under the Child Abduction Section.  
Very useful
- b. INCADAT (the international child abduction database, available at < www.incadat.com >).  
Very useful
- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;<sup>21</sup>  
Very helpful
- d. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);  
Very well accessible
- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);<sup>22</sup>  
Very useful
- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.<sup>23</sup> Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;  
Very important for acceding states to implement the convention in an proper way
- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);<sup>24</sup>  
Very important
- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;  
Very important
- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges

<sup>21</sup> Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

<sup>22</sup> Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

<sup>23</sup> Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

<sup>24</sup> Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

Very important

*Other*

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;  
Intervention by the Permanent Bureau when States do not comply with the Conventions.
- b. To assist States in meeting their Convention obligations; and  
Practical training and recommendations.
- c. To evaluate whether serious violations of Convention obligations have occurred?  
To establish a group of experts or to introduce monitoring reports every five years.

<b>PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS</b>
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**15. Views on priorities and recommendations for the Special Commission**

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

The provision of legal aid to parents, which differs from State to State;

The language in which a request for the return of a child or a request for access with a child is required in some States, in spite of the fact that English is an official Convention language;

Some States require legalization, sworn translations and sworn affidavits of documents regarding the procedure for the return of the child, in spite of what is mentioned in article 23 of the Convention;

Duration of the procedures: in some States it takes a long time before the receipt of an application for the return of a child is acknowledged and before a procedure at the Court is started, which is not in the interest of the child;

Enforcement: After a Court has ordered the return of the child, it takes a long time, if at all, before the child is actually returned to the State of its habitual residence;

The one year term: Localization of the child, as meant in article 7 under a. has in some States a low priority and sometimes leads to the exceeding of the one year term within which a court procedure can be started for the return of the child.

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

**16. Any other matters**

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.