

**REVISION DU FORMULAIRE MODELE A UTILISER POUR LES DEMANDES DEPOSEES
EN APPLICATION DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980
SUR LES ASPECTS CIVILS DE L'ENLEVEMENT INTERNATIONAL D'ENFANTS**

document établi par le Bureau Permanent

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**REVISION OF THE MODEL APPLICATION FORM UNDER
THE HAGUE CONVENTION OF 25 OCTOBER 1980
ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

document drawn up by the Permanent Bureau

*Document d'information No 4 de mai 2011 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*

*Information Document No 4 of May 2011 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

In order to facilitate the dual aims of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter “the 1980 Convention”) of ensuring the “prompt return of children wrongfully removed ... or retained” and “ensur[ing] that rights of custody and of access ... are effectively respected”,¹ the 1980 Convention allows for individuals to apply for the return of a child² or for arrangements to organise or secure the effective exercise of rights of access.³ Article 8(2) of the 1980 Convention sets out the required information for an application, as well as documents that may accompany such an application. At the time of the adoption of the Convention, the Fourteenth Session of the Hague Conference recommended to States Parties that the Request for Return Model Form, available in the Annex of this document (hereinafter “the model form”), be used in making applications for the return of wrongfully removed or retained children.⁴ In the three decades since the drafting of this model form, the form has been adapted by Central Authorities to varying extents.

In 2006, the Special Commission to review the operation of the 1980 Convention reaffirmed “the Recommendation of the Fourteenth Session of the Hague Conference to use the standard Request for Return form”⁵ and recommended “that the Permanent Bureau, in consultation with Contracting States, up-dates the standard Request for Return form.”⁶

In the course of 2010, the Permanent Bureau conducted a preliminary analysis of the forms for request for return or access under the 1980 Convention, currently used by thirty-three Central Authorities⁷ and accessible on their website as of July 2010. While other Central Authorities may have also created application forms, they seem not to be easily accessible online, either because the Central Authority did not provide the Permanent Bureau with links to a Central Authority webpage or because the dedicated webpage was not accessible or did not include application forms as such.⁸ This Report reviews how Central Authorities have used the model form and makes some preliminary recommendations for the review and revision of the model form in its current incarnation. This Report also notes where benefits could be accrued from electronic tools developed by the Permanent Bureau in consultation with Contracting States, namely the iChild case management system, which deals in great part with similar data.⁹ Likewise, the Report

¹ Art. 1.

² Art. 8.

³ Art. 21.

⁴ *Actes et documents de la Quatorzième session* (1980), Tome III, *Child Abduction*; HCCH; 1982, p. 423. Also available on the website of the Hague Conference, < www.hcch.net >, in the “Child Abduction Section”.

⁵ “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)”, Recommendation No 1.1.13.

⁶ *Ibid*, Recommendation No 1.1.14.

⁷ Argentina, Australia, Austria, Belgium, Brazil, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Ecuador, France, Georgia, Germany, Greece, Iceland, Lithuania, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America.

⁸ Italy provides the applicant with the possibility to begin an application through an online submission on the following webpage < <http://www.giustiziaminorile.it/invio/modulo.asp> >. While the Italian application form does not request all the information included in the model form, it appears to be a mechanism for applicants to request that a formal application form be sent to them and bring the situation to the attention of the Central Authority. Newfoundland and Labrador has a form available online. However, it appears to be an affidavit that would be submitted in support of an application.

⁹ See Prel. Doc. No 9 of October 2006, “Report on the iChild pilot and the development of the international child abduction statistical database, INCASTAT - Technology Systems in support of the Hague Convention of 25 October 1980”.

notes insights acquired from the work of the Forms Working Group established in 2004 by the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance¹⁰ and the forms under the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, as adopted by the November 2009 Special Commission on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations.¹¹

I. Form consolidation

1) Making an Access Application Form Available

Several Central Authorities have consolidated return and access requests into one form.¹² In those forms, there are few requests for additional information beyond what is required for a return application. Of the eleven consolidated forms, eight have a dedicated section or question requiring the applicant to indicate if (s)he is filing a return or an access request.¹³ Beyond this simple question to differentiate between application types, only a handful require additional information:

- The Central Authority of Norway specifically indicates in their consolidated form that requests for access are made pursuant to Article 21 of the Convention and asks for both factual and legal grounds justifying the request for access and for proposed arrangements for access with the child.
- The application form for the Central Authority of the United Kingdom (England and Wales) also includes a section concerning requests for contact / access, asking that it should *only* be completed if the claimant is making an application for contact with the child(ren). The form asks first for details relating to the prevention of the exercise of contact rights. Then goes on to ask the applicant to provide a proposal for contact with the child(ren).
- Also from the United Kingdom, the Isle of Man in addition to asking for proposed arrangements for access, also requires applicants to provide evidence that (s)he has rights of access in respect to the child(ren).
- Taking a different tack, Spain, while titling the application form "*Solicitud de Devolución*" (Request for Return), provides space for an applicant to indicate what article of the Convention provides the basis for the applications; thus, allowing the form to be used for an Article 21 access request, while never explicitly referring to access rights.

¹⁰ See Prel. Doc. No 2A of July 2009, "Forms Working Group, Report", available on the website of the Hague Conference at < www.hcch.net >, under "Work in Progress" then "Maintenance Obligations".

¹¹ See Prel. Doc. No 2B (revised) of August 2010, "Forms Working Group, Recommended Forms", available on the website of the Hague Conference, *ibid*. See also "Conclusions and Recommendations of the Special Commission on the implementation of the 2007 Child Support Convention and of the 2007 Protocol on the Law Applicable to Maintenance Obligations (November 2009)", No 3, available on the website of the Hague Conference, *ibid*.

¹² Argentina, Belgium, Ecuador, Netherlands, Norway, Portugal, Sweden, Switzerland, United Kingdom, United Kingdom (England and Wales and the Isle of Man) and the United States of America.

¹³ Argentina, Belgium, Netherlands, Norway, Sweden, Switzerland, United Kingdom (England and Wales) and the United States of America. The United Kingdom (the Isle of Man) application asks applicants to indicate at the conclusion of the application whether they are applying for access to or return of a child.

Alternatively, rather than consolidate return requests and access requests into a single form, a few States have made separate access request forms available on the same website as return request forms.¹⁴

Regardless of whether the access request is consolidated into one form with the return request or assigned its own separate form, the content of the access inquiry is substantially similar to the return inquiries: identity of the child and his/her parents; identity of the applicant; identity of the person alleged to have removed or retained the child(ren) or to have impeded access to the child; circumstances surrounding the removal or retention or denial of access; the factual and legal grounds justifying the request; and proposed arrangements for either the return of or access to the child(ren).

It is worth mentioning that the iChild case management system operates in both Abduction cases as well as Access cases under the 1980 Convention.¹⁵ In addition, iChild permits a user to link electronically an Access case and an Abduction case that relates to the same child(ren). In relation to access, considerations may be given to the inclusion in the model form of information with regard to the wish of the applicants to have access to the child during the course of the return proceedings.

Conclusion: Of the forms surveyed, nearly two-thirds (twenty) have chosen to make an access application form available—either by including space for an access request in a return form or by creating a separate access request form—to applicants. The content of these access requests do not vary substantially amongst themselves or from their complementary return requests. It appears that, in considering the review of the Request for return model form, it would be appropriate to consider the need for a dedicated section or model form for Requests for access.

2) Multiple Conventions, One Form

Among the States Parties to the 1980 Convention, several are also Parties to other multilateral instruments which overlap with or add to the 1980 Convention (e.g. the *Inter-American Convention on the International Return of Children*¹⁶, the *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*¹⁷, the Brussels II a Regulation¹⁸). Some Central Authorities have explicitly created a single form to be used for return request applicants under both the 1980 Convention and other relevant instruments.¹⁹ In contrast, some of these instruments have been adopted accompanied by specific model forms.²⁰

¹⁴ Austria, China (Hong Kong SAR), Cyprus, France, Georgia, Germany, Lithuania, Monaco, South Africa and United Kingdom (Scotland).

¹⁵ See "iChild User Guide", available on the website of the Hague Conference at < www.hcch.net >, in the "Child Abduction Section".

¹⁶ Montevideo, 15 July 1989.

¹⁷ Luxemburg, 20 May 1980.

¹⁸ Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

¹⁹ Argentina, Belgium, Brazil, Greece, Malta, Netherlands, Portugal (Portugal has both a form for only Hague Convention applications and a form for both Hague Convention and Brussels IIa Regulation applications) and United Kingdom (England and Wales, Isle of Man and Northern Ireland).

²⁰ See e.g. *op. cit.* note 18, Annexes I to IV.

Conclusion: The decision to use one form for multiple instruments would need to be considered carefully, especially in relation to the interaction of the various instruments that might be relevant in each region and taking into account the other existing forms already adopted or used under these instruments.

3) Multiple Children, One Form

The model form allows an applicant to file a return request pursuant to the 1980 Convention for one child only. Presumably learning from experience, several States, however, have created forms with space for multiple children;²¹ some forms also explicitly invite applicants to attached additional paper should the space allotted be insufficient.²²

It is worth noting here that the iChild case management system provides for the possibility of saving one Case Profile concerning several children.²³ The Recommended forms under the 2007 Child Support Convention also allow applicants to fill in one form for multiple children.²⁴

Conclusion: Amending the model form so that one form can be used to apply for the return of multiple children is recommended. In many parental abduction cases, siblings are wrongfully removed or retained by one parent; allowing the left-behind parent to file a single form to apply for the return of all concerned children would serve the Convention's purpose of ensuring the prompt return of children through the most expeditious procedures.

II. Identity of the Child(ren) and the Parent(s)

1) Information Concerning the Child(ren)

The model form asks for the child(ren)'s name and first name, date and place of birth, habitual residence before removal or retention, passport or identity card number, and "description" and photo, if possible. Only four Central Authorities have accepted the model form's "Identity of the Child and Its Parents" section without any modification to format or content, apart for updating the year an abducted child will attain the age of 16 (from 19XX to 20XX).²⁵

While the number of entirely unamended application forms was minimal, several Central Authorities do not seem to have used the model form as a basis for their own forms. In most cases, these Central Authorities, while not using the format provided in the model form, made only minimal changes to the model form's content. The following are the most common additions made: sex (17 Central Authorities),²⁶ nationality (26 Central

²¹ Argentina, Canada (Prince Edward Island and Quebec), Ecuador, France, Norway, South Africa, Spain, United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America.

²² Canada (Prince Edward Island and Quebec), Norway and South Africa.

²³ See "iChild User Guide", *op. cit.* note 15, p. 23.

²⁴ *Op. cit.*, note 11, Annexes A to D, paras. 3.2.

²⁵ Australia, Georgia, Malta, New Zealand (has not updated the form to change the year of attaining the age of 16 will take place in 20XX and not 19XX).

²⁶ Argentina, Austria, Belgium, Brazil, China (Hong Kong SAR), Ecuador, Germany, Greece, Lithuania, Netherlands, Norway, Spain, Sweden, Switzerland, Turkey and United Kingdom (England and Wales and Scotland).

Authorities),²⁷ specific spaces for height, weight, eye colour, and hair colour (6 Central Authorities).²⁸ Every State, with the exception of Cyprus, follows the model form by indicating that a photograph should be submitted with the application when possible.²⁹

Conclusion: Practice indicates that additional information regarding the child(ren)—beyond what is requested in the model form—is useful to facilitate an application. The vast majority of States require information concerning nationality. While fewer Central Authorities specifically ask for the child(ren)’s sex, height, weight, eye colour, and hair colour, consideration should be given to require further information concerning the child in a revised model form, including physical description such as scars and birth marks. This information could help competent authorities of the requested State to locate and identify the child(ren) concerned.

2) Information Concerning the Parent(s)

All thirty-three forms require the basic information regarding the parents included in the model form, with the exception of Georgia, which does not ask for information concerning the parents’ marriage. However, many go further, requiring the address (current or last known) (13 Central Authorities),³⁰ telephone number(s) (9 Central Authorities),³¹ and date and place of divorce, if applicable (17 Central Authorities).³² The formatting of several applications indicates that while “habitual residence” was requested, the Central Authority was seeking, in fact, the address of the parent(s);³³ however, without explicitly requesting an “address,” it is doubtful that applicants would understand what information is sought.

A few Central Authorities request even more identifying information in order to facilitate the application.

- Scotland requires the mother’s maiden name.
- Switzerland requires that descriptions and photos, where available, of both parents be provided.
- China (Hong Kong SAR) requests the fax number, e-mail address, and language or dialect spoken by the parent(s).

The United States of America, rather than create dedicated sections for the mother and father’s identity, request the mother and father’s names if they are not listed as applicant or person alleged to have wrongfully removed or retained the child(ren).

²⁷ Argentina, Austria, Belgium, Brazil, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Ecuador, Germany, Greece, Lithuania, Netherlands, Norway, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America.

²⁸ Argentina, Brazil, Canada (Prince Edward Island and Quebec), Cyprus and United States of America. China (Hong Kong SAR) did not create specific spaces for height, weight, eye colour and hair colour, but recommended that this information be provided.

²⁹ The Italian form is an online inquiry, as such it would not be possible to submit a hardcopy of a photo. It appears this online form is a mechanism to begin an application and advise the Central Authority of the removal or retention.

³⁰ Argentina, Belgium, Brazil, Canada (Price Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Lithuania, Malta, Netherlands, New Zealand and United Kingdom (Scotland).

³¹ Argentina, Brazil, Canada (Price Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Iceland and Lithuania.

³² Argentina, Belgium, Brazil, China (Hong Kong SAR), Ecuador, Lithuania, Netherlands, Norway, Slovakia, South Africa, Spain, Sweden, Turkey and United Kingdom (England and Wales, Isle of Man and Scotland).

³³ Canada (Prince Edward Island and Quebec), Portugal, Slovakia, Spain and Sweden.

The iChild Family Information screen³⁴ provides a different approach than that of the model form. The iChild Family Information screen considers the family as a whole, permitting the inclusion, where relevant, of the status of the parents relationship at the time of the request, and information on persons related to the case, such as siblings, a new spouse of a parent, relatives or even friends. In addition, this approach permits the tracking of precise information on children as well as on parents such as details of citizenship, residency status in the requesting and requested countries, civil status and travel documentation or restrictions.

Conclusion: A revised model form could request further practical information concerning the parents, such as telephone numbers (home, work, and mobile) as well as e-mail addresses.

Approximately half of Central Authorities have requested information concerning the date and place of divorce. This request may help in obtaining copies of the divorce order in order to determine what law may govern the divorce proceedings and to establish factual or legal grounds for the request. The collection of information concerning the legal situation of the family was thoroughly dealt with during the iChild pilot project, and the iChild solutions to these issues could constitute an important source of inspiration in working on a revised model form.³⁵

III. Information about the Applicant

All forms, at some point, request the following information concerning the applicant or left-behind parent: name and first name, nationality, occupation, address, passport or identity card number, relationship to the child, and name and address of legal advisor, if applicable. Beyond this, a number of States request the applicant's country of habitual residence (8 Central Authorities),³⁶ telephone number(s) (14 Central Authorities),³⁷ e-mail address (5 Central Authorities),³⁸ and languages spoken (4 Central Authorities).³⁹ Concerning the applicant's attorney, some Central Authorities have expanded the single line provided in the model form so as to include designated spaces for the telephone number (12 Central Authorities),⁴⁰ fax number (6 Central Authorities),⁴¹ and e-mail address (6 Central Authorities)⁴² of the attorney. Norway and Sweden also ask applicants to indicate what languages are spoken by the attorney. Moreover, the United Kingdom (England and Wales) and Norway inquire if the applicant prefers the Central Authority correspond with the applicant directly or with the legal adviser directly.

Additionally, twelve Central Authorities indicate, in the form itself, that the requesting individual or institution must actually have exercised, either alone or jointly, custody rights before the removal or retention.⁴³ Finally, South Africa and the Isle of Man have

³⁴ See "iChild User Guide", *Op. cit.* note 15, p. 28.

³⁵ See *ibid*, pp. 29-34 and 40.

³⁶ Canada (Prince Edward Island and Quebec), Cyprus, Lithuania, Norway, Slovakia, South Africa and Sweden. In its form, Sweden specifically requests the "habitual residence" of the applicant in lieu of address.

³⁷ Belgium, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Cyprus, Lithuania, Netherlands, Slovakia, South Africa, Sweden, United Kingdom (England and Wales, Isle of Man and Scotland) and United States of America.

³⁸ Belgium, China (Hong Kong SAR), Norway, Slovakia and United Kingdom (England and Wales).

³⁹ China (Hong Kong SAR), Norway, Sweden and United States of America.

⁴⁰ Belgium, Cyprus, Lithuania, Netherlands, Norway, South Africa, Sweden, United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America.

⁴¹ Belgium, Netherlands, Norway, South Africa, Sweden and United Kingdom (England and Wales).

⁴² Belgium, Norway, Sweden and United Kingdom (England and Wales, Isle of Man and Scotland).

⁴³ Australia, Austria, Belgium, Canada (Prince Edward Island and Quebec), Georgia, Iceland, Lithuania, Malta, New Zealand, Slovakia and Switzerland.

elected to place the section requesting information on the applicant first before any other inquires.

Conclusion: While only fourteen States request the applicant's phone number, this is a good practice that can facilitate processing applications and should be recommended. Requesting as much contact information for the applicant as possible will allow Central Authorities to process applications more rapidly and expeditiously. Hong Kong SAR's form provides an informative example of how to request contact information, including information concerning the legal adviser of the applicant.

Although only twelve States indicate in the form that the applicant must actually have exercised custody rights in order to meet the requirements of the Convention, it would be worth considering whether indicating the requirements to be met under the Convention to establish a wrongful removal or retention should be included in a revised model form or in an instruction sheet used to fill in the form.

IV. Place Where the Child(ren) Is(Are) Thought to Be

In developing a revised model form, particular attention should be given to the issue of collecting information concerning the place where the children or child are or is thought to be, with a view to collecting as precise information as possible in order to facilitate and speed up the location of the children or child.

1) Identity of Person Alleged to Have Removed or Retain the Child(ren)

All Central Authorities, except Cyprus and England and Wales,⁴⁴ follow the model form, requesting the name, date and place of birth, nationality, occupation, (last known) address, and passport or identity card number of the person alleged to have removed or retained the child(ren). In some cases, this is supplemented by a request for a telephone number (5 Central Authorities),⁴⁵ habitual residence (2 Central Authorities),⁴⁶ name and address of employer (6 Central Authorities),⁴⁷ and list of languages spoken by the person alleged to have removed or retained the child(ren) (2 Central Authorities).⁴⁸ A more common supplement to the model form is a request for the relationship of the child(ren) to the person alleged to have removed or retained the child(ren) (13 Central Authorities).⁴⁹ Five Central Authorities supplemented the model form's general request for a physical description by asking for the height, weight, eye colour, and hair colour.⁵⁰

⁴⁴ Cyprus and United Kingdom (England and Wales) only request the name of the person alleged to have removed or retained the child(ren) and that person's relationship to the child(ren). In a subsequent section, these forms ask for the address where the child(ren) is(are) thought to be, however, this could be different from the address of the person alleged to have removed or retained the child. At no point, does either of these forms ask for a physical description of the person alleged to have removed or retained the child. The English form, in the final section, when recommending documentation to submit in support of the application indicates that a photo of the abductor should be included with the application.

⁴⁵ Argentina, China (Hong Kong SAR), Lithuania, Sweden and United States of America.

⁴⁶ Argentina and Sweden.

⁴⁷ Argentina, Brazil, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR): and United States of America.

⁴⁸ China (Hong Kong SAR) and Norway.

⁴⁹ China, (Hong Kong SAR), Cyprus, Ecuador, Greece, Netherlands, South Africa, Spain, Sweden, United Kingdom (England and Wales, the Isle of Man, Northern Ireland and Scotland) and United States of America.

⁵⁰ Argentina, Brazil, Canada (Prince Edward Island and Quebec), United States of America.

A few Central Authorities also adopted other practices:

- The United Kingdom (the Isle of Man) and China (Hong Kong SAR) allow an applicant to indicate if the person alleged to have removed or retained the child(ren) is a parent; if so, the applicant only need indicate the relationship of the child(ren) to the person alleged to have removed or retained the child and the description and last known address of the person alleged to have removed or retained the child.
- The United States of America requests known aliases of the person alleged to have removed or retained the child(ren).
- China (Hong Kong SAR) requests the e-mail address of the person alleged to have removed or retained the child.

Conclusion: As with the applicant section, requesting as much specific contact information as possible for the person alleged to have removed or retained the child(ren) would be a good practice. The model form only requests the last known address of the alleged taking parent; however, either the requesting or requested state's Central Authority may wish to contact the alleged taking parent by telephone. While only a few Central Authorities request the name and address of the employer, this is a good practice that should be recommended.

As with the identity of the child section, making specific inquiries about the physical description of the alleged abductor (height, weight, eye colour, and hair colour) may facilitate the requested Central Authority in locating the alleged abductor. Furthermore, providing examples of useful additional information, such as scars, birth marks, or tattoos, can help guide applicants.

2) Information Concerning (Possible) Address of the Child(ren)

All Central Authority forms surveyed, with the exception of those of Brazil, Turkey, and the United States of America, specifically request the new address, if applicable, of the child(ren) in addition to that of the person alleged to have removed or retained the child(ren). In contrast, Switzerland requests information on either the place where the child is thought to be *or* the habitual residence of the child. However, eighteen Central Authorities, instead of asking for the child(ren)'s "address," specifically inquire about the child(ren)'s current whereabouts.⁵¹ Lithuania also requests the phone number of the location where the child is thought to be.

Conclusion: While the title of this section of the model form is the "Place where the child is thought to be," it would be good practice to reiterate that the address requested for the child(ren) is the location where the child(ren) are thought to be, *not* the address of the child(ren) before removal or retention. An applicant aware of the habitual residence requirement of the Convention might be hesitant to list the child(ren)'s address after the removal or retention for fear that it may constitute evidence that the new address is the habitual residence.

⁵¹ Argentina, Belgium, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Cyprus, France, Greece, Iceland, Lithuania, Netherlands, Norway, Slovakia, South Africa, Spain, United Kingdom (England and Wales, Isle of Man and Northern Ireland). Spain requests both the place where the child(ren) is(are) thought to be and the address of the child(ren).

3) Distinguishing Information on the Respondent from Information on the Whereabouts of the Child

The section concerning the location of the child(ren), presents the most format changes from the model form. Several Central Authorities have changed the name of the section or separated it into multiple sections—one for the identity and location of the person alleged to have removed or retained the child(ren) and one for the presumed address of the child(ren) and contact information of other persons able to supply information concerning the whereabouts of the child(ren).

Conclusion: Clearly separating the situation of the person alleged to have removed or retained the child(ren) from the whereabouts of the child acknowledges, either purposefully or incidentally, that the child(ren) may be located somewhere other than the (last known) address of the person alleged to have retained or removed the child. A revised model form could make such a clear distinction.

4) Information Concerning Other Person(s) Who Might Be Able to Supply Additional Information Relating to the Whereabouts of the Child(ren)

Apart from Brazil, Cyprus, Ecuador, and Monaco, each Central Authority surveyed requests supplemental information that might aid in locating the child. In addition to simply requesting the names of individuals who might be able to provide information to locate the child, thirteen Central Authorities specifically request the contact information or details for such people.⁵² However, Canada (Prince Edward Island and Quebec) do not limit this to individuals who might be able to supply additional information relating to the whereabouts of the child. They request “All information which might be of help in locating the whereabouts of the child (e.g., Names of persons, facts etc.).”

Conclusion: Thirteen Central Authorities have supplemented the model form by explicitly requesting the contact information for such individuals. This may be a practice to be recommended to all States as well as considered in a revised model form.

V. Factual or Legal Grounds Justifying the Request

Many Central Authorities, including several that do not make the application form available online, have created information brochures or websites including an outline on the international abduction application process.⁵³ Among these instruction forms, six have dedicated space to explaining explicitly what information is required to provide legal or factual justification for an application.⁵⁴ Some Central Authorities, list the requirements of the Convention, but do not explain how an applicant would demonstrate factual or legal grounds. As an alternative, or supplement, to a separate instruction

⁵² Argentina, China (Hong Kong SAR), Lithuania, Malta, New Zealand, Norway, South Africa, Sweden, United Kingdom (England and Wales, Isle of Man and Northern Ireland) and United States of America.

⁵³ Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Canada (Quebec), China (Hong Kong SAR), Czech Republic, Dominican Republic, Ecuador, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, Slovakia (only available in Slovakian), South Africa, Sweden, Switzerland, Turkey (only available in Turkish), United Kingdom (England and Wales, Isle of Man, Northern Ireland and Scotland) and United States of America. Bosnia and Herzegovina, the Czech Republic, the Dominican Republic, Finland, Ireland, only provide information on the process without making the application form available online. In Canada, while the Canadian federal Central Authority does not handle applications, it does provide information online indicating the legal requirements that an application must meet in order to qualify for return pursuant to the Convention.

⁵⁴ Australia, Netherlands (in Dutch only), New Zealand, Switzerland, United Kingdom (England and Wales) and United States of America.

sheet, some Central Authorities provide, within the form, a list of legal grounds (15 Central Authorities).⁵⁵ Most commonly, States that elect to provide information within the form simply indicate that a court decision is an example of grounds to justify the request.⁵⁶

Examples of how Central Authorities handle the provision of information on factual and legal grounds justifying the request include:

- Asking applicants to indicate which conventions or domestic laws would provide the legal basis for an application⁵⁷ or to indicate if the claim is based on a court decision or agreement.⁵⁸ France even asks claimants provide the section of the relevant domestic law justifying their request.
- Australia lists the essential elements of any Hague Child Abduction Convention claim (habitual residence, rights of custody, and actual exercise of custody rights), including making the applicant aware of possible defences (consent or acquiescence) that the person alleged to have removed or retained the child may claim.
- China (Hong Kong SAR) inquires who has legal custody rights of the child(ren) and who had daily care of the child(ren) before the removal or retention and requests relevant documentation, such as custody orders or agreements or applicable law be submitted.
- South Africa and the United Kingdom (the Isle of Man), rather than ask for factual or legal grounds requires applicants to provide evidence of rights of custody in respect to the child(ren) and that the applicant was exercising those rights at the time of removal.

Conclusion: Admittedly, legal or factual grounds for a request will vary from State to State based on domestic law; however, States may be encouraged to inform applicants what is meant by “factual or legal grounds justifying the request.” As an example, the iChild case management system provides for very helpful pre-listed legal information that could serve as a basis for an extended section on the legal situation of the family.⁵⁹

A separate sheet, although less common in the Central Authorities surveyed, allows for more room to explain in detail what factual or legal grounds are and what might demonstrate sufficient grounds. Central Authorities may provide examples, either within the form or the separate sheet, of documents that can be used to demonstrate grounds according to their domestic law.

VI. Return of the Child

1) Securing the Voluntary Return of the Child and Bringing about an Amicable Resolution of the Issue

While the model form requests applicants to provide the name and contact information of the person or institution to whom the child is to be returned and proposed practical arrangements for the return of the child, it does not address the possibility of an amicable resolution. Argentina and China (Hong Kong SAR) inquire, within their forms, about the possibility of a voluntary return of the child. The French form makes no

⁵⁵ Argentina, Belgium, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Ecuador, France, Greece, Netherlands, South Africa, Spain, Sweden, Turkey, United Kingdom (Scotland) and United States of America.

⁵⁶ Belgium, Ecuador, Greece, Netherlands, Spain, Sweden, Turkey, United Kingdom (Scotland).

⁵⁷ Argentina, France.

⁵⁸ Canada (Prince Edward Island and Quebec).

⁵⁹ See “iChild User Guide”, *Op. cit.* note 15, pp. 39 and 40.

mention of voluntary return within the form, but on the Central Authority's website, significant space is dedicated to mediation in child abduction cases.

Conclusion: The model form does not envision the possibility of Central Authorities achieving the voluntary return of the child(ren). Inquiring about voluntary return or an amicable resolution of the issue is today an established practice that should be discussed for possible inclusion on future revised model form. In particular, a new section might be considered to provide, for example, where appropriate, an indication that the applicant is open to an amicable resolution of the matter.

2) Proposed Practical Arrangements for the Return of the Child

The model form provides for a space on "proposed arrangement for the return of the child" under section VII entitled "Child to be returned to:". Seven Central Authorities, when asking the applicant to propose practical arrangements for the return of the child(ren), provide suggestions of what those practical arrangements might entail (*e.g.* means of transportation, individual charged with travelling with or recovering the child(ren), intervention in travel expenses, and date and place of return).⁶⁰ Argentina and Brazil do not follow the model form nor provide space to indicate any proposed arrangements for the return of the child.

Conclusion: Work on a revised model form might include the extension of the section on possible agreed practical arrangements for the return of a child (for instance, by way of a list of illustrative examples).

VII. Civil Proceedings in Progress

Nine Central Authorities provide information, either within the form or separately, explicitly explaining a civil proceeding that is currently in progress.⁶¹ Three have divided the section into two parts: one requests civil proceedings from their State and another requests all other civil proceedings.⁶² Additionally, five Central Authorities inquire not only about civil proceedings that have or are taking place, but also proceedings that are intended.⁶³

Conclusion: This section of the model form seems inadequate in describing what information is sought. Considered revisions on this section could benefit from the format of the Status of Application Reports drafted under the 2007 Child Support Convention Forms⁶⁴ as well as the format used by iChild, in particular on the "Child custody screen" that allows a user to collect detailed information on proceedings in progress. A revised model form may also explain or provide examples of what constitutes a *relevant* civil proceeding. In addition, when recommending or listing documents, a revised model form may encourage applicants to submit documentation from these relevant civil proceedings, including proceedings taking place abroad. Finally, consideration may also be given to the extent to which information on proceedings should be required (*e.g.* in relation to criminal proceedings, etc.).

⁶⁰ Belgium, China (Hong Kong SAR), Norway, South Africa, Sweden, United Kingdom (England and Wales and Isle of Man).

⁶¹ Australia, China (Hong Kong SAR), Lithuania, New Zealand, South Africa, Switzerland, United Kingdom (England and Wales and Isle of Man) and United States of America.

⁶² South Africa and United Kingdom (England and Wales and Isle of Man).

⁶³ Belgium, Ecuador, Greece, Spain and Turkey.

⁶⁴ *Op. cit.* note 11, pp. 25, 31, 40 and 51.

VIII. Other Remarks Section

While the model form provides the applicant with blank space to add other remarks, several Central Authorities have elected to produce forms which allow applicants to provide relevant information in accordance with a pre-defined list of issues. Pre-defined issues include: suspicions, and reasons for those fears, that the person who removed or retained the child(ren) might disappear or flee once learning about the application; history of mental illness of the person who removed or retained the child(ren); any abuse of the child(ren) by the person alleged to have removed or retained the child; health of the child(ren); and the likelihood of agreement to a voluntary return. Prince Edward Island and Quebec also require that applicants submit an affidavit in support of a claim that the child is endangered.

Conclusion: Providing pre-defined “remarks” may help applicants to filter relevant from unnecessary remarks. Another option consists in providing Yes/No questions as in the Hong Kong SAR Central Authority form. While such questions could serve a useful purpose in a revised model form, a number of them may be better placed in other new or extended sections of a revised model form.

IX. Authorisation to Act on Applicant’s Behalf

Seventeen States include authorisation requests within the form itself.⁶⁵ The need for authorisation likely depends on domestic law; therefore, the wording varies from form to form. Generally, however, authorisations include reference to authorisation to “all things reasonable and necessary” or “appropriate measures” in connection with this application. Others include explicit authorisation to release personal information.

Conclusion: For those States that do require authorisation in order to process applications, it may be worth considering including the authorisation within the form itself. Several Central Authorities make the authorisation available separately; however, this could result in an applicant failing to locate and/or complete the required form.

X. Application Format

1) Electronic Form Completion

Only one Central Authority, Italy, provides the applicant with the possibility to begin an application through an online submission. While the Italian application does not request all the information included in the model form, it appears to be a mechanism for applicants to request a formal application form to be sent to them and bring the situation to the attention of the Central Authority. All other States require that applicants submit hard copies to the Central Authority; however, several forms allow applicants to complete the form electronically and then print a typed, completed form.⁶⁶

⁶⁵ Australia, Canada (Quebec), China (Hong Kong SAR), Cyprus, Ecuador, France, Georgia, Greece, Malta, Netherlands, South Africa, Spain, Switzerland, Turkey and United Kingdom (England and Wales, Isle of Man and Northern Ireland).

⁶⁶ Australia, Belgium, Canada (Prince Edward Island and Quebec), Cyprus, Germany, Lithuania, Netherlands, New Zealand, Norway, Switzerland, Turkey, United Kingdom (England and Wales and Northern Ireland) and United States of America. Most of these forms are .DOC format, however Canada (Prince Edward Island and Quebec), Germany and the United States of America have created .PDF forms with active cells that applicants can complete electronically.

Conclusion: It may not be feasible at this stage to recommend that States create forms that can be submitted online; however, creating forms with active cells so that applicants, if they choose, can complete the form on a computer and then print and submit a typed form may be more feasible. In revising the model form, consideration should also be given to the establishment of electronic forms, in light of the forms adopted in the context of the 2007 Child Support Convention, which include efficient solutions to issues of signatures in the context of electronic forms.⁶⁷

2) One Form, Multiple Languages

Twenty States make the form available in multiple languages, either in separate forms or within one form.⁶⁸ Of the remaining thirteen forms that are only available in one language, all but two are available in either English or French.

There are benefits of including multiple languages in one form, but the lack of clear section divisions (see below for further discussion of section division) combined with multiple languages without any formatting differentiation can make such forms difficult to read and complete.

Conclusion: It is worth noting here the importance of following the Convention's language requirements (or reservations with respect to these requirements) and to provide information on the Convention in as many languages as possible. Central Authorities that wish to include three or more languages in a single form may wish to consult the Ecuadorian form. This form succeeded in including three languages through the use of formatting—bolding the Spanish and placing English and French in subordinate positions—without sacrificing comprehensibility. In considering work on a revised form, it is worth a reminder that the Forms Working Group for the 2007 Child Support Convention responded to the issue of languages by developing electronic forms that require information through tick-boxes which permits a user, to a large extent, to fill in a form in one language in one template and to read it in another language template, which may reduce the need for full translations.⁶⁹

3) Section Divisions

While the model form does capitalise section headers, Seventeen Central Authorities have elected to divide sections into text boxes.⁷⁰ Of those States that do not use text boxes, most have modified the model form—through the use of bolding, underlying, and text justification—to improve the separation between sections.

Conclusion: The lack of clear section divisions makes it difficult to differentiate between the different inquiries. So long as they incorporate the content of the model form, Central Authorities should be given flexibility to format the document in such a way that it is consistent with other government forms and most accessible to the population.

⁶⁷ See No 2 A of July 2009, "Forms Working Group, Report", in particular p. 6, *op. cit.* note 10.

⁶⁸ The following States include multiple languages within a single form: Argentina, Brazil, Ecuador, Greece, Netherlands, Portugal, Spain, Switzerland and Turkey. The following States have (also or alternatively) made separate forms available for multiple languages: Austria, Belgium, Canada (Quebec), China (Hong Kong SAR), Cyprus, France, Georgia, Germany, Norway, Sweden, Switzerland and Turkey.

⁶⁹ See Prel. Doc. No 2A of July 2009, "Forms Working Group, Report", p. 3, *op. cit.* note 10.

⁷⁰ Argentina, Austria, Belgium, Brazil, Canada (Prince Edward Island and Quebec), China (Hong Kong SAR), Germany, Iceland, Netherlands, Norway, Sweden, Switzerland, United Kingdom (England and Wales, Northern Ireland and Scotland) and United States.

CONCLUSION ON FURTHER WORK

In 2006, the Special Commission recommended “that the Permanent Bureau, in consultation with Contracting States, up-dates the standard Request for Return form.”⁷¹ The Permanent Bureau would like to suggest that work already started on the revision of the model form under the 1980 Convention be further pursued in consultation with Contracting States, taking into account the results of this preliminary study and, in particular, operational requirements of electronic case management systems such as iChild and the work accomplished in relation to forms under the 2007 Hague Child Support Convention.

⁷¹ Conclusion and Recommendation No 1.1.14 of the Fifth Meeting of the Special Commission, *op. cit.* note 5.

A N N E X

Request for return

Hague Convention of on the Civil Aspects of
International Child Abduction

REQUESTING CENTRAL AUTHORITY
OR APPLICANT

REQUESTED AUTHORITY

Concerns the following child: who will
attain the age of 16 on 19.....

NOTE: The following particulars should be completed insofar as possible.

I - IDENTITY OF THE CHILD AND ITS PARENTS

1 Child

name and first names
date and place of birth
habitual residence before removal or retention
passport or identity card No, if any
description and photo, if possible (see annexes)

2 Parents

2.1 Mother: name and first names
date and place of birth
nationality
occupation
habitual residence
passport or identity card No, if any

2.2 Father: name and first names
date and place of birth
nationality
occupation
habitual residence
passport or identity card No, if any

2.3 Date and place of marriage

II - REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)

3 name and first names
nationality of individual applicant
occupation of individual applicant
address
passport or identity card No, if any
relation to the child
name and address of legal adviser, if any

III - PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1 Information concerning the person alleged to have removed or retained the child

name and first names
date and place of birth, if known
nationality, if known
occupation
last known address
passport or identity card No, if any
description and photo, if possible (see annexes)

4.2 Address of the child

4.3 Other persons who might be able to supply additional
information relating to the whereabouts of the child

IV - TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

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.....

V - FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

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.....
.....

VI - CIVIL PROCEEDINGS IN PROGRESS

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.....
.....

VII - CHILD IS TO BE RETURNED TO:

a name and first names
date and place of birth
address
telephone number

b proposed arrangements for return of the child
.....
.....

VIII - OTHER REMARKS

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.....
.....
.....

IX - LIST OF DOCUMENTS ATTACHED*

.....
.....
.....
.....

Date

Place

Signature and/or stamp of the requesting Central Authority
or applicant

.....

* e.g. Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.