

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE HAGUE
CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION**

**(Including questions on 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*)**

Response on behalf of FINLAND

The role and functions of Central Authorities

1. Have any difficulties arisen in practice in achieving effective communication with other Central Authorities? In particular, how are "modern rapid means of communication,"¹ used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?

- The Finnish Central Authority has not experienced any major difficulties in effective communication with other Central Authorities. The most used mean of communication is fax. Phone and e-mail are used mainly for more informal contacts, clarification of issues, or in cases of urgency.

2. Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?

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3. Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see < www.hcch.net > ☐☐ Child Abduction Section ☐☐ Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001:

- The Central Authority for Finland maintains a website and a booklet on international child abduction. The links at the Hague Conference website are accurate.

The booklet's aim is to give basic information to parents and act as a guide to Finnish authorities in cases of international child abduction. Booklet concentrates on cases when a child has been abducted from Finland to another state.

"a) the other Contracting States in relation to whom the Convention is in effect;

- Yes

b) the means by which a missing child may be located;

- Yes

c) the designation and contact details for the Central Authority;

- Yes

d) application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;

- Yes

e) *details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;*

- Yes

f) *the judicial procedures, including appeals procedures, which apply to return applications;*

- Yes. The booklet does not, however, give detailed information on the child abduction procedures in Finland.

g) *enforcement options and procedures for return and access orders;*

- Yes

h) *any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);*

- Yes

i) *information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;*

- Yes

j) *information, if applicable, concerning liaison judges“?*

- No. Liaison judge system does not apply in Finland.

4. What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings? [Note: Questions 20-22 deal with the subject of mediation.]

- When the Central Authority of Finland has received a request for return, it assigns the case to a Finnish lawyer whose first duty is to attempt to achieve a voluntary return of the child. In practice the lawyer makes a contact with the abductor in order to find out his/her willingness to amicable solution of the situation. Failing this, the lawyer will bring action for return of the child in the Helsinki Court of Appeal. This has not lead to a considerably delay but, on the contrary, often to very positive solutions.

Considering the purpose of the Convention, all Central Authorities should, as a first duty, ensure that there is a real opportunity for a voluntary return. A short delay for that purpose is worth it.

¹ See the Guide to Good Practice – Part I on Central Authority Practice, Chapter 1.3.3. See, in particular, Chapter 6.5 on twinning arrangements.

³ See Guide to Good Practice – Part II on Implementing Measures, Chapters 5 – 7.

5. In accordance with the Guide to Good Practice – Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority?²

- The Finnish Central Authority has exchanged views of the child abduction matters annually with the Central Authority of Estonia.

The first meeting with the Central Authorities of all Nordic countries (Sweden, Norway, Denmark, Iceland and Finland) was organised in Stockholm in November 2005. The meetings proved to be very fruitful and the aim is to organise such meetings annually.

Court proceedings³

6. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts or judges? Are such arrangements being contemplated?

- At first instance, only one court, Helsinki Court of Appeal, has jurisdiction to make decisions on international child abduction. Moreover, handling of return cases have been concentrated to a handful of judges within the court. These arrangements have proved to be very advantageous in terms of uniform application and better understanding of the Convention.

7. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

- a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?
- b) What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?

- Return cases are always of high priority in the court. The national law limits the time of the court procedure to six weeks. The decision of the first instance court, Helsinki Court of Appeal, is directly enforceable regardless of an appeal.

8. What measures exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?

- The applicant is granted free legal aid without costs automatically in Finland in accordance with the Hague Convention. There are no delays due to this.

See also answer to question N:o 67.

9. In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?

- According to the Child Custody and Right of Access Act of Finland, Article 39, before he competent court makes a resolution on a return application it shall ascertain the opinion of the child, if he/she is, on the basis of his age or other circumstances in the knowledge of the court, to be presumed to have attained such a degree of maturity that it is appropriate to take his opinion into account.

In most of the cases the hearing of the child is conducted by social welfare board's social workers. There are no special rules how the hearing should be organised, and it varies depending on the age of the child, child's parent's mutual cooperation and other circumstances. A social worker may hear the child in child's home or in the authority's premises. Parents of the child are not normally present in the hearing. The social welfare board writes up a report of the hearing which will be sent to the judge.

If the child is heard in court a judge conducts the hearing.

Court will take the opinion of the child into account, but estimates what influence it has

to the final decision. The opinion of the child is not binding to the court. Court must give reasons for its decision.

10. How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?

- Article 20 has never been applied in Finland. The Finnish Central Authority is not aware of an increase in the use of this article.

Legal issues and interpretation of key concepts

11. Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.

- None.

12. Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please could you provide us with an electronic copy of relevant legislation if possible?

- The term "international child abduction" has been included to the national Code of Criminal Procedure (Section 25 Article 5a) in 2005. Earlier similar acts fell under the essential elements of an offense "arbitrary taking into custody". This, however, does not have concrete effects to the procedures according to the Convention, but the criminal procedure may go in parallel with the civil one.

13. Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- a) rights of custody (Articles 3 *a*) and 5 *a*));
- b) habitual residence (Articles 3 *a*) and 4);
- c) rights of access (Article 5 *b*));
- d) the actual exercise of rights of custody (Articles 3 *b*) and 13(1) *a*));
- e) the settlement of the child in his / her new environment (Article 12(2));
- f) the one year period for the purposes of Article 12;
- g) consent or acquiescence to the removal or retention of the child (Article 13(1) *a*));
- h) grave risk (Article 13(1) *b*));
- i) exposure to physical or psychological harm (Article 13(1) *b*));
- j) intolerable situation (Article 13(1) *b*));
- k) the child objects to being returned (Article 13(2)); (see also question 9)
- l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10)

Direct international judicial communication

14. Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002 Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: < www.hcch.net > ☐☐ Child Abduction Section ☐☐ Questionnaire & Responses).

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Immigration / asylum / refugee matters

15. Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

- Central Authority of Finland does not have experience on these type of cases.

16. Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases 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 country in which the application for return is to be considered. How have such cases been resolved?

- No experience.

17. 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 experience.

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

- No experience.

Criminal proceedings

19. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

- Central Authority of Finland has some experience on cases when the abducting parent has had difficulties entering the country of child's habitual residence (U.S.A.), to visit the child after the return, due to pending criminal charges. Situations have been solved with active cooperation and help of Central Authorities and a local lawyer.

We would like to underline the significance of an abducting parent being able to re-enter the country from which a child was abducted. The solution of this matter should be given highest priority after an abduction has occurred. The role of the Central Authorities is crucial in these situations.

Mediation

20. Are there any programmes of mediation available in your State for parents or other persons involved in Hague Convention cases? Please describe these, indicating *inter alia* the methods employed to ensure that mediated agreements are enforceable and respected by the parties, as well as the availability of, and training opportunities for, international mediators.

- There are no particular programmes for this.

21. How do you ensure that mediation procedures do not unduly delay proceedings for the return of the child?

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22. Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?

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Training and education

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

- Training of national authorities and judges is extremely important in terms of effective functioning of the Convention. The Finnish Central Authority trains for example social workers, lawyers, enforcement authorities and judges in Finland. Moreover, Finnish judges who have participated international seminars and conferences on matters of child abduction have been satisfied and found such international events very useful and motivating. We welcome warmly the idea to organise more international training for different actors of the field of child abduction.

24. Can you give details of any training sessions / conferences organised in your country, and the influence that such sessions have had?

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Ensuring the safe return of children where issues such as domestic violence and abuse are raised

25. Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?

- Accusations of this type are quite frequently used arguments not to return the child. The general approach to such cases is strict, but the court certainly estimates the importance and credibility of the arguments in its decision.

Court in Finland has made only one non-return order in accordance with Article 13(b) since Finland became a member of the Convention. Central Authorities' cooperation is crucial in organising the safe return in cases where accusations of domestic violence and/or abuse have been made.

26. What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?

- Safe return is organised in cooperation with Central Authorities and social welfare officials. If necessary an interim custody order might be made and the child taken into social welfare officials' custody.

27. To what extent are your courts entitled and prepared to employ "undertakings" (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.

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28. Will your courts / authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement between the parties and those made at the request of the court?

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29. To what extent are your courts entitled or prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned)?

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30. Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?

- The Finnish legal system does not know the concepts of undertakings, mirror orders or safe harbour orders. The Finnish Central Authority does not have experience of cases where such would have occurred.

31. Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?

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32. Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child?

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Standard questionnaire for newly acceding States

33. If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?

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34. Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < www.hcch.net > Child Abduction Section Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?

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35. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations, and how do you ensure that this process does not result in undue delays?

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The Guide to Good Practice

36. In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on

Preventive Measures to assist in implementing for the first time, or improving the implementation or operation of, the Convention in your State?

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37. How has the Guide to Good Practice assisted your State in making policy or practical decisions relating to the implementation or operation of the Convention?

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

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39. Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?

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40. Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < www.hcch.net > ☐☐ Child Abduction Section ☐☐ Questionnaire & Responses).

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41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report" drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 5 of July 2002 available at: < www.hcch.net > ☐☐ Conventions ☐☐ Convention 28 ☐☐ Practical Operation Documents.)

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42. Are there any other topics that you would like to see form the basis of future parts 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 as well as enforcement measures and access / contact)?

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

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44. Can you list any examples of good practice not included in the Guides?

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Standardised consent form

45. The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State (see the Guide to Good Practice – Part III on Preventive Measures). Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?

- In Finland it is not necessary to obtain consent from the holder of parental responsibility when a child leaves the country. However, we are of the opinion that in some cases a standardised form might be helpful.

Statistics and case management

46. Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.

- The Central Authority of Finland does maintain and submit the standard form statistics to the Permanent Bureau.

47. Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?

- We do not use any special software for case management or statistical purposes. The amount of the cases annually is rather low in Finland and we have managed well by using the most common applications.

Publicity / debate concerning the Convention

48. Has the Convention given rise to (a) any publicity (positive or negative) in your country, or (b) any debate or discussion in your national Parliament or its equivalent?

- (a) Some difficult cases has been given lot of publicity especially in tabloids, but also in more respected newspapers and national TV. The Central Authority has not actively taken part to the media in individual cases, but commented the principles of the Convention and the handling of cases in the Central Authority.

The reservations some member states have made concerning access to legal aid have been seen problematic and unfair compared to the availability of free legal aid in Finland regardless of applicants financial status.

- (b)

49. Is the Convention having any negative effects which are causing concern?

- No. The Convention is seen as rather well functioning method for solving return cases.

50. By what methods do you disseminate information about the Convention?

- Information is available at the Central Authority's web page, and is given for example by phone, e-mail, and by sending articles for the interested ones. The Central Authority provides training for different authorities, lawyers and judges working with return issues.

51. Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Conventions?

- The Finnish Association for Mental Health (including the SOS Center)
Maistraatinportti 4 A
FI-00240 Helsinki
Finland
Tel: +358 9 615 516
Fax: +359 9 6155 1770
www.mielenterveysseura.fi

SOS Center
Tel: +358 9 4135 0510
Fax: +358 9 4135 0570
www.sos-keskus.fi

The SOS Center helps foreigners and their family members living in Finland in different crisis of life.

- Kaapatut Lapset ry
Stenbäckinkatu 22 B 6
FI-00250 Helsinki
Finland
Tel: +358 9 587 4401
www.kaapatutlapset.fi

Services provided by the Permanent Bureau

52. Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:

- a) INCADAT;
- b) the Judges' Newsletter on International Child Protection;
- c) the bibliography of the Convention;
- d) the Child Abduction Section on the website of the Hague Conference;
- e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);
- f) iChild (the electronic case management system designed by the Canadian software company WorldReach, which is currently being piloted by seven Central Authorities in six Contracting States).
- g) support for national / international judicial (and other) seminars / conferences concerning the Convention;
- h) support for communications among Central Authorities, including maintenance of updated contact details.

- Generally the Finnish Central Authority finds all these services useful. Especially INCADAT has proved to be a very good tool, and the Convention web site is frequently visited. It is important that the web site has accurate information and is updated accordingly.

Finnish Central Authority does not have experience of iChild service, and has some doubts of possible language problems in its wider use.

53. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

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Compliance with the Convention

54. Are there any Contracting States with whom you are having particular difficulties in achieving successful co-operation? Please specify these difficulties.

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

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Non-Convention cases and non-Convention States

56. Are you aware of any troubling cases of international abduction which fall outside the scope of the Convention?

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57. Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission meeting in October / November 2006. Would you be willing to contribute to a fund to enable certain developing States to attend?

- Finland would like especially Russia to become a member of the Convention. The topic has been on the agenda of bi-lateral ministerial meetings with Russia as well as in discussions between EU and Russia.

58. Do you have any comments on bilateral or other agreements between your State and a non-Contracting State?

- Finland does not have any bi-lateral agreements relating to child abduction issues with non-Convention countries.

59. What additional information would you find useful on the non-Hague Convention page on INCADAT available at < www.incadat.com >.

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Relationship with other instruments

60. Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, *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* and the *1989 Inter-American Convention on the International Return of Children*?

- The entry into force of the Brussels II bis Regulation has not changed the basic handling of the return cases or the cooperation of the Central Authorities. The articles of the Brussels II bis -Regulation relating to return of a child that complement the Hague Convention, have not yet been applied in court in Finland.

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

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The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

62. If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?

- The 1996 Convention is not yet in force in Finland.

63. If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?

- Finland has signed the 1996 Convention in 2003 together with the other EU Member States and is ready to proceed with ratification as soon as necessary decisions within the EU have been made.

64. Have you experienced any difficulties concerning interpretation of particular provisions?

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65. Would you find a Guide to Good Practice on implementation of this Convention useful?

- A guide might be useful.

66. The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?

- See answer to the question N:o 63.

Any other matters and recommendations

67. States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the 1996 Convention.

- Concerning the 1980 Convention, the Finnish Central Authority would like to highlight the Central Authorities' crucial role to act dynamically and to monitor that all local authorities and actors involved apply the Convention efficiently. Handling of cases should be swift in all stages of the procedure, at the Central Authority, at the first instance court, at the appeal level and in enforcement. The gravest problem in return cases is delayed processes that take too long.

In some states obtaining free legal aid cause significant delays and may take so long that it does not help the applicant in practice. Moreover, regardless of legal aid, the litigation costs may rise very high. We have experienced that this a problem especially in the U.S.A..

68. States are invited to make proposals concerning recommendations to be made by the Special Commission.

