

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION
DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT
INTERNATIONAL D'ENFANTS ET DE LA CONVENTION DE LA HAYE
DU 19 OCTOBRE 1996 CONCERNANT LA COMPÉTENCE, LA LOI APPLICABLE,
LA RECONNAISSANCE, L'EXÉCUTION ET LA COOPÉRATION EN MATIÈRE
DE RESPONSABILITÉ PARENTALE ET DE MESURES DE PROTECTION DES ENFANTS**

établi par le Bureau Permanent

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**QUESTIONNAIRE CONCERNING THE PRACTICAL 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**

drawn up by the Permanent Bureau

*Document préliminaire No 1 de novembre 2010 à l'intention de la
Commission spéciale de juin 2011 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

*Preliminary Document No 1 of November 2010 for the attention of the
Special Commission of June 2011 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

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INTRODUCTION TO THE QUESTIONNAIRE

Objectives of the Questionnaire

This Questionnaire is addressed in the first place to States Parties to the 1980 and / or 1996 Convention(s).¹ It has the following broad objectives:

- a. To seek information from States Parties as to any significant developments in law or in practice in their State regarding the practical operation² of the 1980 and / or 1996 Convention(s);
- b. To identify any current difficulties experienced by States Parties regarding the practical operation of the 1980 and / or 1996 Convention(s);
- c. To obtain the views and comments of States Parties on the services and supports provided by the Permanent Bureau of the Hague Conference on Private International Law regarding the 1980 and / or 1996 Convention(s);
- d. To obtain feedback on the use made of the Guide to Good Practice under the 1980 Convention and the impact of previous Special Commission recommendations;
- e. To obtain views and comments on related projects of the Hague Conference on Private International Law in the fields of international child abduction and international child protection; and
- f. To obtain views and comments on the priorities for the upcoming Special Commission meeting.

The Questionnaire will facilitate an efficient exchange of information on these matters between States Parties, as well as other invitees, prior to the Special Commission meeting.

Scope of the Questionnaire

This Questionnaire is intended to deal with only those topics not covered by the Country Profile for the 1980 Convention (currently in development and to be circulated for completion by States Parties in April 2011). The new Country Profile will provide States Parties with the opportunity to submit, in a user-friendly tick-box format, the basic information concerning the practical operation of the 1980 Convention in their State. States Parties should therefore be aware that, for the purposes of the Special Commission meeting, their answers to this Questionnaire will be read alongside their completed Country Profile.

States Parties should also be aware that this *general* Questionnaire will be followed, in due course, by a questionnaire dealing specifically with the issue of a protocol to the 1980 Convention. This Questionnaire is not therefore intended to deal directly with any questions surrounding the issue of a protocol to the 1980 Convention.

Whilst this Questionnaire is primarily addressed to States Parties to the 1980 and / or 1996 Convention(s), we would welcome from all other invitees to the Special Commission (*i.e.*, States which are not yet Party to either Convention, as well as certain intergovernmental organisations and international non-governmental organisations) any comments in respect of any items in the Questionnaire which are considered relevant.

¹ References in this document to the "1980 Convention" and the "1996 Convention" are to 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* respectively.

² As stated in Info. Doc. 1, where reference is made to the "practical operation" of the 1980 or 1996 Convention in documentation for this Sixth Meeting of the Special Commission, this is intended to refer to the *implementation and operation* of the relevant Convention.

We intend, except where expressly asked not to do so, to place all replies to the Questionnaire on the Hague Conference website (< www.hcch.net >). Please therefore clearly identify any responses which you do not want to be placed on the website.

We would request that replies be sent to the Permanent Bureau, if possible by e-mail, to secretariat@hcch.net no later than **18 February 2011**.

Any queries concerning this Questionnaire should be addressed to William Duncan, Deputy Secretary General (wd@hcch.nl) and / or Hannah Baker, Legal Officer (hb@hcch.nl).

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1980 AND 1996 CONVENTIONS**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 and / or the 1996 Convention(s), **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:³ Denmark

For follow-up purposes

Name of contact person: Cecilie Ambrosius Pedersen

Name of Authority / Office: Ministry of Justice, Department of Family Affairs

Telephone number: +45 33 92 33 02 / +45 33 92 29 20

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PART I: RECENT DEVELOPMENTS⁴

1. Recent developments in your State

- 1.1 Since the 2006 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of:
- a. International child abduction; and
 - b. International child protection?
- Where possible, please state the reason for the development in the legislation / rules.

By 1 October 2007 The Act on Parental Responsibility entered into force. The new law does not change the rules on child abduction, but has widened the possibilities for decision on access by e.g. allowing others than parents – under certain circumstances – to apply for access. Furthermore more parents will have joint custody.

The Danish Administration of Justice Act has been amended in compliance with the 1996 Convention, so that a case of parental responsibility in general only can be handled by Danish authorities, if the child is habitual resident in Denmark.

- 1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 and / or 1996 Convention(s) given since the 2006 Special Commission by the relevant authorities⁵ in your State.

No significant decisions.

- 1.3 Please provide a brief summary of any other significant developments in your State since the 2006 Special Commission relating to international child abduction and / or international child protection.

³ The term "State" in this Questionnaire includes a territorial unit, where relevant.

⁴ 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 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 "the 2006 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2006 Special Commission, please provide such information here.

⁵ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 and 1996 Conventions. 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.

No other significant developments.

2. Issues of compliance

- 2.1 Are there any States Parties to the 1980 and / or 1996 Convention(s) with whom you are having particular difficulties in achieving successful co-operation? Please specify the difficulties you have encountered and, in particular, whether the problems appear to be systemic.

No comments.

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

In a few cases we have experienced that the central authorities are not able to provide significant assistance in cases under art. 21.

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION
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3. The role and functions of Central Authorities designated under the 1980 Convention⁶

In general

- 3.1 Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities? If so, please specify.

In a few cases we have experienced difficulties with communication by fax and to some countries we have experienced a very slow postal service.

- 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 comments.

- 3.3 Has your Central Authority encountered any difficulties with the interpretation and / or application of any of the 1980 Convention provisions? If so, please specify.

No comments.

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? If so, please specify.

In cases where the central authorities or the local courts are appointing attorneys we see no delays of any importance.

- 3.5 Are you aware of any other difficulties 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?⁷

⁶ See also question 6 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

⁷ 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") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings"):

"1.1.4 The importance for the applicant of having effective access to legal aid and representation in the requested country is emphasised. Effective access implies:

a) the availability of appropriate advice and information which takes account of the special difficulties arising from unfamiliarity with language or legal systems;
 b) the provision of appropriate assistance in instituting proceedings;
 c) that lack of adequate means should not be a barrier to receiving appropriate legal representation.

1.1.5 The Central Authority should, in accordance with Article 7[(2)] g), do everything possible to assist the applicant to obtain legal aid or representation.

1.1.6 The Special Commission recognises that the impossibility of, or delays in, obtaining legal aid both at first instance and at appeal, and / or in finding an experienced lawyer for the parties, can have adverse effects on the interests of the child as well as on the interests of the parties. In particular the important

It is our experience that in cases about abductions from Denmark the left behind parent is not able to get legal aid in the country where the child is abducted to because his or her income exceeds the limit of income for being granted legal aid in that country.

Locating the child

- 3.6 Has your Central Authority encountered any difficulties with locating children in cases involving the 1980 Convention, either as a requesting or requested State? If so, please specify the difficulties encountered and what steps were taken to overcome these difficulties.

We have only experienced difficulties in one case. The child has been located by the combined efforts of several central authorities, Danish police and Interpol.

- 3.7 Where a left-behind parent and / or a requesting Central Authority have no information or evidence regarding a child's current whereabouts, will your Central Authority still assist in determining whether the child is, or is not, in your State?

We will assist as far as possible in locating the child.

- 3.8 In your State do any particular challenges arise in terms of locating children as a result of *regional* agreements or arrangements which reduce or eliminate border controls between States? If so, please specify the difficulties encountered and any steps your State has taken to overcome these difficulties. Are there any *regional* agreements or arrangements in place to assist with locating children because of the reduced / eliminated border controls?

No difficulties.

- 3.9 Where a child is not located in your State, what information and / or feedback is provided to the requesting Central Authority and / or the left-behind parent as to the steps that have been taken to try to locate the child and the results of those enquiries?

If the search for a child in Denmark is unsuccessful we will inform the requesting central authority of which steps has been taken by us and other authorities and pass on any information that might assist in locating the child.

- 3.10 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)? Have you encountered any particular difficulties in working with these external agencies? Is there any good or bad practice you wish to share on this matter?

The Danish Central Authority has in general a very good experience with the cooperation with the police and similar agencies.

Information exchange, training and networking of Central Authorities

- 3.11 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?⁸

The central authorities from the Nordic countries meet once a year to exchange experiences. In 2010 we also participated in a Nordic/Baltic seminar on child abduction.

- 3.12 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference

⁸ 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.

call, as proposed in Recommendations Nos 1.1.9 and 1.1.10⁹ of the 2006 Special Commission?

No, we do not have such an experience.

3.13 Would your Central Authority find it useful to have an opportunity to exchange information and network with other Central Authorities on a more regular basis than at Special Commission meetings?

We would in general find such opportunities useful.

⁹ See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7):

"1.1.9 The Special Commission recognises the advantages and benefits to the operation of the Convention from information exchange, training and networking among Central Authorities. To this end, it encourages Contracting States to ensure that adequate levels of financial, human and material resources are, and continue to be, provided to Central Authorities.

1.1.10 The Special Commission supports efforts directed at improving networking among Central Authorities. The value of conference calls to hold regional meetings of Central Authorities is recognised."

*Statistics*¹⁰

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

We submit statistics to INCASTAT.

Views on possible recommendations

- 3.15 What recommendations would you wish to see made in respect of the role and particular functions that Central Authorities might, or do, carry out?

No comments.

4. Court proceedings

- 4.1 If your State has not limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, it has not "concentrated jurisdiction"), are such arrangements being contemplated?¹¹ If the answer is no, please explain the reasons.

We refer to our answers in the 2006-questionnaire.

- 4.2 Are any procedural rules in place in your State in relation to return proceedings brought under the 1980 Convention? If so, do you consider that the procedural rules which are applied allow the relevant authorities to reach a decision within six weeks? To what extent do you consider that delays in return proceedings under the 1980 Convention are linked to a lack of appropriate procedures?

We refer to our answers in the 2006-questionnaire.

5. Domestic violence allegations and Article 13(1) b) of the 1980 Convention¹²

- 5.1 Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases in your State? What is the general approach of the relevant authorities to such cases?

It is our experience that the issue of domestic violence is not often raised.

- 5.2 In particular:
a. What is the standard of proof applied when a taking parent relies on Article 13(1) b)?

It is our experience that the issue of domestic violence is not often raised.

¹⁰ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7).

¹¹ See, for example, the "Conclusions and Recommendations of the Fourth 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* (22–28 March 2001)" (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings") at para. 3.1:

"The Special Commission calls upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts."

¹² See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.1.12, 1.4.2 and 1.8.1 to 1.8.5. Please also refer to question 6 of this Questionnaire regarding the safe return of children.

- b. Bearing in mind the obligation in the 1980 Convention to act expeditiously in proceedings for the return of children,¹³ how far do the relevant authorities in your State investigate the merits of a claim that domestic violence or abuse has occurred? How are resulting evidentiary issues dealt with (e.g., obtaining police or medical records)? How is it ensured that no undue delay results from any such investigations?

It is our experience that the issue of domestic violence is not often raised.

¹³ Art. 11 of the 1980 Convention: "The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children."

- c. Is expert evidence permitted in such cases and, if so, regarding which issues? How is it ensured that no undue delay results from the obtaining of such evidence?

Yes.

- 5.3 Where allegations of domestic violence / abuse are made by the taking parent, how will the relevant authority deal with any reports from children as to the existence of such domestic violence / abuse?

It is our experience that the issue of domestic violence is not often raised.

- 5.4 Where allegations of domestic violence / abuse are made by the taking parent, what tools are used by judges (or decision-makers) in your State to ascertain the degree of protection which can be secured for the child (and, where appropriate, the accompanying parent) in the requesting State upon return (e.g., information is sought from the requesting Central Authority, direct judicial communications are used, expert evidence on foreign law and practice is obtained, direct notice can be taken of foreign law, etc.)?

It is our experience that the issue of domestic violence is not often raised.

- 5.5 Do any regional agreements affect the operation of Article 13(1) *b*) in your State (e.g., for European Union Member States excluding Denmark, Art. 11(4) of the Brussels II a Regulation¹⁴)? If so, please comment upon how the relevant regional provision(s) have operated in practice.

No.

- 5.6 From your practical experience, what do you see as the main (a) similarities, and (b) inconsistencies between States Parties regarding the application and interpretation of Article 13(1) *b*) in cases of alleged domestic violence? Can you suggest any good practice which should be promoted on this issue?

No comments.

- 5.7 Do you have any other comments relating to domestic violence or abuse in the context of either the 1980 or the 1996 Convention?

No comments.

6. Ensuring the safe return of children¹⁵

*The implementation of previous Special Commission recommendations*¹⁶

- 6.1 What measures has your Central Authority taken to ensure that the recommendations of the 2001 and 2006 Special Commission meetings¹⁷ regarding the safe return of children are implemented?

We use the recommendations and conclusions from the 2006 Special Commission as

¹⁴ Full title: Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

¹⁵ See Art. 7(2) *h*) of the 1980 Convention and the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.1.12 and 1.8.1 to 1.8.5. Please also refer to the "Domestic violence allegations and Article 13(1) *b*) of the 1980 Convention" section of this Questionnaire (question 5).

¹⁶ See the Conclusions and Recommendations of the Special Commission of 2006 (*op. cit.* note 7) at paras 1.1.12 and 1.8.1 to 1.8.5 and the Appendix to the Conclusions and Recommendations.

¹⁷ *Id.*

general guidelines in our daily work with child abduction cases.

- 6.2 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)?

We have no experiences with such a case.

*Methods for ensuring the safe return of children*¹⁸

- 6.3 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? How does the relevant authority in your State ensure that the conditions or requirements put in place are implemented and adhered to?

We have no experiences with such a case.

Direct judicial communications

- 6.4 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? What procedural safeguards surround such communications in your State?¹⁹

We have no experiences with such a case.

Use of the 1996 Convention to ensure a safe return

- 6.5 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)?

Even though Denmark is not yet party to the 1996 Convention, the rules on jurisdiction in cases on parental responsibility has been changed in compliance with articles 7 and 11 of the convention.

Other important matters

- 6.6 Are you aware of cases in your State where a primary carer taking parent 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 provide case examples where possible.

We have no experiences with such a case.

- 6.7 What steps has your State taken to ensure that all obstacles to participation by parents in custody proceedings after a child's return have been removed (in accordance with Recommendation No 1.8.5 of the 2006 Special Commission)? In

¹⁸ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹⁹ See the draft General Principles on Judicial Communications which will be circulated prior to the 2011 Special Commission meeting.

particular, where a custody order has been granted in the jurisdiction of, and in favour of, the left-behind parent, is the order subject to review if the child is returned, upon application of the taking parent?

In general the taking parent is heard before a custody hearing is made. If the taking parent has not been heard before a decision is made the case will normally be reopened by the parent's request.

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

We have a very limited experience with following up on cases when the child has been returned, but we find the idea interesting.

7. The interpretation and application of the exceptions to return

In general

- 7.1 Where the taking parent raises any exceptions under Article 13 or Article 20 of the 1980 Convention, what are the procedural consequences? What burden and standard of proof rest on the taking parent in respect of such exceptions?²⁰

It is our experience that the issue of domestic violence is not often raised.

- 7.2 Does the raising of exceptions under Article 13 or Article 20 in practice cause a delay to return proceedings? What measures, if any, exist to keep such delay to a minimum?

It is our experience that the issue of domestic violence is not often raised.

Article 13(2) and hearing the child

- 7.3 In relation to Article 13(2) of the 1980 Convention:
- a. By whom, and how, will any enquiry be made as to whether a child objects to a return?

Depending on the child's age and the issues raised the enquiry will be made by either the judge or a child expert (psychologist).

- b. Who will assess the child's maturity for the purposes of Article 13(2)?

Depending on the child's age and the issues raised the enquiry will be made by either the judge or a child expert (psychologist).

- c. In what circumstances, in practice, might the relevant authority in your State refuse to return a child based on his or her objections? Please provide case examples where possible.

We have little experience with such cases, but in one case return was rejected based on the fact that the children physically attacked the applicant father during the attempt to hand over the children to him.

- 7.4 How, if at all, have other international and / or regional instruments affected the manner in which the child's voice is heard in return proceedings in your State?²¹

The UN Convention on the rights of the child.

²⁰ In relation to Art. 13(1) *b*), see also question 5.2 above.

²¹ For EU Member States, excluding Denmark, reference should be made to Art. 11(2) of the Brussels II a Regulation:

"When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity."

7.5 How does your State ensure that hearing a child does not result in any undue delay to the return proceedings?

We have not experienced that the hearing of a child has lead to delays.

Article 20

- 7.6 How has Article 20 of the 1980 Convention been applied in your State? Are you aware of an increase in the use of this Article (please note that Art. 20 was not relied upon at all according to the 1999 Statistical Survey, nor was it a sole reason for refusal in 2003²²)?

We have no experience with the use of Article 20.

Any other comments

- 7.7 Do you have any other comment(s) you would like to make regarding any of the exceptions to return within the 1980 Convention?

No comments.

8. Article 15 of the 1980 Convention

- 8.1 Have you encountered any difficulties with the use of Article 15? If so, please specify the difficulties encountered and what steps, if any, have been taken to overcome such difficulties.

In general, it is our experience that the possibility to request a statement according to Article 15 is very rarely used.

- 8.2 Has the use of Article 15 caused undue delay in return proceedings in your State? Are there particular States Parties with whom you have had difficulties in this regard? Please provide case examples where possible.

We have experienced that the request for an Article 15 declaration in some countries has caused severe delays. In some cases obtaining of the declaration took several months.

- 8.3 Are you aware of any cases in your State where direct judicial communications have been used in relation to Article 15? If so, please provide details of how, if at all, direct judicial communications assisted in the particular case.²³

In one case a telephone call were arranged between the Danish judge requesting the Article 15 declaration, and the foreign judge who was to make the declaration.

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

- 9.1 Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the taking parent to re-enter the State from which the child was wrongfully removed or retained? If so, how have such issues been resolved?

No, we do not have such experience.

- 9.2 Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases

²² It was, however, partially relied upon in eight cases (9%), all of which were in Chile. See N. Lowe, "A Statistical Analysis of Applications made in 2003 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I - Overall Report", Prel. Doc. No 3, Part I, of October 2006 for the attention 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 of October - November 2006 (2007 update, published in September 2008). Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents".

²³ See *supra*, note 19.

in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the State in which the application for return is to be considered. How have such cases been resolved?

No, we do not have such experience.

- 9.3 Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?

No, we do not have such experience.

- 9.4 Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

No, we do not have such experience.

10. Newly acceding States to the 1980 Convention

- 10.1 If your State has recently *acceded* to the 1980 Convention, what steps have been taken to inform other States Parties of the measures taken to implement the Convention in your State?²⁴ Did you find the Standard Questionnaire for newly acceding States²⁵ useful for this purpose?

Do not apply.

- 10.2 How regularly does your State consider declaring its acceptance of the accessions of new States Parties to the 1980 Convention (Art. 38)?

Do not apply.

- 10.3 What measures, if any, do your authorities take to satisfy themselves that a newly acceding State is in a position to comply with 1980 Convention obligations, such that a declaration of acceptance of the accession can be made (Art. 38)? How does your State ensure that this process does not result in undue delay?

Do not apply.

11. The Guide to Good Practice under the 1980 Convention

- 11.1 In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures, Part III on Preventive Measures and Part IV on Enforcement²⁶ – to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

We use the Guide to Good Practice Part I, Part II and part III to improve the implementation and operation of the convention.

- 11.2 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?

Through our website.

- 11.3 Do you have any comments regarding how best to publicise the recently published Guide to Good Practice – Part IV on Enforcement (published October 2010)?

No comments.

- 11.4 Are there any other topics that you would like to see form the basis of future parts

²⁴ See Art. 38 of the 1980 Convention.

²⁵ The Standard Questionnaire for newly acceding States is available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Questionnaires and responses".

²⁶ 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".

of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures; Part IV on Enforcement; and the draft of Part V on Mediation)?

No comments.

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

No comments.

12. Relationship with other instruments

- 12.1 Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Convention, in particular, the 1989 *United Nations Convention on the Rights of the Child*?

No comments.

- 12.2 Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Convention, for example, the Brussels II a Regulation²⁷ and the 1989 *Inter-American Convention on the International Return of Children*?

No comments.

13. Publicity and debate concerning the 1980 Convention

- 13.1 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? What was the outcome of this debate or discussion, if any?

The convention itself has not raised any publicity or debate. But specific cases have raised publicity and debate.

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

Mainly by our website www.boernebortfoerelse.dk and by seminar for practitioners.

PART III: THE PRACTICAL OPERATION OF THE 1996 CONVENTION²⁸
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14. Implementation of the 1996 Convention

- 14.1 If your State is Party to the 1996 Convention, do you have any comments regarding:

- a. How it has been implemented?

Do not apply.

- b. How it is operating?

Do not apply.

- c. Further, when implementing the 1996 Convention, did your State use the implementation checklist drawn up by the Permanent Bureau in consultation with States Parties?²⁹ If so, do you have any comments regarding the implementation checklist and how it might be improved in future?

Do not apply.

²⁷ *Op. cit.* note 14.

²⁸ This part of the Questionnaire is directed both to States Parties and non-States Parties to the 1996 Convention save where indicated otherwise, and should be completed by all States insofar as is appropriate.

²⁹ Available on the Hague Conference website at < www.hcch.net > under "Conventions" then "Convention No 34" and "Practical operation documents".

14.2 If your State is not Party to the 1996 Convention, is your State considering implementing the 1996 Convention? What are viewed as the main difficulties, if any, in implementing this Convention?

Yes, Denmark expects to implement the 1996 Convention before the summer of 2011.

15. The role and functions of Central Authorities designated under the 1996 Convention

- 15.1 If your State is Party to the 1996 Convention:
- a. Did you encounter any difficulties designating a Central Authority?
Do not apply.
 - b. Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities? If so, please specify.
Do not apply.
 - c. Have any of the duties of Central Authorities within the 1996 Convention raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?
Do not apply.
 - d. Has your Central Authority encountered any particular difficulties with the interpretation or application of the 1996 Convention provisions? If so, please specify.
Do not apply.
 - e. Would you consider the development of any model forms under the 1996 Convention useful (*e.g.*, in relation to the provisions regarding transfer of jurisdiction (Arts 8 and 9), or in relation to the certificate which may be given by the relevant authorities under Art. 40)?
Do not apply.

16. Publicity concerning the 1996 Convention

- 16.1 If your State is Party to the 1996 Convention, by what methods does your State disseminate information to the public about the 1996 Convention?

Do not apply.

- 16.2 Could you provide a list (including contact details and website addresses) of non-governmental organisations in your State which are involved in matters covered by the 1996 Convention?

Do not apply.

17. Relationship with other instruments

- 17.1 Do you have any comments or observations on the impact of regional³⁰ or international instruments on the operation of the 1996 Convention, in particular, the 1989 United Nations Convention on the Rights of the Child?

Do not apply.

³⁰ *E.g.*, the Brussels II a Regulation (*op. cit.* note 14).

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION
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18. Transfrontier access / contact³¹

- 18.1 Since the 2006 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 developments.

³¹ See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.7.1 to 1.7.3.

18.2 Please indicate any important developments in your State, since the 2006 Special Commission, in the interpretation of Article 21 of the 1980 Convention.

No developments.

18.3 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;

In a few cases we have experienced that the central authorities are not able to provide significant assistance in cases under art. 21.

b. the effective exercise of rights of access; and

In a few cases we have experienced that the central authorities are not able to provide significant assistance in cases under art. 21.

c. the restriction or termination of access rights.

In a few cases we have experienced that the central authorities are not able to provide significant assistance in cases under art. 21.

Please provide case examples where possible.

18.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"³² to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

No experience.

19. International family relocation³³

19.1 When does a parent require the permission of (a) the other parent, and (b) the relevant State authorities, to relocate internationally with a child (*i.e.*, to move with a child from your State to another State, on a long-term basis)?

According to the Act on Parental Responsibility Article 3, Section 2, the relocation of the child requires the consent of the other parent.

19.2 Do you have a specific procedure in your State which applies when a parent wishes to seek the relevant authority's permission to relocate internationally? When permission of the relevant authority is required to relocate internationally, what criteria are applied to determine whether such permission should be granted, or not?

According to the Act on Parental Responsibility a permission to relocate can be granted by the court either as a decision on sole custody or a decision which allows the parent to relocate. It is also possible to make a temporary decision during a case of custody or the

³² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

³³ 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."

child place of living. The criteria for granting permission to relocation is what is best for the child.

- 19.3 Are you aware of any recent decisions in your State concerning international family relocation which may be of interest to the Special Commission meeting? In particular, are you aware of any cases where the international relocation of a child was permitted by the relevant authorities in your State following the return of the child to your State under 1980 Convention procedures?

No.

- 19.4 Do you have any comment on the Washington Declaration on International Family Relocation³⁴ reached at the conclusion of the International Judicial Conference on Cross-Border Family Relocation³⁵ in March 2010? In particular, do you have any comment on paragraph 13 of the Washington Declaration, which states:

"The Hague Conference on Private International Law, in co-operation with the International Centre for Missing and Exploited Children, is encouraged to pursue the further development of the principles set out in this Declaration and to consider the feasibility of embodying all or some of these principles in an international instrument. To this end, they are encouraged to promote international awareness of these principles, for example through judicial training and other capacity building programmes."

No comments.

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

20. Non-Convention cases and non-Convention States

- 20.1 Are you aware of any troubling cases of international child abduction which fall outside the scope of the 1980 Convention? Are you aware of any troubling cases of international child protection which fall outside the scope of the 1996 Convention?

No.

- 20.2 Has your State had a significant number of cases of international child abduction or protection with any particular non-Contracting States?

Denmark has currently 27 registered cases.

- 20.3 Are there any States that you would particularly like to see become a State Party to (a) the 1980 Convention and / or (b) the 1996 Convention? If so, what steps would you suggest could be taken to promote the Convention(s) and encourage ratification of, or accession to, the relevant Convention(s) in those States?

No comments.

- 20.4 Since the 2006 Special Commission, has your State concluded:
- a. Any bilateral, or other, agreements on international child abduction with States not Party to the 1980 Convention?

³⁴ Available in full on the Hague Conference website at < www.hcch.net > under "News & Events" then "2010".

³⁵ The International Judicial Conference on Cross-Border Family Relocation was held in Washington, D.C., United States of America, from 23 to 25 March 2010 and was co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children (< www.icmec.org >), with the support of the United States Department of State.

No.

b. Any bilateral, or other, agreements on international child protection with States not Party to the 1996 Convention?

No.

Please provide brief details of any such agreements, including which non-Contracting States are party to the agreement(s).

Not applicable.

20.5 Are there any States which are not Parties to the 1980 or 1996 Conventions or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2011 and 2012?³⁶

No comments.

³⁶ See the "Request for funding" made in Info. Doc. No 1 (circulated at the same time as this Prel. Doc. No 1).

*The "Malta Process"*³⁷

- 20.6 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?³⁸ Have any steps been taken towards implementation of the Principles in your State?
- No.
- b. Do you have any comment to make on the "Malta Process" generally?
- No.
- c. What is your view as to the future of the "Malta Process"?
- No comments.

**PART VI: TRAINING AND EDUCATION AND
THE TOOLS, SERVICES AND SUPPORTS PROVIDED
BY THE PERMANENT BUREAU**³⁹

21. Training and education

- 21.1 Do you have any comments regarding how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the 1980 and 1996 Convention(s)? In particular, how have the conclusions and recommendations of these seminars or conferences (some of which are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section"), had an impact on the functioning of the 1980 and 1996 Convention(s)?

No comments.

- 21.2 Can you give details of any training sessions / conferences organised in your State, and the influence that such sessions have had?

The central authorities from the Nordic countries meet once a year to exchange experiences. In 2010 we also participated in a Nordic/Baltic seminar on child abduction.

³⁷ 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 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".

³⁸ 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".

³⁹ Further information regarding the tools, services and supports provided by the Permanent Bureau will be set out in the report to the 2011 Special Commission meeting on this subject (see the "Documentation" section of Info. Doc. No 1).

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

In general

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

- a. INCADAT (the international child abduction database, available at < www.incadat.com >). INCADAT underwent a complete revision and an improved, re-designed version was launched on 30 April 2010;⁴⁰

We find that INCADAT is a very good instrument.

- b. *The Judges' Newsletter* on International Child Protection - the bi-annual publication of the Hague Conference on Private International Law which is available in hard copy and online for free;⁴¹

No comments.

- c. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);

We use the website very often and find it of great importance that the contact information to the different central authorities is updated.

- d. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);⁴²

We find that INCASTAT contains useful information.

- e. iChild (the electronic case management system designed by the Canadian software company WorldReach);⁴³

No experience.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.⁴⁴ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau (often through the International Centre for Judicial Studies and Technical Assistance) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

⁴⁰ Further information regarding the INCADAT re-launch can be found on the Hague Conference website at < www.hcch.net > under "News & Events" then "30 April 2010". Further information regarding the improvements to INCADAT and the continuing work being undertaken will be provided in the report to the 2011 Special Commission meeting on the services provided by the Permanent Bureau (see Info. Doc. No 1).

⁴¹ 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 now possible to download individual articles as required. Further, an index of relevant topics is being created to enable more user-friendly searches of the publication. The publication is also in the process of being re-designed. Further information regarding this publication will be provided in the report to the 2011 Special Commission meeting (see Info. Doc. No 1).

⁴² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

⁴³ Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "iChild".

⁴⁴ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

We have positive experiences with visits from The Permanent Bureau.

- g. Where individuals contact the Permanent Bureau seeking help in cases involving international child protection issues (which occurs on an almost daily basis), providing referrals (primarily to Central Authorities) and offering advice of a general nature on the operation of the Convention(s);

No Comments.

- h. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);⁴⁵

No comments.

- i. Supporting communications between Central Authorities, including maintaining an online database of updated contact details.

We find these efforts very useful.

Other

- 22.2 What other measures or mechanisms would you recommend:
a. To improve the monitoring of the operation of the Conventions;

No Comments.

- b. To assist States in meeting their Convention obligations; and

No Comments.

- c. To evaluate whether serious violations of Convention obligations have occurred?

No Comments.

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS
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23. Views on priorities and recommendations for the Special Commission

- 23.1 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.

No Comments.

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

⁴⁵ 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.

No Comments.

24. Any other matters

24.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 and / or the 1996 Convention(s).

No Comments.