



**Response to the questionnaire concerning the practical
operation of the 1980 Hague Child Abduction Convention
and of Access/Contact orders**

July 2006

NEW ZEALAND

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?**

No. The New Zealand Central Authority's preferred and most frequently used means of communication is by e-mail. The Central Authority has the ability to scan and send applications by e-mail in preference to facsimile where this option is available. However, the large size of some documents may prevent receipt by the overseas State due to limited access or size restrictions imposed for users. Facsimile is the second preferred option. All original documentation is couriered to destination on receipt after it is faxed or e-mailed to the receiving state or Court.

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

The New Zealand Central Authority believes that there is a fundamental need for clear and effective communication and co-operation between Central Authorities, especially in individual cases. Co-operation between Central Authorities is essential to the effective working on the Convention. Sadly New Zealand has experienced difficulties with some Central Authorities failing to keep the CA informed of progress and failure to respond to queries. If the CA receives regular updates the CA may through legal representative offer legal opinion on the process, clarify the legal situation and make recommendations.

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:**

Information about child abduction is available on the Ministry of Justice website at <http://www.justice.govt.nz/family/what-familycourt-does/children/hague-convention.asp>

The Ministry of Justice also publishes brochures on Preventing Children Being Removed from New Zealand, and on child abduction.

"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;

¹ See the Guide to Good Practice – Part I on Central Authority Practice, Chapter 1.3.3.

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.

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”?

Not applicable.

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 an application is received and the child is located, the Central Authority will appoint counsel to represent the applicant. Counsel are instructed to initiate

proceedings and to determine, after communication with counsel acting for the abducting parent, whether it is possible to negotiate a voluntary return. These measures do not lead to delays as they run parallel to the timetabling of the court process. If voluntary return negotiations are successful, it is common practice to obtain orders by consent from the court which allows for enforcement measures to be initiated if the terms of the return are changed or not complied with thus avoiding unnecessary delay.

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 New Zealand Central Authority is working at strengthening relations with Fiji. The Central Authority and Fiji hope to work together offering support and assistance in the implementation of the Convention and infrastructure required to resource a Central Authority in Fiji.

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?**

No. Since 1981 New Zealand has a specialised Family Court as a division of New Zealand's District Court. The Family Court is made up of 66 Courts and approximately 40 Judges. Applications are heard in the court where they are filed. As the bench is quite small no consideration is being given to limit the number of judges or courts that deal with Hague matters.

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?**

The standard is 6 weeks or 13 weeks if there are special circumstances such as where a specialist report or other evidence, material or information is required that cannot be obtained immediately. There is generally good compliance with the timeframes.

- b) **What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?**

Generally hearings in New Zealand are conducted on counsel's submissions and affidavit evidence. It is unusual for oral evidence to be adduced at the hearing. However New Zealand legislation or the New Zealand Family Court has statutory authority to receive any evidence it sees fit. The Court has inherent power to control its own proceedings and there are no specific rules to limit this power in

² See, in particular, Chapter 6.5 on twinning arrangements.

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

respect of Hague proceedings.

The admissibility of evidence section 128 of the Care of Children Act 2004 applies. This section allows the court to 'receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not'. However the need for the cases to be dealt with promptly means that evidence is mostly by affidavit, and oral evidence and cross examination are not encouraged. Cross examination and oral evidence may however be allowed where both parties are available.

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?

Where an application for the return of child is made under section 102 or 103 of the Care of Children Act 2004 and the applicant does not have legal representation the Central Authority shall, where the circumstances require, appoint a barrister or solicitor to represent the applicant. Using a select number of lawyers ensures that the applicant receives expert legal representation.

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?

Children do not attend the hearing. Their views are heard most often by appointing a lawyer to represent them at the hearing. Sometimes the Judge will meet with the child, or a psychological report commissioned, to evaluate the child's views.

The Care of Children Act states that in proceedings under the Act a child must be given reasonable opportunities to express views on matters affecting the child, and any views the child expresses (either directly or through a representative) must be taken into account. Unless the Court is satisfied that the appointment would serve no useful purpose, the Court must appoint a lawyer for the child if the proceedings appear likely to proceed to a hearing. It is the duty of the lawyer for child to ascertain the child's level of maturity and nature of any objection.

Examples of the objection to return

In *VP v A* no return was ordered for a combination of grave risk and that the children objected to the return. The mother had suffered from domestic violence that was found to be likely to result in her psychological state deteriorating to the point the children would suffer psychological harm should she be forced to return with them. In conjunction with this, the children had witnessed the domestic violence, and had a justifiable objection to returning. This case was said to be exceptional, as even though the Dutch authorities could protect the children and mother from physical harm, the level of psychological trauma that would result from a return would be debilitating and prevent the mother from providing for the children with their heightened needs.

In *ADR v JMR FC WN FAM 2005-085-000243* 30 June 2005 counsel was appointed to represent the children so their views could be properly ascertained. The mother also enlisted a psychologist to evaluate the wishes of the children. Here the

children were not required to return to France. It was found that a return to France would expose the children to a grave risk of psychological harm. The children had also expressed their clear wish to remain in New Zealand. One of the two children in particular was so emotionally distressed by the separation of the parents that he said he had contemplated suicide. The psychologist found this was a real concern. The thought of returning to France was found to be intolerable for the child. The child was not emotionally resilient, and it was held that a return order would expose him to an unacceptable level of emotional harm.

- 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?**

No successful returns have been made under Article 20.

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 Care of Children Act 2004 has replaced the Guardianship Act 1968.

- 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);**

The Court of Appeal has addressed the issue of habitual residence twice in recent times: in *Punter v Secretary for Justice* [2006 CA 221/05], and in *SK v KP* [2005] 3 NZLR 590, (2005) 24 FRNZ 518.

The starting point is that habitual residence is to be a factual inquiry, without resort to presuppositions or presumptions. Certain legal principles have developed about how the factual inquiry is to be conducted. The principles cannot be applied rigidly, or the ultimately factual nature of the inquiry can be obscured.

- Attaining habitual residence generally requires an actual period of residence along with a settled purpose. Settled purpose of a child is said to usually follow that of their parent. Settled purpose to leave a place can mean that habitual residence is immediately lost.
- a person can be without habitual residence for a period.
- A long period of residence without a settled purpose can also result in the acquisition of a new habitual residence.

- A different culture and language can mean that a longer period of residence is required for a new habitual residence to be gained.
- Unilateral purpose generally cannot change the habitual residence of the child, but a “very lengthy period” of residence in such a situation could eventually change the child’s habitual residence.
- Where the parents’ shared intent is for a limited stay (e.g. holiday or shuttle custody in another state), generally loss of habitual residence can only result as a gradual weakening of the connections to the former state due to the orientation of the child in the new state.

c) rights of access (Article 5 b));

In *Jenson v Olagues* [Hague Convention: Access] (2002) 22 FRNZ 625, [2003] NZFLR 19 Judge Twaddle held that the term “rights of access” does not require an access order to be in place in the State of the applicant. As long as the applicant has a right to access they can apply under the Hague Convention to exercise that access provided that they were exercising access or can show that contact has been denied.

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));

The traditional approach in New Zealand has been to confine the risk to the return to the home country, and to evaluate the defence against an expectation that the legal system in the home country will be able to protect the child (*A v Secretary for Justice* [1996] 2 NZLR 517 (CA)). The Court of Appeal’s view is that “grave risk” should receive a narrow interpretation and be evaluated against the expected protection of the legal system in the habitual residence. However there need not be a presumptive approach when a defence is raised. So, it is possible to raise the grave risk defence where the home country has an unexceptional legal system, but the defence will be difficult to make out, and the ability of the home country to protect the child will be a highly relevant consideration.

An example of the grave risk defence being successfully established where the home country (Australia) would normally be expected to be able to protect the child is *Secretary for Justice v MF Te N* [2006] NZFLR 306. In this case it was shown on the facts that there was a risk to the child because the Australian State welfare agency had not acted to protect the child in circumstances where it would normally be expected to act. This was overcome by undertakings from the agency so the child was ultimately returned.

i) exposure to physical or psychological harm (Article 13(1) b));

In *DA v MS* [Hague Convention Application], (10 March) FC WAIT FAM 2005-034-000057, the grave risk defence was discussed in terms of whether the detrimental impact on the mental and physical wellbeing of the abducting parent should they be forced to return, could amount to a grave risk of exposure to psychological harm to the child. It was held that it is possible to make out the defence in this way, although the burden is high. If the defence is made out there is still a discretion to return, which will often be exercised having regard to the principles of the Convention of having the merits of the case decided in the home country.

In *VP v A* [2005] NZFLR 817 it was found that domestic violence suffered by the mother would result in her psychological state deteriorating to the point the children would suffer psychological harm. The return order was refused for this reason in conjunction with the fact the children had witnessed the domestic violence, and had a justifiable objection to returning. This case was exceptional, as even though the Dutch authorities could protect the children and mother from physical harm, the level of psychological trauma that would result from a return would be debilitating and prevent the mother from providing for the children with their heightened needs.

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).

Principal Family Court Judge Boshier recently submitted an article on direct judicial communication, which is to be published in the Hague Conference Judges' Newsletter. The article gives recent examples of such communication emanating from New Zealand.

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?

Yes. The Central Authority liaises with Immigration and Foreign Affairs for information on how to obtain visas. Good co-operation with immigration and our consulate offices.

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?

The Department of Labour Refugee Status Branch (RSB) is not aware of any such cases but cannot confirm this as they do not file claims by this detail. If they did have such a case, Hague Convention issues would not affect whether or not they found someone to be a refugee. The RSB assess only refugee status and do not make decisions on matters such as residence, immigration status, etc.

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. The Department of Labour is not aware of any such cases.

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

Yes. If the left behind parent does not qualify for entry to NZ, the terms of access are tailored accordingly.

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.

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.

We are not aware of any specific transfrontier mediation services available in New Zealand. Counsel are instructed to initiate proceedings and after discussions with counsel acting for the abducting parent to determine if a voluntary return may be negotiated. Counsel may enter into negotiations at any time if they believe it may assist in reaching resolution.

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

See q.4

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?

In New Zealand it is our practice to file the applications in the Court as a means of ensuring that any delay is minimised. Due to New Zealand's relative isolation trans border mediation may be problematic due to distance and time zones. There are issues that would need to be addressed such as perception, neutrality and cultural differences. However, as the majority of our cases are with Australia we welcome discussions in establishing trans border mediation with Australia.

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?

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

Legal Services conferences are held annually, and the Hague convention is usually covered. In May 2006 Colin Pidgeon and Emma Parsons presented a paper.

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?

Yes. Domestic violence is often raised as a defence in conjunction with the risk of psychological abuse if children are returned and witness violence. The general approach is to ensure protective steps are taken such as in H v C. In H v C it was considered that the defence was not established but the order was still adjourned so that protective steps could be taken in Australia such as interim court orders giving protection to the mother, custody in her favour, and supervised access to the father, and the appropriate supervision structure arranged.

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?

The Central Authority generally does not offer protection or assistance upon return,

primarily because most of those being returned are New Zealand nationals and accordingly have the support of their families. There have been a number of cases between Australia and New Zealand where issues of protection have arisen. If there are concerns for the safety of the child or returning parent, these can be dealt with by ensuring the child is surrendered directly to the State Authorities and or the appropriate agencies are notified.

New Zealand law would only contemplate disclosure of information to child welfare protection bodies in circumstances where an imminent threat to safety was established and it was necessary to disclose the information to minimise the risk. If the returning parent raised such concerns the Central Authority would provide contact information for the appropriate bodies but would not take an active role.

The provision of information fits comfortably with the Central Authorities facilitative and administrative role. Once the matter is before the Court, the Court can deal with any specific allegations or concerns and the returning parent can involve agencies such as the police at any time.

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.

The Courts often use undertakings where a defence has been successfully established and appropriate undertaking can relieve the situation which gave rise to the defence. In *LJG v RTP* Judge O'Dwyer stated:

"[77] The defence of grave risk has rarely succeeded. Often risk to the child can be alleviated by undertakings given by the applicant parent; returning the child or children with the abducting parent; relying on protective mechanisms in the country of habitual residence."

In *Secretary for Justice v MF Te N* [2006] NZFLR 306, Judge von Dadelszen held that undertakings cannot be imposed prior to the establishment of a defence. However if a justifiable defence is found to exist, the Court can then impose conditions and consider undertakings when exercising the discretion to return. If conditions or undertakings can alleviate the risk, then the child should be returned, in line with the presumption of return in the Convention. Conditions and undertakings must be "guaranteed" to ensure the safety of the child, having regard to the reliability of the person or organisation giving the undertaking, and the reputation of the Country involved regarding enforcement.

This case involved the Australian State welfare agency not acting to protect the child in a situation where they would generally be expected to do so. The Judge ordered the return of the child, but suspended the order until Australian authorities undertook to:

- a) Monitor the mothers care and control of the child;
- b) Ensure the mother undertook monthly drug tests;
- c) Ensure the child attends school; and

- d) Supply the respondent with a brief monthly report on the above and any further information requested.

It was also ordered that a copy of the judgment be supplied to the Department of Community Services, and another lodged in the Family Court of Australia. With these steps taken the Judge was satisfied that the child would be protected from harm upon return to Australia. It was noted that this would reflect as a criticism of the Australian authorities, which should be avoided, but here the child had not been protected as one would ordinarily expect.

- 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?**

Yes there is a differentiation. Undertakings by agreement are not enforceable whereas undertakings that form part of a Court order are.

- 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)?**

This is a matter that is determined by the Judge. If they believe that the level of risk is significant they may order or direct such undertakings be obtained from the relevant individuals or authorities in the requesting state to satisfy the concerns raised.

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

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

That domestic violence be recognised as a risk factor sufficient to prevent the return of a child if a safe return cannot be negotiated.

- 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?**

In RES v BJS the Judge made it clear that the mother could not prevent a return order by refusing to accompany the children home. The Judge stated:

“[42] There is evidence from the psychological assessment and report on the children that their forced separation from their mother would at present pose a serious risk of psychological harm to the children. That raises the possibility that if an order were made for the return of the children, and the mother refused to accompany them, then it could be argued that their separation from her presented a grave risk of psychological harm.

[43] I need to be very clear that such an argument would not be accepted by the Court. If such a development were to occur then it would not be the children's “return” that exposed the children to such a risk but the mother's personal choice to allow them to return without her.

[44] My view is based squarely on the Court of Appeal decision in *A v A* (supra) and the subsequent cases decided in reliance on that decision all developing the clear principle that a respondent cannot create a situation of potential psychological harm and then rely on it to prevent the return of the children. To permit such an abuse would be to subvert the foundation of the Convention itself.”

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?

n/a

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?
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?

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?
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?
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?

New Zealand has one Central Authority. The judiciary and counsel are encouraged to refer to the GGP.

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?

No

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).

An application made under the Convention for assistance from the Central Authority to secure contact with a child will be dealt with under the Care of Children Act 2004 in the same way as domestic applications, and a resulting order can be enforced under the general provisions relating to enforcement of domestic orders. In New Zealand the governing legislation allows for the use of Article 21 procedure to establish access rights de novo (start afresh)

No further developments to add to response to July 2004 consultation paper.

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.)

N/A

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)?

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

No

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

No

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?

While a standardised form is a very positive development the issue seems to be that the terms of the agreed relocation or undertakings given are not adhered to, thereby the left behind parent seeks a return to secure their rights of custody and access.

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.**

Yes. We have a very good case management computer system used by the local Courts that the CA has access to. The CA also keeps statistical data for reporting purposes.

- 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?**

The New Zealand CA is very fortunate to have access to the national courts case management computer system. The system is very detailed and contains specific case information. It is unlikely that New Zealand would consider using an alternative or a dual computer based system.

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?**

There is both positive and negative publicity through media stories and representations.

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

There is a public perception of a lack of consideration of domestic violence issues in Hague Convention proceedings. Several high profile cases have focussed on the grave risk situation.

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

The New Zealand Law Society provides education to practitioners and have included seminars in 1995 and 2003. The annual Family Law Conference organised by the Family Law Section of the Law Society usually includes sessions on the Hague Convention. Since the Central Authority appoints lawyers from a small select group, very experienced and expert counsel are used in Convention cases. Liaison and networking amongst counsel is strongly encouraged. A memorandum

is circulated to all Hague counsel to raise awareness of particular 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?

n/a

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.

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?

Information provided is very accessible and easy to follow.

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.

See response to question 1. Particular reference is made to the Central Authority of England and Wales. New Zealand has experienced difficulties with the CA failing to respond to requests for information and progress reports not provided.

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

No

2. The comments of Goddard J should be noted in the second High Court judgment in *Punter*, that if shuttle custody cases create a serial habitual residence, this may create a loophole in the Convention where protection is not afforded to the parent in the initial habitual residence.

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?

No

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?

Yes. Samoa, India, Thailand. and China.

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

New Zealand does not have any formal bilateral agreements with other states.

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

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?*

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?*

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?
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?
64. Have you experienced any difficulties concerning interpretation of particular provisions?
65. Would you find a Guide to Good Practice on implementation of this Convention 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?

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