

**Reply to the Questionnaire on the Practical Operation of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption****Name of the Country or Organization: INDIA**

<b>Question No.</b>	<b>Reply</b>
1.a	Our country is primarily a State of Origin.
1.b	Not applicable as our country is a party to the Convention on 6.6.2003.
1.c	No our country was not represented at the 2000 Special Commission.
2.a	Some of the 'Good Practices' of our country in inter-country adoption are: (i) mandatory provisions for making adequate efforts by the concerned agency/authority for the restoration of the child to the biological parents; (ii) escort of the child by the adoptive parents during the transfer to the Receiving Country; (iii) check & balance at various levels in the process of inter-country adoption for reasonable adoption costs/fees; (iv) mandatory provision for post adoption follow up; (v) no direct contact between the biological parents and prospective adoptive parents; & (vi) priority to in-country adoption by having in place institutional mechanism involving Voluntary Coordinating Agencies(VCAs).
2.b	We would like to suggest, 'financial transparency and control mechanism' as a topic for future chapters in the 'Guide to Good Practice'.
2.c	No. The Revised Guidelines of Govt. of India for Inter-country Adoption issued in 1995 are an outcome of a judicial pronouncement of the Highest Court in the Country and are in synchronization with the requirements of the Convention.
2.d	Not applicable.
3.a to 3.c	No.
4.a	Physical, nutritional, medical, psychological, special care for children with special needs, pre-adoptive foster care and education, etc. are different types of care available to a child in need of care and protection in our State.
4.b	The concerned Child Welfare Agency tries to find out suitable adoptive parents from those who are registered with it. In case it could not find a suitable parent from its own list within 45 days, it is supposed to seek the assistance of the Voluntary Coordinating Agency(VCA) which maintains a central list of eligible and suitable domestic adoptive parents for finding a family for the child. When the VCA does not find suitable parents for the child within 30 days out of the common list maintained by it, it gives its clearance for the placement of the child in inter-country adoption.
4.c	A child is adoptable in two ways. A relinquished child is considered as adoptable after 02 months from the date of surrender if the biological parents relinquish their rights over the child in favour of an agency out of its own volition through the execution of a Surrender Deed and do not reclaim the child during the same period. An abandoned child is considered as adoptable when he/she is declared legally free for adoption by a statutory body, i.e., Child Welfare Committee set up under the Juvenile Justice (Care & Protection of Children) Act,2000.

4.d	The consent of the biological parents is expressed in the Surrender Deed itself. The biological parents declare in such Deed that they are giving their consent freely and they are conscious of the implications of their relinquishment of the child. They also declare that their consents are not induced by payment or compensation of any kind. They authorize the agency to arrange for suitable rehabilitation measures including the child's placement in inter-country adoption. The concerned Institution (child welfare agency) gives its consent for the inter-country adoption for the child in the petition filed by it in the court as co-petitioner or on behalf of the adoptive parents. The child's wishes and opinion are given due consideration by the concerned agency and Court in such cases where they are able to form any opinion vis-à-vis their adoption.
4.e	The content of the 'Statement of Consent' is included in the format used for 'Relinquishment/Surrender Deed' executed by the surrendering biological parents/guardians.
4.f	No.
4.g to 4.i	Not applicable to our country being a State of Origin.
4.j	Post adoption services, such as, post adoption counseling to the visiting adoptive parents and their adoptees and for the follow up of the progress of the adoptees are available in our country.
5.a	The functions envisaged under article 17.c of the Convention is performed by the Central Adoption Resource Agency (CARA), the only Central Authority in the Country, in the form of granting No Objection Certificate to the children placed in inter-country adoption by its recognized child welfare agencies.
5.b	Ten (10) personnel are employed by our Central Authority to deal with inter-country adoption, out of which, seven (07) are having Masters Degree in Social Work while two (02) are having M.Phil Degree in International Law.
5.c	The continuity of experience staff is tried to be ensured through their permanent nature of job, except, the Secretary(CARA), who usually is a Senior Officer belonging to a Permanent Civil Service on deputation to the Central Authority as the Head of the Organisation for a period of 3 to 5 years.
5.d & 5.e	No.
6.1.a	The Central Authority (CARA) is empowered to grant accreditation/recognition to suitable child welfare agencies for processing inter-country adoption cases.
6.1.b	Seventy-four (74) agencies have been accredited as recognised Placement Agencies. The State/Province-wise list is enclosed as <u>annexure-I</u> .
6.1.c	The accreditation in our country is governed by the provisions made under Chapter-V of the 1995 'Revised Guidelines for Adoption of Indian Children' (hereinafter called 'the Guidelines'). Some of the important criteria for accreditation/recognition as provided under para 5.4 of these Guidelines are (please see annexure-II) that the accredited body must be either a Society registered under the Societies Registration Act (1860) or a Trust created under the Charitable Trust Act or an Organisation registered under appropriate law or an organization which has been working for the welfare for the children during last 5 years. Besides, it must have been duly licensed/recognised by the State/Provincial Government under Section 15.1 of the Orphanages or Charitable Homes (Supervision & Control) Act, 1960 or under Section 34.2 of the Juvenile Justice (Care & Protection) Act, 2000. It must be running on a non-commercial or non-profitable basis. It must have a duly constituted Executive Committee with the majority of the members being Indian Citizens. It must have

	an appropriate children home and adequate staff including social worker (professionally qualified and trained) to carry out the adoption work.
6.1.d	A social/child welfare agency in India, desirous for accreditation/recognition for inter-country adoption and fulfilling the above-mentioned criteria, applies to CARA through the concerned State Government. CARA, in turn, decides as to whether such agency should be granted accreditation or not only in the light of the criteria mentioned above but also other factors such as, the standing and reputation of the agency in the field of voluntary sector, child care/welfare and in-country adoption, the number of accredited agencies already working in the same State or District and the need for having another one, the natural flow of orphaned/abandoned children into its children home during last five years, the adequacy of professional staff including social workers, sound management, etc. The decision of CARA in this regard is final.
6.1.e	The relevant provisions of the Guidelines regarding accreditation criteria and procedure is enclosed as <u>annexure-II</u> as well as an electronic copy (in English version) is attached.
6.1.f	The accredited bodies are supervised through a system of Quarterly and Annual Reporting and review as well as through physical inspection by CARA/State Govts. on periodic basis.
6.1.g	The performance of the accredited body is assessed and evaluated annually and at the time of renewal as well on the basis of its performance in inter-country adoption and its adherence to the subsidiary principle (priority to in-country adoption), consent principle, financial rules and periodic reporting as laid down under the Convention as well as the Guidelines.
6.1.h - i	No.
6.1.j	Satisfactory performance in in-country adoption, regular submission of reports and returns, no instance of proved malpractice, etc. are the conditions prescribed under para 5.5 of the Guidelines for the renewal of accreditation/recognition.
6.1.k - l	No.
6.1.m, 6.2	Yes.
6.2.a	The process of authorization to the foreign accredited bodies to work for the inter-country adoption from India is governed by the provisions laid down under Chapter-VI of the Guidelines (please refer to <u>annexure-III</u> ). A foreign social/child welfare agency desirous of sponsoring applications of foreign adoptive parents for adopting Indian children applies to CARA for authorization/enlistment through respective Govt. Departments/Central Authorities and concerned Indian Diplomatic Missions. On the recommendation of the Indian Diplomatic Mission and of the Competent/Central Authority concerned (applicable to Hague Countries only), CARA examines the applications and considers the agency concerned for enlistment if it fulfills the criteria laid down under para 6.2 of the Guidelines as well as under article 10, 11 & 32 of the Convention.
6.2.b	The functioning of the foreign authorized bodies are supervised through a system of annual reporting and review during the renewal of their authorization/enlistment.
6.2.c	No.
6.3	No applicable.
6.4	We would like the following issues to be discussed on the Accreditation Day (17 <sup>th</sup> September 2005):



	As a matter of fact India is already a party to the 1961 Convention w.e.f. 26.10.2004. The Ministry of External Affairs is the Competent Authority for this Convention.
7.6	No, not yet. A DNA testing has significance for establishing the bonafide/authentication of the cases of (i) sibling, (ii) twins and any claim of unidentified persons as biological parents. Since, this is a sensitive matter with financial implications and question of accessibility of DNA centers, our country would like to have wider consultations with the accredited bodies (child care agencies), medical associations, State Govts. and legal community for having consensus on the question of morality, legality and practicability before deciding its application.
8.1.a - b, 8.2	No.
9.1	Not yet.
9.2	No difficulties have arisen yet.
9.3 & 9.4	No.
10.1	The costs and expenses charged or fees paid in our country in respect of inter-country adoption are governed as per the provisions laid down under para 4.38.i to iv. The concerned child care agency (accredited body) in India is entitled to charge not more than Rs.100/- per day as maintenance costs from the date of selection of the child by the adoptive parents until the child is taken into physical custody by the adoptive parents. The agency is also allowed to reimburse an amount not exceeding Rs.10,000/- to be fixed by the concerned Indian court towards the costs incurred in preparing and filing the application and processing it in the court including lawyer fees, other legal expenses, administrative expenses, preparation of child study report, medical reports, passport, visa and conveyance expenses. The adoptive parents are also required to bear the cost of the travel of the child and he/her escort during the transfer of the child to the receiving countries as well as the cost involved in the repatriation of the child to India in the case of disruption and no alternative placement their. <i>Yes, this information is freely available and accessible to prospective adoptive parents and competent authorities in the receiving country through the web-site of CARA - <a href="http://www.adoptionindia.nic.in">www.adoptionindia.nic.in</a> - Revised Guidelines)</i>
10.2 to 10.6	No.
10.7	No, the inter-country adoption fees are not used either to support the national child care and protection system or to fund the Central/Regional/Public Authorities or Accredited Bodies.
10.8	The reasonableness of the costs should be linked to the requirements to serve the 'Best Interest' of the child including adoption procedure & his safe and secured passage to the country of destination.
10.9	No.
11.1	The Guidelines has provisions under para 4.35 and 4.38.v for giving effect to the principle that no one shall derive 'improper financial or other gain' from an activity related to an inter-country adoption. The adoption agencies in India shall pursue only non-profit objectives. Under no circumstances should they derive improper financial gain from any activity related to inter-country or in-country adoption (para 4.35). The prospective adoptive parents are not allowed to directly negotiate with the agency (having the care and custody of the child) in order to eliminate the possibility of a bargaining on the part of the later

	regarding the fees and expenses involved in their proposed inter-country adoption. The adoption cost/fees/charges are allowed to be routed only through the concerned sponsoring agency in the receiving country. Under para 4.38.v, it is provided that 'if it comes to CARA's notice that any Recognized Indian Agency charges more fees than the prescribed fees or tries to exploit financially the foreign Enlisted Agency, CARA may after may giving an opportunity to such an agency to explain its point of view, suspend or revoke its recognition. Similarly, if any Enlisted Foreign Agency induces an Indian Recognized Agency by giving or offering more money than the prescribed fees for processing a case of inter-country adoption of an Indian child, CARA may, after giving an opportunity to such an agency to explain its point of view, de-enlist the Foreign Agency.
11.2	The question of enforcing penalties to discourage improper financial gain has not arisen yet as no such case has been proved or established so far.
11.3	No.
11.4	The agencies are being reminded from time to time through Circulars to remain confined to the prescribed adoption costs/fees and to remain away from any direct contact/negotiation with the adoptive parents. Periodic inspections of the agencies by CARA/State Govts. also work out as a preventive measure in this regard.
11.5	Solicitation/inducement to consent is prohibited both by the Supreme Court of India as well as under the Guidelines. The onus lies with the concerned Indian Placement Agency to disprove that the consent has neither been solicited nor being induced from the biological parents either through compulsion or enticement in case of a doubt/dispute. This remains as a deterrence to them not to be indulged in such unethical practice.
11.6	No.
12	The Convention is understood to be covering the relative (inter-family) adoption. However, no definition of a relative has been provided. Nor is it that what is the extent or degree of relationship within which adoptions carried out can be termed as the relative adoptions. It would be useful if guidelines are drawn up in the Convention regarding these issues.
13	Top priority is given for placement of children with special needs.
14.1 - 14.2	No.
14.3	Yes, our country is studying at present the 1996 'Convention on Parental Obligations'
15	No.

16	<ul style="list-style-type: none"> <li>The additional safeguards applied to inter-country adoptions from our country over and above the ones set out in the Convention are as follows:               <ol style="list-style-type: none"> <li>The Guardianship Order is issued by an Indian Court with a view for the ultimate adoption of the child by the prospective adoptive parents as per the laws of their country.</li> <li>The child is allowed to be escorted by his/her adoptive parents only.</li> <li>The adoptive parents are supposed to obtain a final adoption decree in the country of their habitual residence within two years from the date of receipt of the child.</li> <li>The adoptive parents in the receiving countries are required to seek the extension of time from the concerned Indian court through their sponsoring agency &amp; concerned Indian Agency in case the adoption decree could not be obtained within two years from the date of arrival of the child.</li> <li>Any alternative placement arranged for the child in the Receiving Country in the case of his/her adoption disruption has to be made with due approval of the concerned Indian Agency &amp; CARA, at least, in the cases where the child has not been legally adopted nor has acquired citizenship of that country.</li> </ol> </li> <li>No bilateral agreements have been entered into by our country as on date either with a Contracting State or with a Non-contracting State.</li> </ul>
16(a)	The Convention safeguards envisaged under article 4, 5, 20, 21 & 32 are applied by our country to even Non-contracting States.
16(b)	No difficulties have arisen in the operation of the Convention with other Contracting States who have designated Central Authorities. <i>The problem lies with only those Contracting States who have no designated Central Authority as yet.</i>
17	The necessity has not arisen so far.
18	<ul style="list-style-type: none"> <li>The Adoption Convention was the main theme of discussion in the International Conference on Adoption organized by CARA in New Delhi from 8<sup>th</sup> - 10<sup>th</sup> December 2003. This Conference was attended by the representatives of Indian Placement Agencies, Provincial Governments, Enlisted Foreign Adoption Agencies working with India as well as the Central Authorities of Austria, Australia, New Zealand, Switzerland, Spain, Germany, Italy &amp; Norway. The Convention was also discussed for its implementation in the National Annual Meet on Adoption organized by CARA in New Delhi from 22-23 February 2005.</li> <li>We would like to suggest that the announcement of the meetings organized for and by the Central Authorities on the Adoption Convention should also be posted in the website of the Permanent Bureau.</li> </ul>
19	Yes.
20	<p>The topics which we consider as priority issues for the Special Commission in September 2005 are indicated below in the order of their degree of importance:</p> <ul style="list-style-type: none"> <li>Application of the 'Best Interest of the Child Principle' in the process of Inter-country Adoption : Cross-country Practices.</li> <li>How Adoptee's access to information about their origin or identity of his/her parents are being handled Cross-country Practices.</li> <li>Striking a balance between the right of the child to know the source and circumstances of his/her adoption as recognized under article 1.1 &amp; 30.2 of the 1993 Adoption Convention and article 8 of the UNCRC on the one</li> </ul>

	<p>hand and the Right to Confidentiality of his/her biological parents (who have been assured the confidentiality).</p> <ul style="list-style-type: none"> <li>• An attempt should be made for arriving a consensus, as far as possible, on a workable definition of the term 'habitual residence' as mentioned under article 2 of the Convention, keeping in view the safeguards and accountability required in the case of an adoption by a person who is a citizen of one country but living in another country (which is not a Contracting State).</li> <li>• Identifying the possible instances which may tantamount to 'improper financial or other gain' and strategies for their prevention as required under article 8 &amp; 32 of the Convention.</li> <li>• Arriving in a broad consensus as to what may constitute or what kind of fees/charges/payments could be treated as 'reasonable' and what are those which may be construed as 'unreasonable' ones.</li> <li>• Problems arising from the application of the Convention to relative adoptions.</li> <li>• Need for greater involvement of the Central Authorities of the Receiving Countries in the post-adoption follow up.</li> <li>• Working out on a Model Format for the Article 15 &amp; 16 Reports (Home Study Report and Medical Report of the parents and the Child Study Report respectively).</li> <li>• Framing Standard Clauses of Safeguards and Cooperation for their inclusion in Bilateral Agreements on Inter-country Adoption as envisaged under article 39.2 of the Convention.</li> </ul>
21	<p><b>Suggestion/Comments/Opinion on the Convention and its implementation:</b></p> <p>We have been implementing the Revised Guidelines for Adoption of Indian Children, 1995 even before the signing &amp; ratification of the Convention. These Guidelines are an outcome of a judicial pronouncement from the Highest Court of our country. Most of the procedures laid down thereunder are in synchronization with the requirements under the Convention.</p> <p>We are in the process in establishing direct contact and understanding with the Central Authorities in the Receiving Countries for facilitating inter-country adoptions and monitoring the financial transaction between the concerned accredited bodies of both the countries. At the home front, we are in the process of giving orientation about the Convention to the concerned adoption agencies, State Govt. officials, judicial officers and public authorities. However, we are having teething problem in dealing with relative adoptions vis-à-vis the Convention which is hoped to be sorted out through a clear-cut Guidelines on the scope, limitation and procedure for processing such cases. This would require effective consultation with the concerned State Governments and Central Ministries in the home front and Central Authorities abroad, besides the Permanent Bureau.</p>