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ANNEXES

GUIDE DE BONNES PRATIQUES EN VERTU DE LA CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET LA COOPERATION EN MATIERE D'ADOPTION INTERNATIONALE

MISE EN ŒUVRE

établi par le Bureau Permanent

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ANNEXES

GUIDE TO GOOD PRACTICE UNDER THE HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

IMPLEMENTATION

drawn up by the Permanent Bureau

Annexes au Document préliminaire No 2 de septembre 2005 à l'intention de la Commission spéciale de septembre 2005 sur le fonctionnement pratique de la Convention de La Haye du 29 mai 1993 sur la protection des enfants et la coopération en matière d'adoption internationale

Annexes to Preliminary Document No 2 of September 2005 for the attention of the Special Commission of September 2005 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

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OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**

IMPLEMENTATION

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1. THE PATH TO SIGNATURE AND RATIFICATION OR ACCESSION¹**1.1 Understanding the terminology of the Hague Convention**

- It is possible for a State to become a Party to the 1993 Hague Convention without being a Member of the Hague Conference.
- By *signing* the 1993 Convention, a State expresses, in principle, its intention to become a Party to the Convention. However, signature does not oblige a State to ratify the Convention.² According to the terms of the 1993 Convention, signing and ratifying is only possible for (1) those States that were Members of the Hague Conference during the Session in which the Convention was adopted (29 May 1993); and (2) those non-Member States that participated in the diplomatic Conference.³
- *Signature followed by ratification:* After signature, ratification requires the Convention to be approved through the appropriate national procedures. It establishes on the international plane a State's consent to be legally bound by the Convention.
- *Accession:* Other States wishing to become a Party to the 1993 Convention may accede.⁴ Accession is the process by which a State which was not a Member State of the Hague Conference at the time the Convention was adopted (on 29 May 1993), or did not participate in the diplomatic Conference, may nevertheless become a full Party to the Convention and be bound by its terms.
- If an objection to an accession is raised by any other Contracting State within a six-month period, the Convention will not operate between the acceding State and the objecting State until such time as that objection is withdrawn.⁵
- The entering into force of the Convention requires the deposit by a State of an instrument of ratification, acceptance, approval or accession with the depositary of the Hague Conventions, the Ministry of Foreign Affairs of the Kingdom of the Netherlands.⁶
- All States that have signed and ratified or that have acceded to the Convention are considered Contracting States to the Convention. Contracting States to the Convention do not receive different treatment according to the manner in which they became parties. Once the Convention is in force between two States the obligations are the same whether the States concerned ratified or acceded to the Convention.

¹ This chapter is based partly on the Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part II: Implementing Measures.

² Article 18 of the *Vienna Convention on the Law of Treaties* obliges States, not to defeat the object and purpose of the treaty prior to its entry into force or until that State has made clear its intention not to become a party to the Convention.

³ Article 43(1).

⁴ Article 44. States that cannot sign and ratify may only accede.

⁵ Article 44(3).

⁶ Article 46; see also Article 43(2), Article 44(2).

1.2 Steps prior to signing the Convention

1.2.1 *Contemplating becoming a Party*

- Consult with the Permanent Bureau of the Hague Conference and other States Parties on the benefits of the Convention.
- Consider whether any existing domestic laws create obstacles or impediments to the implementation and operation of the Convention.
- Federal States may wish to consider how best to achieve co-ordination and consistent practices among the various provinces, territories or states.
- Consult with different stakeholders, government and non-government agencies to obtain support and approval to ratify or accede to the Convention.
- Read the Guide to Good Practice: Implementation.

1.3 Steps to take before ratification of, or accession to, the Convention

1.3.1 *Assessment of current situation*

States should undertake a detailed assessment of their current operation before making determinations on how to set up a Central Authority, whether or not to use accredited bodies or non-accredited persons, and how to structure the child protection and adoption policies.

The assessment should include information on any and all available aid programs for family preservation and reunification, current domestic adoption programs or child care services, and current adoption practices.

An assessment should also include an analysis of how each step of the current process is funded and where institutions, bodies or other persons now perform functions affected by the Convention.

1.3.2 *Development of implementation plan*

After an assessment is done, States may be able to determine which changes or actions need to be taken immediately to protect children, which can be implemented upon entry into force, and which should be developed over a period of time.

These decisions will inform choices about who to designate as the Central Authority, and what resources to allocate to the Central Authority. In addition, States will determine which functions, if any, can be performed by accredited entities or approved persons and how the proposed system will be funded.

Further information on developing an implementation plan can be found in Annex 2.

1.4 Entry into force

Entry into force occurs on the first day of the month following three months after the instrument of ratification and accession is deposited with the depositary which is the Ministry of Foreign Affairs of the Netherlands.⁷

⁷ Article 46. For comments on the relationship between Article 46(2) and Article 44(2), see Chapter 7.3.1.

States must notify the Permanent Bureau of the designation of the Central Authority and any bodies or persons which have been accredited or approved to perform functions under the Convention.⁸

States should ensure that all necessary procedures are in place and functional before the Convention enters into force. All interested parties, and the public, should be made aware of the new procedures and policies enacted under the Convention.

After the Convention enters into force, States should continue to provide appropriate training and education to those persons responsible for implementing the Convention (e.g. Central Authorities, judges, lawyers, locating agencies, social service agencies). States are also encouraged to continually monitor the application and functioning of the Convention and respond to any implementation difficulties that may arise.

1.5 Methods of implementation

The Convention will be brought into force within the domestic legal order of each State Party in accordance with that State's legal and constitutional requirements. Experience has shown that even in those countries where treaties are regarded as self-executing, additional implementing measures are extremely useful in translating the Convention's provisions into practice. For instance, either through implementing legislation or other measures, it may be particularly useful to designate any competent authorities, to determine if and how bodies will be accredited to perform Central Authority functions, to lay down procedures for determining that intercountry adoption is in the child's best interests, to provide protective mechanisms against the abduction, sale of, or traffic in children and to secure any appropriate consents.

In some States the Convention will enter into force in domestic law, without any intermediate step, once ratification or accession takes effect (*i.e.* monist States). In other States the Convention will need to be incorporated in domestic law by legislation (*i.e.* dualist States).⁹ In the case of dualist States, different kinds of implementing legislation can be contemplated. Some constitutions contain both dualist and monist elements.¹⁰

Where the provisions of the Convention are being transformed into national law or where a legislative act is necessary to give effect to a treaty, there is a risk that the international and domestic mechanisms may not be synchronised. In the dualist system, whether based on incorporation or transformation, a divergence may occur in two directions: the treaty is ratified but the necessary legislation is not enacted; or the legislation is passed, but ratification does not occur.¹¹ As a result care should be taken to ensure that the two processes are brought into line.

1.5.1 Monist approach (automatic incorporation)

Under the constitutional provisions of some "monist" States, once an international treaty has been concluded in accordance with the constitution, approved by competent State organs and has entered into force at the international level for that State, it will, without the need for intervening legislation, become part of domestic law. Generally, when legislation is not needed, such treaties are described as "self-executing".¹² In some

⁸ Article 13.

⁹ See J.H.A van Loon, *The Hague Conventions on Private International Law*, Volume 7 in F.G. Jacobs and S. Roberts, *The Effect of Treaties in Domestic Law* (Sweet & Maxwell, London, 1987), at 221-43.

¹⁰ See A. Aust, *Modern Treaty Law and Practice* (Cambridge University Press, 2000), at 145.

¹¹ See J.H.A van Loon, *supra* note 225, at 230.

¹² Aust, *supra* note 228, at 146.

monist States further measures (legislative, administrative or fiscal) may be needed for the treaty to have full effect in domestic law.¹³

In many monist States following ratification or accession, the Hague Convention has effect in domestic law immediately on the date of entry into force at the international level.¹⁴ It is applied directly by the judicial and administrative authorities and consequently can create rights and claims for private citizens.¹⁵

If this method is employed, States have a particular responsibility to ensure that those who are affected by, or who may have to apply the Convention, are made aware of the Convention's contents, date of entry into force, reservations and designated Authorities. The failure to adopt specific legislation or rules has sometimes led to difficulties in effectively carrying the Convention into practice.¹⁶

1.5.2 Dualist approach (*incorporation or transformation by legislation*)

Under the constitutional provisions of dualist States, an international treaty must be given effect by incorporating the rights and obligations set out in the treaty into domestic law through legislation. In this category, a statute may directly enact the provisions of the treaty by setting out the treaty as a schedule to the enacting legislation. A statute may also transform the treaty into domestic legislation by employing its own substantive provisions to give effect to the treaty without enacting the text of the treaty itself.¹⁷

When an international treaty is given effect by transformation through implementing legislation, the legislative provisions may be in accordance with, but not necessarily expressed in the same terms as, the Convention. The treaty provisions are thus used as a basis for drafting a new law or a set of rules to be applied within the Contracting State. Under this approach, the text of the treaty will not necessarily be found in a schedule to the act.

Implications of the incorporation approach

Where implementation by legislation is employed, setting out the text of the Convention in a schedule to an act, it will at the same time be possible to enact more specific provisions deemed necessary for the appropriate application of the treaty by domestic bodies or authorities. For example, such specific provisions may cover the designation of any competent authorities, the accreditation process for service providers, procedures for determining that a child is adoptable or that the prospective adopters are suited to adopt, and provisions for obtaining consent to adoption.

¹³ *Id.*

¹⁴ See Aust, *supra* note 228, at 146. "Although there are many variations in how the monist approach is expressed in constitutions, three main features are common to most. First, although the constitution requires the treaty to have first been approved by parliament, there are exceptions for certain types of treaties or certain circumstances. Secondly, a distinction is made between treaties according to their nature or subject matter, some being regarded as being self-executing, others requiring legislation before they can have full effect in domestic law. Thirdly, a self-executing treaty may constitute supreme law and override any inconsistent domestic legislation, whether existing or future, though in some States where parliament is supreme later legislation can override a self-executing treaty."

¹⁵ See M. Savolainen, The Hague Convention on Child Abduction of 1980 and Its Implementation in Finland, *Nordic Journal of International Law*, Volume 66 (Kluwer, 1997), at 122.

¹⁶ See Aust, *supra* note 228, at 157. "Under a monist system it may be many years after the treaty entered into force for a State that [...] a determination is made by a court deciding usually on application by a citizen, whether a provision is self-executing."

¹⁷ I. Brownlie, *Principles of Public International Law* (Clarendon Press, 1990), at 48.

This method encourages an international approach; the incorporation of the actual text of the Convention as a schedule to the act enables direct reference to the articles of the Convention in their context and facilitates international consistency in interpretation of the Convention.

Implications of the transformation approach

While the use of established domestic structures and terminology may make the Convention rules more accessible to judges, lawyers and the parties, discrepancies between international and domestic law must be avoided. There are several issues requiring close attention if the Convention rules are reproduced in an internal transformation statute:

- Every effort should be made to ensure that the Convention will be capable of being interpreted within its international context.
- The carefully drafted provisions of the Convention should not be altered in such a way that the application of the domestic rule might lead to results which are incompatible with the provisions of the Convention.¹⁸
- All essential Convention provisions should be included in the domestic implementing legislation or in regulations; provisions not included will have no force in domestic law.
- Domestic provisions should be drafted in accordance with the objectives of the Convention. To this end, use of the Explanatory Report of the Convention, the Parra-Aranguen Report, is valuable.¹⁹

1.5.3 A continuing process of implementation

The successful operation of the 1993 Hague Convention requires that the Convention be consistently applied by all States Parties. The national and regional legal frameworks in which the Convention has to operate may require significant changes. Contracting States that have already implemented the Convention should continue to evaluate the operation of the Convention within their domestic systems. To this end, implementation should be seen as a continuing process of development and improvement and Contracting States should continue to consider ways in which to improve the functioning of the Convention, if appropriate, through modification or amendment of existing implementing measures.

¹⁸ See Savolainen, *supra* note 231, at 123. See Article 27 of the Vienna Convention on the Law of Treaties, stating that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

¹⁹ The Convention and the Explanatory Report are available in, *inter alia*, English, French and Spanish. See the website of the Hague Conference, Convention #33, Translations.

2. A POSSIBLE MODEL FOR AN IMPLEMENTATION PLAN

In the years since the acceptance of the Convention, States have experienced a wide range of implementation challenges. On the one hand, it has been noted that States who have implemented strong controls on the use of intermediaries or the acceptance of fees for services may be experiencing operational difficulties because of a lack of personnel or resources. Some States have stopped intercountry adoption entirely while endeavouring to develop a functioning child care and protection program, only to find that such actions resulted in prolonged moratoria on services that may affect children already in care at the time of ratification or accession.

Equally troubling are concerns that implementation of the Convention in other countries has done little to protect children or improve practices or cooperation. In these, the concern is that the Convention has been applied in such a way to add a layer of respectability to a process that remains basically unchanged. While the basic principles of the Convention may be included in the law, in actual practice the protections of the Convention are not manifest. In some cases this may be due to lack of resources or enforcement capabilities. In other cases, it may be that long-standing practices, cultural considerations, or a history of failure to govern according to the rule of law may be involved. By many reports, the issue of corruption by both government officials and private practitioners and failure to enforce the provisions of the law remain deeply problematic in respect to the Convention.

States may, however, have the desire to implement an effective child care and protection system, but may lack the immediate resources and ability to do so. If such a situation exists, States are encouraged to develop a progressive plan which outlines detailed steps designed to achieve effective implementation over a set period of time.

Once a State has undertaken an internal assessment of its current adoption and child care system, and reviewed the requirements and principles of the Convention, a progressive implementation plan can be developed.

2.1 Developing an implementation plan

The following steps are involved in developing an implementation plan:

- Develop assessment tools
- Assess internal situation
- Review internal assessment results
- Determine whether emergency measures are needed
- Develop long-term plan
- Develop short-term plan
- Produce a written implementation plan
- Further ongoing assessment (control)

2.2 Evaluation tools and strategies

States considering ratification of or accession to the Convention should undertake an assessment of relevant aspects of the current child welfare protection and adoption situation in their country. Undertaking such an assessment involves consideration of:

- who currently provides child welfare protection and adoption services in their State;
- how those services are structured;
- how current services are funded;
- whether all functions required by the Convention are currently being performed;
- whether current laws or procedures adequately protect the integrity of the system.

Evaluation of the appropriate options in restructuring the system to meet Convention standards requires detailed knowledge of four key areas:

- principles and requirements of the Convention;
- each step of a child's journey through the child care system and the needs and concerns associated with each stage;
- child protection needs;
- tools and strategies for effective implementation.

It should be emphasised that creating a system that complies fully with Convention principles may not be immediately possible. States should certainly do everything in their power to implement as many of the protections and principles as possible as soon as it is feasible to do so.

The question of whether existing procedures for intercountry adoption should be halted pending implementation of the Convention will depend on particular countries. There is no reason why, as a general principle, this should occur except where it would clearly otherwise be impossible to meet Convention requirements. The following evaluation process may assist States in determining which changes are immediately necessary to protect children, which can be implemented in the short-term, and which changes will require long-term modification plans. The diagram following Chapter 1.7 indicates the steps of the recommended process for developing an implementation plan.

2.3 Using the internal assessment

The results of the internal assessment of a State's adoption system are a key component of the development of an implementation plan. The assessment should determine:

- whether a function is currently being performed;
?? If, how it will be performed in future;
- who is performing or will perform the function;
- how the function is being or will be funded.

States are encouraged to review the results of the assessment carefully. In doing so, it may be helpful to chart the progress of a child through the child care system as it is currently operated. Doing so will enable States to see where critical steps in the process may be missing.

States may also chart what fees are currently being paid and to whom. When reviewing fee structures, States are encouraged to conduct a review of resources available on the Internet and in literature in receiving countries to determine the amount of fees being charged to adoptive parents. Doing so may highlight a problem of "unofficial fees" and help clarify whether professional fees being charged are consistent with professional fees charged for similar work in the State of origin.

The assessment should establish the extent to which child care functions are being funded through intercountry adoption fees. States may find that fees paid by accredited bodies actually support facilities, family preservation or child health programs. Therefore, States may need to consider how the sudden withdrawal of fees could affect the welfare of children.

2.4 Emergency measures

Emergency measures are those needed to immediately protect children against the risk of abduction or child trafficking. If the results of the internal assessment indicate concerns in this area, it may be appropriate to institute protective measures even before the Convention enters into force.

Such measures could include DNA verification of a parent's identity, independent investigations of abandoned children, or other protections discussed in subsequent Chapters.

If emergency measures are necessary, it would be prudent to fully inform other governments, accredited bodies or non-accredited persons, and adoptive parents.

2.5 Long-term reform

In order to develop procedures that will be instituted upon ratification or accession to the Convention, it is first necessary to create an overall plan with a concrete long-term goal. To do so, it is vital that States first plan how their child care and adoption system will ideally operate in the future. Long range planning is the key to successful implementation of interim measures.

To develop a long-term implementation plan, States should:

- review each stage of the process;
- determine how each stage will ultimately function;
- determine staff and resource requirements;
- review current situation;
- compare current system with proposed system;
- determine overall time needed to reach those goals;
- determine concrete steps that can be taken to meet goal;
- determine timeline and process for each stage.

2.5.1 Review and determination of each stage of the process

States are encouraged to review each stage outlined in Chapter 5 and 6 and determine how they can structure a child care and protection system that will fulfil Convention requirements and provide for the best interests of children.

States may wish to develop a diagram of a child's journey through the proposed system as well. Doing so may illuminate areas where the proposed process is repetitive or unclear, or where it provides opportunity for malfeasance.

2.5.2 *Determine staff and resource requirements for system*

Once each stage of the process is planned, an overall statement of needs should be developed which outlines the cumulative staffing and financial resources that will be required to adequately operate the proposed child care and protection system.

After a draft statement of needs is prepared, States will be encouraged to review key operating principles to determine if adequate resources are allocated.

2.5.3 *Comparison with current operation*

Once the proposed system is planned, States need to compare the current operating system with the proposed system to determine what changes need to be instituted. In doing so, States should also review how the current allocated resources and personnel could be used in the proposed system as well.

2.5.4 *Determine total length of time to achieve systemic change*

Once States determine what changes are needed and how many additional resources will be needed to institute those changes, States should determine an overall length of time needed to achieve those goals.

For some States, an extended amount of time may be necessary to actually design and implement programs to provide family preservation services, national adoption options or other services. For other States, the main issue of implementation may be a lack of financial resources to implement a system that is not dependent upon intercountry adoption fees.

2.5.5 *Determine concrete, progressive steps to reach goal*

After the overall time frame is determined, States should plan a systematic implementation of such reforms. It may be helpful for States to outline the steps necessary to reform *each* stage of the process, and then to chart those changes on an overall grid designed to strategically implement gradual reform of the entire system.

These steps constitute the details of interim arrangements designed to achieve progressive reform. Such details will be informative to other States, accredited bodies and non-accredited persons, and birth and adoptive families.

2.5.6 *Determine timeline and process of interim arrangements*

Once each step of the reform process is outlined, States should determine the order in which changes will be implemented and the projected timeline for doing so. The result of this process will be the overall implementation plan, delineated in progressive steps to achieve an ultimate goal.

When reviewing the order and timeline of necessary changes, States should pay particular attention to what steps can be instituted immediately, and which are the most necessary to ensure the protection of children and families.

Once the immediate changes are identified, States will need to consider the procedural changes that will be needed in the short term to meet those goals.

2.6 Short-term / interim arrangements

When planning for immediate or short-term arrangements, States must also consider the attendant procedural changes that will accompany each stage of the long-term reform process.

2.6.1 Immediate changes

States are strongly encouraged to consider dividing procedural changes into two categories: those for adoption cases already in process at the time of entry into force (or other changes) and those for new cases beginning after entry into force.

In most cases, States do not apply new procedures to those cases already in process. States must, however, clearly indicate which cases will be considered "in process" when the Convention enters into force. States are encouraged to:

- announce a specific date on which cases must be filed to be considered "in process";
- determine clearly what is meant by "in process", perhaps by determining what documents must have been filed, or which actions must have occurred;
- communicate those decisions officially to other States and to concerned parties.

Procedural changes which will commence upon entry into force should also be clearly announced to all concerned. States are urged to clearly specify:

- what the new procedures are;
- how accredited bodies, non-accredited persons and families will fulfil these procedures;
- fees for the new procedures, if any;
- who can be contacted for assistance with new procedures.

2.6.2 Future interim arrangements

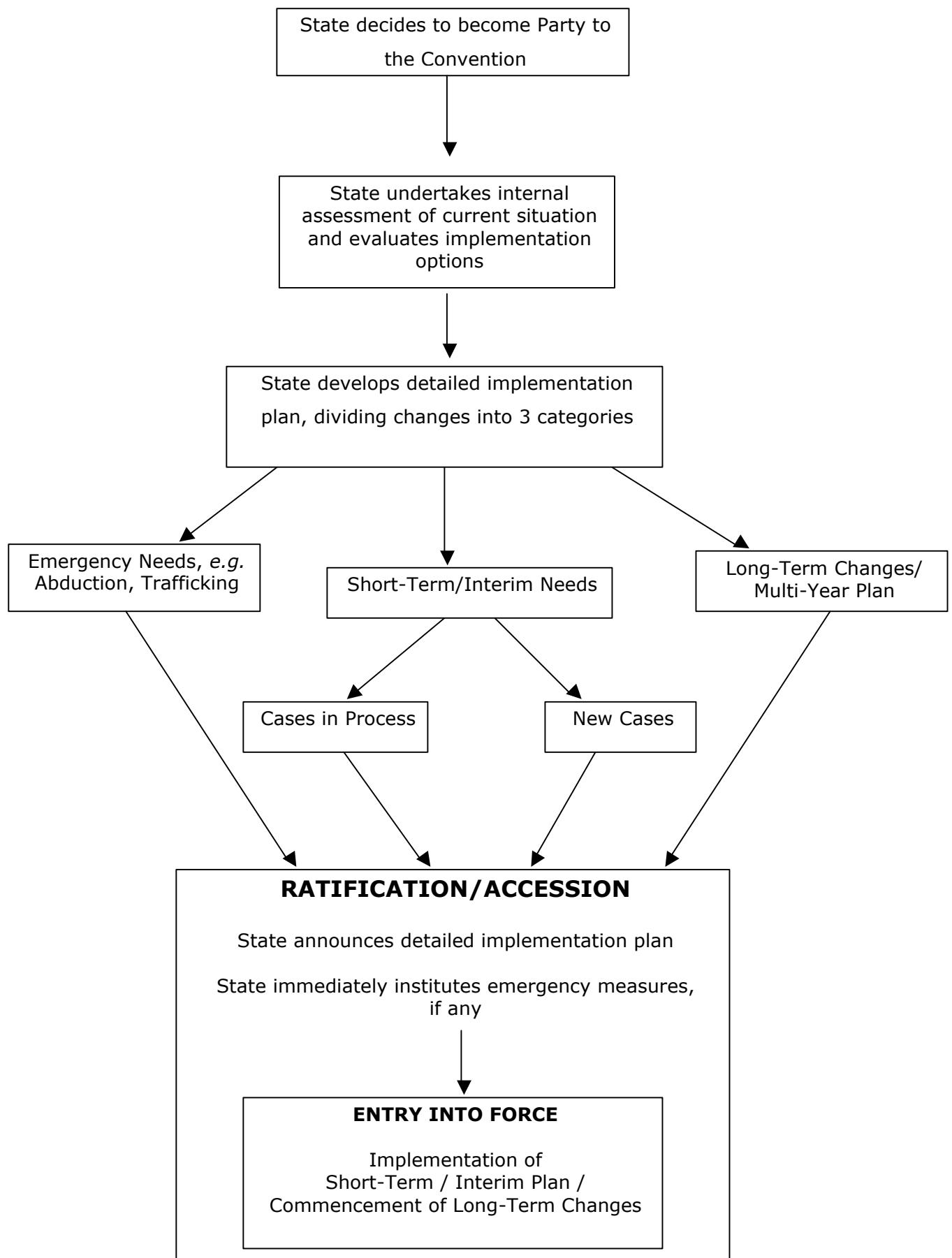
Other interim arrangements that will be instituted in the period of time between entry into force and the accomplishment of the proposed long-term system should also be handled in the same manner. States should develop clear procedures to effect each change, and clearly communicate those procedures to other States and interested parties well in advance of the changes.

2.7 Writing the formal implementation plan

Once the implementation plan is determined, States are encouraged to write an official document outlining the proposed plan. This document should contain details of the proposed system, the steps necessary to achieve that goal, and the necessary resources that will make such a goal possible.

Doing so serves several purposes. It clearly shows other contracting States that a comprehensive plan has been developed. This may be especially helpful if other States have concerns that may lead to their objecting to an accession. In addition, outlining the needed resources may allow other States the opportunity to provide financial or technical assistance in meeting those goals.

2.8 Diagram of the pathway to signature and ratification / accession



3. CREATING EFFECTIVE PROCEDURES – PRACTICAL EXAMPLES

The review of the stages of the child care, protection and adoption system in *supra* Chapters 5 and 6 defined the numerous functions that must be completed during the adoption process.

A key to effective implementation is the use of well-constructed procedures. In most States, administrative bodies develop procedures after the enactment of the law. Experience has shown that it is often these administrative procedures that determine whether an adoption system will operate effectively. States have to carefully consider every procedural decision with a view to determining how it will affect the functioning of every other aspect of the system.

To assist States in undertaking this task, the following examples have been developed to illustrate the impact that individual procedures can have on the entire adoption system. The hypothetical situations outlined in each scenario are drawn from real examples in countries around the world. The problems and options discussed in this Chapter are not meant to be inclusive of every decision that will be made in the construction of an implementation plan. It is hoped however that these examples will provide States with the tools necessary to conduct further analysis of their adoption system.

3.1 Country: Alpha

3.1.1 The situation

The country of Alpha is recovering from a serious famine that affected its residents for almost four years. As a result of the famine, thousands of families are unable to adequately care for their many children. Many parents died, leaving their families without support. Children were relinquished in large numbers to institutions. Alpha currently has over 50,000 children in orphanages. The majority of children are over the age of 2, however several hundred infants have been relinquished in the last year.

Until the famine, intercountry adoptions from Alpha were rare. The high number of children needing services attracted the attention of many international organisations. Some of these moved into specific locations and began offering humanitarian assistance to local residents with permission from local authorities. After determining that some children had no homes to return to, a small number of intercountry adoptions were allowed, mostly for older children with medical needs. In the wake of this development, dozens of other organisations requested permission to work in Alpha placing children for adoption. Some organisations offered to build new facilities to house children. Large numbers of applications for adoption are now being received.

Alpha, wanting to ensure that children are being placed abroad properly, acceded to the Convention after reviewing the requirements. Noting that most of the functions of the Central Authority could be delegated, and having few resources with which to implement the Convention, the following decisions were made:

The Ministry of Foreign Affairs was designated as the Central Authority. Its direct duties are:

- communicating with other Central Authorities regarding its new laws;
- establishing policies and accreditation standards;
- issuance of the certificate of conformity.

The Central Authority assigned the majority of the tasks under the Convention to competent authorities in each region, noting that these authorities were already overseeing institutions in their areas. The local authorities were authorised to a) accredit bodies performing adoption services, b) declare children adoptable, c) provide or supervise family preservation and adoption services, and d) authorise the operation of local orphanages.

The local authorities approved applications for bodies seeking accreditation after requesting a dossier of information to establish that they met the Convention requirements in Article 11. The bodies were also required to submit plans for family preservation services and the recruitment of national adoptive families. Having few qualified social service personnel in the local authorities, the tasks of receiving applications, matching children and families, and all required paperwork gathering were also delegated to accredited bodies.

The Central Authority could provide no funding to local authorities. Local authorities were allowed to set fees. Mindful, however, of the prohibition against improper financial gain, local authorities were advised to set fees for services at the lowest possible rate. Accreditation applications were to be submitted with 250 (Euro equivalent). Required activities such as declaring children adoptable, approving passport applications and certifying documents were charged at the same rate as local services, ranging from 20-50 (Euro equivalent) each. Pleased by the new institutions being built around the country, the Central Authority agreed that it was appropriate for accredited bodies to charge fees that would cover the operating costs of the orphanages.

The local courts were required to confirm consent to adoption by the family of origin during a required court appearance and approve any match between child and adoptive family, foreign or domestic. Adoption fees were set at 100 (Euro equivalent) per adoption, payable to the local court. After the adoption was approved in the local court, the adoptive family reported to the office of the Central Authority, where a certificate of conformity was issued and a fee of 100 (Euro equivalent) was assessed to pay for the operation of the Central Authority.

Operations began smoothly, particularly in Region 1. Located close to the capital city, this Region received the most accreditation applications. However, wanting to limit the number of facilities, the Region decided to choose three, including two that had already been operating aid programs for many years. Both of these programs were well established, providing families with financial assistance to feed their children, educational grants to help children attend school, and small business loans to single mothers who were supporting families. These programs were run out of established regional orphanages with local staff. The other was an unknown entity, but planned programs included the building of new orphanages with schools, playground facilities, and medical services.

Many families could not be reunited, and few local families considered adopting more children into their already large families. Over 300 children were placed for intercountry adoption from Region 1, mostly infants and young toddlers. As word spread about adoptions from ALPHA, applications continued to pour in from around the world. However, the number of children entering the orphanages slowed as the economic conditions improved, and soon the orphanages had more applications for young infants and children than they had children available.

At first, the system functioned well. A year after implementation the Central Authority became concerned about two regions of the country, where a high number of children

were being placed for intercountry adoption. A review of the situation revealed that virtually no national adoptions had taken place. Even more disconcerting was the revelation that no fewer children were entering institutions in these regions. Allegations of child trafficking and corruption had been raised.

An ensuing investigation revealed that the intended protections had not been realised and that significant problems had arisen.

The investigation found:

- accredited bodies were using agents to solicit children directly from families of origin;
- families were being paid money in return for consent to adoption;
- little, if any, family preservation activity was being conducted even though documents reported it had been done;
- accredited bodies contracted with a network of accredited bodies in other countries to match children and families;
- accredited bodies sent photos and reports of "available children" before families were identified, encouraging a sharp rise in the number of applications, perpetuating the trafficking activities;
- local authorities were declaring children adoptable without respect for subsidiarity principles;
- families of origin were confirming in court that they had not been paid for their child;
- the local judge, in good faith, approved adoptions and sent them to the Central Authority who also reviewed the case file and then issued the certificate of conformity.

This scenario highlights the existence of several procedural and structural problems, including:

- accredited bodies had financial incentives to traffic in children;
- lack of separation of duties;
- poverty stricken families were vulnerable to exploitation;
- close relationship between accredited bodies and local officials with no official oversight;
- accredited entities operating with lax oversight procedures in both countries;
- lack of checks and balances, mandatory reporting, and conflict of interest provisions.

3.1.2 *The problems*

For various reasons, including a lack of financial resources, States may allow accredited bodies, non-accredited persons, or others, to perform functions related to family preservation, national adoptions or intercountry adoption. States may have program requirements that stipulate that agencies must engage in humanitarian efforts or family preservation efforts but may not effectively monitor the results. When this occurs, services to families can be sporadic or ineffectual. This may be particularly true when those who are providing services have other interests that may conflict with family preservation goals.

In Alpha, the accredited bodies effectively controlled all of the functions from the time the child entered the child care and protection system through intercountry adoption. They:

- determined when a child could be kept in or reintegrated into the family;
- obtained the written consent for adoption (later verified by the judge);
- sought a national adoptive placement; and
- arranged intercountry adoption placements.

The provision of such services costs money. Because Alpha provided no State resources for these programs, the only source of income for these entities was intercountry adoption. Without proper oversight, this type of system is open to systemic abuse at the hands of those who might not have the best interests of children as their paramount concern.

Alpha's accredited bodies created contracts with accredited bodies in receiving countries who had also been delegated child matching and approval responsibilities by their Central Authorities. Neither Alpha nor the receiving country had strict guidelines or established procedures on such things as the use of Internet photolistings, the matching of children, and declaration of adoptability.

The result of this type of system is often a convoluted network of service providers that end up competing for children on behalf of adoptive parents - and which provide accredited bodies in a country of origin with strong financial incentive to traffic in children.

Investigators found that Alpha Region A had three accredited bodies, and each of those bodies worked with three accredited bodies in two other countries, for a total of 18 accredited bodies performing adoption services in one region. Two of Alpha's accredited bodies did things well, but one did not, and the system quickly became ineffective.

Accredited Body 3 (AB3) determined that it would place the pictures of children, particularly healthy infant children, on the Internet for viewing by adoptive families in the receiving country. This resulted in a rapid escalation of the number of adoption applications received from that country. AB3 quickly determined that while family preservation and national adoption efforts cost money, intercountry adoption resulted in a net gain of several thousand (Euros equivalent). The more quickly they could move children through the various stages of the process, the more quickly they could be placed abroad. The resulting large amounts of cash allowed them to hire local residents as "child finders" who could offer families of origin money for their children, perhaps couched as payment of 'expenses' for the adoption.

Poor economic conditions and few alternatives left families vulnerable to exploitation. In exchange for what they considered considerable sums of money, often enough to support their families for 2 years or more, they were willing to sign consents and verify with the judge that they had not received compensation for their consent.

Local officials, the only line of defence between illegal practices and the Central Authority were also vulnerable to financial influences that could be offered to forestall the asking of questions.

3.1.3 Possible solutions

3.1.3.1 Solicitation / Coercion

States may first wish to make the solicitation of children illegal. Doing so may allow States to curb this practice by prosecuting offenders. Some countries have added provisions to the adoption law which allow for criminal charges to be brought against those soliciting or buying children, or have included provisions in the country's criminal code.

Controls on inducement or compensation may be exercised by having the parent apply or consent directly to Central or Public authorities. Doing so gives authorities direct contact with families of origin, providing an opportunity to inquire about the reasons for consenting to an adoption and inducements.

States should not simply rely on such questions to conclude that no compensation has been made. Few birth parents admit to being paid any money during the course of an adoption, even though public statements about the practice of paying money to families are common. States may wish to include provisions in their law or procedures to allow for independent investigation of consent practices.

Article 29 of the Convention stipulates that there shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4(a) through 4(c) and Article 5(a) have been met unless the contact is *in compliance with the conditions established by the competent authority of the State of Origin*. Therefore, States who wish to ensure that adoptive parents are not matched with children prior to the declaration of adoptability should include such provisions in their law or implementing regulations.

3.1.3.2 Separation of duties / Conflicts of interest

States may also wish to ensure that an independent entity controls the process of determining a child's adoptability. Some States may accomplish this by having a centralised office, rather than institutions or facilities, refer families to available services, retaining control of determining when families cannot be reunited or preserved and when a child is declared adoptable. Even with this provision, additional checks on the functioning should be maintained at other levels as well, to lessen the chances for official corruption. This could be accomplished by required periodic reports and reviews from other official offices.

If private adoption service providers are used to perform family preservation or national adoption functions, there is a strong need for clear, transparent requirements and parameters as well as policies for addressing conflicts of interest. In some countries, local authorities or courts may randomly assign children to orphanages, removing the incentive for solicitation of children from families of origin. Separation of duties may also be necessary to ensure that the entity which performs family preservation or national adoption efforts is not the same entity that benefits from intercountry adoption.

3.1.3.3 Adoptability

States should have clear guidelines for determining adoptability, as well as an understanding of the Convention procedures prior to the matching of children and families.

3.1.3.4 Photolistings

Internet “photolistings” have become popular tools in the recruitment of adoptive families. Displaying photos may be helpful in the placement of older and special needs children. Care should be taken, however, to regulate this practice to ensure that photos of healthy infant children are not used to attract adoptive families to a particular accredited body or facility.

In recent years, photolistings have been used to “bait” adoptive families into a particular program. When the family travels to adopt the child they were assigned, they find that the child is not available and are presented with an alternative child. In some countries, it is believed that this tactic is used to recruit families before children are even identified. Then, when applications are received, children are “found” to match the criteria of the parents.

Regulations on these types of activities are most effective when both the country of origin and the receiving country regulate the practice. At the least, receiving countries should have clear regulations which require their accredited bodies authorised to operate in a State of origin to follow the laws and procedures of that country. Receiving countries should also be aware of the ways in which their fee practices and oversight structure may affect the country of origin.

3.2 Country: Delta

3.2.1 *The situation*

Delta, having witnessed the problems in Alpha and other countries, established the following processing procedures:

- Regional Central Office to accept applications for assistance from families in need, declare a child adoptable, determine if placement for national adoption was available and declare a child available for intercountry adoption;
- abandoned children were subject to investigation to determine circumstances;
- Regional Central Office assigned the children to orphanages randomly;
- family preservation efforts were available through, and paid for by, the Regional Central Office;
- accredited bodies were asked to support directly the functioning of specific orphanages;
- once a child was matched with an adopting family abroad, the adoption was approved by Delta's Central Authority, which reviewed the documentation provided by the region and issued the certificate of conformity.

The establishment of the Regional Central Office enabled the regions to refer families to resources available to them to assist in keeping their families intact. If a child was found abandoned, either at a hospital, police station or at an institution, the office would initiate a search for the child's family to see if preservation programs could be utilised. If the family was found and could not be assisted in remaining intact, the office would be able to obtain the consents to the adoption.

The State made funds available for family preservation efforts, which provided added protections against the unnecessary relinquishment of children. In addition, the fact that children needing temporary care were assigned to an orphanage or other facility by the office was intended to eliminate the risk that individual orphanages would solicit children for adoption.

Accredited bodies were specifically asked to provide support to individual orphanages and perform family preservation services in exchange for the privilege to conduct adoptions. They typically agreed, provided that they were allowed to form exclusive arrangements with the orphanages, barring other organisations from also providing services. Accredited bodies were only allowed to distribute information about available children to their overseas partners after a child was declared adoptable.

If a region declared the child adoptable, it would review applications for adoption from local adopting families to see if the child could be adopted locally. If not, the child would become available for intercountry adoption.

Even with the addition of safeguards, Delta began experiencing problems in its adoption system. Following allegations of impropriety, a review of its operation revealed the following problems:

- investigations into abandonments were often perfunctory;
- officials were accepting "expediting fees" to process paperwork for particular children and/or orphanages;
- lawyers were paying families to abandon children anonymously;
- children were being abducted for adoption.

Virtually all the problems in Delta were traced to one source: the Regional Offices responsible for performing the duties of family preservation and adoptability were seriously underfunded and understaffed.

3.2.2 *The problems*

The Regional Offices were burdened by a lack of resources and a lack of staff. Due to such constraints, investigations to locate birth families of abandoned children were often perfunctory. The lack of resources in the Regional Offices also often led to long delays in having children declared adoptable, in providing documentary evidence of family preservation efforts, and in efforts to find national adoptive families.

As the Regional Office was solely responsible for these functions, they were susceptible to pressure from accredited bodies who had large numbers of children in their care. In general, the pressure resulted in the lack of adequate investigation, perfunctory family preservation efforts, limited national adoption efforts and an emphasis on simply providing the paperwork trail needed to document that these steps had occurred, rather than on the quality of each step.

In frustration that these steps were taking so long, some accredited bodies offered the Regional Offices "expediting fees" to move paperwork along faster. Rather than establishing a formal, transparent system for such fees, they were paid "under the table" and the amounts remained obscure. In addition, paperwork for those who refused to pay such fees stopped progressing at all - creating a system where such fees were actually required rather than possible. In time, such fees were also used to persuade officials to refer certain children to specific orphanages.

This atmosphere, unchecked, led to other difficulties. Realising that investigations were perfunctory, especially if the time frame to acquire paperwork showing it had been completed was significantly shortened through fees, certain accredited bodies began again to use solicitors to find children from families who were willing to abandon anonymously the child in exchange for payment.

In some cases, it was discovered that an abduction ring had been formed around the country to bring children to specific regions for "abandonment". Families of origin who were seeking missing children had few resources and no central office which investigated alleged abductions, and were thus often unable to locate the child before adoption paperwork was processed.

3.2.3 Possible solutions

3.2.3.1 Adequate resources

The solution that would eliminate the problems experienced by Delta is adequate funding of the local offices, coupled with strong oversight from the Central Authority. A well-funded office would not be as susceptible to monetary pressures from accredited bodies. However, even if the office were well-funded, placing so much responsibility on one office often leads to considerable pressure from local entities. Therefore, States may wish to consider separating the duties between several offices, or requiring independent monitoring of the system by outside entities.

3.2.3.2 Fee policies

The problem of "expediting fees" is a common one around the world. At times, the system develops because of the pressure from entities to process paperwork faster. In some cases this system may merely be a reflection of the normal way of doing business in a particular country. It should be noted, however, that even if this practice is accepted in other industries, its use in relation to adoption can result in the failure of the State to meet its Convention obligations regarding subsidiarity and the best interests of the child.

Expediting fees for the actual processing of paperwork (not the circumvention of investigations, etc) may occur in a manner which is both legal and acceptable to most. For example, some countries allow extra fees to be paid to rush paperwork. However, those fees are transparent, and they are paid to the office itself and not to individual persons. In addition, the rate for such services is clearly posted and official receipts are offered. If employees are required to work additional hours to process expedited requests, they are paid established extra wages. The establishment of such a transparent system may help to eliminate abuses in this regard, particularly when they are coupled with civil or criminal penalties for misconduct on behalf of officials or those attempting to improperly influence official decisions.

3.2.3.3 Abduction

As noted in Chapter 5.1 of the *Guide to Good Practice: Implementation*, a large number of abandonments can signal the possibility of abductions that are occurring for the purposes of adoption. Safeguards against these practices generally include adequate investigations of abandoned children. States may also want to consider whether the collection and analysis of statistical information from each province can be used as a safeguard against this and other activities. A review of such information by the Central Authority may show a pattern of abandonments in one particularly area, or to one particular orphanage. Further, States may wish to ensure that local or regional authorities have a systematic way to investigate reports of abduction.

3.3 Country: Omega

3.3.1 The situation

In country Omega, the Central Authority determined that it would avoid the problems experienced by other countries by entrusting the sole responsibility for the referral of children for adoption abroad to the Central Authority itself. This decision was taken to curtail the “incentives” that accredited bodies could have for influencing the system, and to protect local and regional authorities from pressure to perform illegal acts.

The operation of child care and protection institutions and family preservation and national adoption programs was left to individual regions of the country. Regions were expected to operate such programs from funds the State provided as an annual allocation for regional services. They were, however, allowed to accept donations from adoptive families to supplement the annual allotment. It was expected that doing so would allow the regions to offer more services to children in care.

The determination of a child's adoptability also remained at the local level, as local authorities were felt to be in the best position to determine when a local family could be assisted, and when such assistance was likely to be ineffectual. Omega believed its system would empower local regions to provide services to their residents.

If families could not be preserved, the local authorities would register the child on a national registry for adoption, taking care to first determine if a local family could provide an adoptive home. Only after the child was declined by three national families would the child be approved for intercountry adoption.

Once an intercountry adoption match was made by the Central Authority, the file would proceed to a judge who would review the file, approve the adoption, and finalise the process.

For the most part this system worked as planned. Accredited bodies and non-accredited persons, both local and foreign, had little direct cash incentive to introduce children into the system because the central authority determined when children were placed abroad. However, these provisions helped keep the number of available children low, and helped the country place most younger children who were available every year. Because of this, the local regions knew that children who were declared adoptable would likely be placed abroad, particularly if they were healthy.

Over time, three concerns were raised by other States and NGOs about Omega's system:

- donations paid by adoptive families did not seem to be used for children's programs;
- children were not being offered to local adopting families;
- long delays in the court process meant children aged considerably during the wait.

3.3.2 The problems

A review of the system revealed that the main weakness was that keeping children in families or in national adoptive homes required payments of subsidies. Therefore, the only option that did not cost the local region anything was intercountry adoption. Therefore, regions which placed more children abroad obtained more money for regional projects. Regions were also not required to demonstrate that such programs actually benefited the children, nor were there requirements to keep adoption fees in a separate

fund only to be used for children's projects. Therefore, it was found that some regions were failing to provide adequate services to families, and using the increased income from intercountry adoption to fund other types of programs for the region.

The type of national registry used by Omega was also vulnerable because efforts were not made to ensure that the three families who had to "reject" the child were actually seriously considering adoption. No provisions were made for reporting on the national adoption efforts to the Central Authority.

The judicial review proved to be a significant issue, even though there was no discernable reason for judicial approval to be an extensive process. No investigations were actually required in most cases. In some regions, it was reported that judges waited to approve adoptions until additional offers of payments were forthcoming. Other regions concluded that judges simply did not consider the approval of adoptions a priority. This, coupled with a lack of administrative requirements that specified a time frame for adjudication of the case meant that cases languished for months.

3.3.3 Possible solutions

3.3.3.1 Adequate administrative controls

In order for the subsidiarity principle to be effectively implemented, States should ensure that local, provincial or regional authorities are not adversely affected financially for their efforts to place children with national adoptive families. When no fees are paid regionally, there can be incentives for regions to move children into intercountry adoption faster. Small numbers of children in a system may result in accredited bodies and non-accredited persons attempting to influence decisions about a child's placement, particularly if there are no controls on the number of applications accepted in a country. Experience has shown that when demand exceeds supply, the likelihood of illegal activity increases.

While there may be reasons to separate financial decisions, *i.e.* fees, from placement decisions, States should ensure that adequate review mechanisms exist that will protect the integrity of the system. Periodic review of services rendered, money paid to regions and how those funds were used, and statistics on the numbers of children receiving each service in a region may be helpful in this regard.

3.3.3.2 Child registries

Omega utilised a registry system that requires that a certain number of national families be offered, and subsequently reject, the child for adoption, before the child can be offered for intercountry adoption. This type of system has developed as an alternative to a time-limited system (*i.e.* children would remain on a registry for 60 or 90 days) when a State may not actually make national adoption efforts during that time frame.

On the other hand, it has been found that Omega's system can be manipulated by having local citizens who are not interested in adopting sign rejection statements on a child in order to free the child for intercountry adoption. Social service personnel also raise the significant concern that the practice of having families officially reject a child may cause the child psychological harm.

National registries are important tools in the centralisation of an adoption system. However, protections are necessary to ensure that they are not simply used as a symbol of subsidiarity without actual efforts to place children nationally. States may wish to

require that actual efforts be substantiated before removing a child from a registry, or that controls are used to ensure that families rejecting a child are actually families approved to adopt nationally.

3.3.3.3 "Child friendly" deadlines

Many States experience significant delays with administrative and judicial processes. States may find it helpful to add specific time frames to their law, regulations or procedures. Such deadlines require that an official or judge act on an application within a certain amount of time, or report why action is not possible. Civil or administrative penalties for not doing so may be necessary to achieve the desired result. States should be aware of the need to provide adequate staffing and resources to meet such deadlines.

3.4 Country: Phi

Throughout a long and troubled history of intercountry adoption, country Phi has changed its policies and procedures many times. The resultant system provides a comprehensive framework of policies designed to protect the best interests of children.

- the Central Authority randomly refers children to adoptive families;
- all adoption fees are paid to the Central Authority;
- the Central Authority provides annual funding for family and child programs to every region of the country;
- regions are rewarded for national adoption efforts;
- employees of local, regional and national child care and protection offices are paid sufficient wages;
- both children and national adoptive families are registered in a central database;
- subsidies are provided for national adoption efforts;
- Phi accepts adoption applications only for children already identified as being available for adoption;
- administrative controls provide oversight of each stage of the process.

3.5 Country: Theta

Theta's child care and adoption program provides a poignant example of the final challenge facing States that implement the Convention. Theta took steps to institute policies which sought to protect children and provide oversight:

- the use of paid intermediaries in the adoption was disallowed;
- children were declared adoptable by a Central Office after efforts had been made to investigate the origin of the child;
- children were registered for 90 days to provide time for national adoption;
- national adoptive families were not charged fees;
- adoptive families were approved by an office separate from the one declaring children adoptable;
- reasonable fees were paid directly to Ministries.

In spite of these guidelines, Theta experienced enormous problems of child trafficking, abduction, improper financial gain, corruption and a lack of services to children and families. All problems could be traced to a single cause: While the system had been adequately constructed in theory, it did not actually exist in practice.

In reality, Theta's system was not funded, not monitored, and rarely used. The protections were a façade for a basic lack of infrastructure that made adequate child protection impossible:

- intermediaries did function, with silent official cooperation;
- intermediaries determined adoptability;
- intermediaries matched children and families and presented completed paperwork for "rubber stamping";
- intermediaries collected fees that were used to pay officials for necessary approvals;
- children were routinely solicited from families, who were paid to relinquish children.

In short, Theta's policies existed only in their regulations. States wishing to protect children and families adequately and to meet Convention obligations effectively must be vigilant in instituting and enforcing the policies and procedures created.

4. STRATEGIES TO ASSIST FAMILY PRESERVATION AND UNIFICATION

The Guide recognises the importance of this question in the development of a national childcare and protection system. However all the information necessary to develop such a system is beyond the scope of this Guide.

4.1 *Keeping families intact*

It should be a goal of all States to prevent children from needlessly entering the child care and protection system. In order to develop a strategy to prevent families from needing intervention services, States should consider the causes of family breakdown. It has been noted that poverty or financial hardship is the leading cause of family breakdown in many States. Other factors often complicate the situation, such as domestic violence, substance abuse and societal or cultural norms.²⁰

Special attention should be paid to the presence of families or communities that may be particularly vulnerable to the risk of family disintegration or exploitation.²¹ Ethnic minorities or indigenous communities may be more likely to experience financial hardship or discrimination. At times, they may enjoy fewer protections under the law or be particularly prone to maltreatment from local authorities. As a result, they may be vulnerable to abduction concerns, solicitation, trafficking in children, or official corruption.

Poverty and hardship may make a family vulnerable to exploitation. If a family with several children is experiencing severe financial difficulties, they may consider relinquishing a child in return for financial payment.

For these reasons, family preservation efforts should focus on practical support programs for families in crisis. Laws that provide rights to parents may not, by themselves, be sufficient. Experience has shown that the provision of material or financial assistance to families in need often produces the best results.

4.2 *Family re-unification*

Where possible, States should make efforts to reintegrate separated children into their families. Through the use of practical assistance programs similar to those used to keep families together, families may regain stability and choose to retrieve their child from temporary care.²²

If it is not possible to maintain a child in his or her family of birth, it may be possible to enable another family member to parent the child. This may be the most appropriate and preferable solution for many situations, especially those in which parents may have died or been disabled. Efforts to place children with extended family should be performed carefully and with the best interests of each individual child as a paramount consideration.

²⁰ See van Loon, *supra* note 4, at 235. Full citation.

²¹ See, India; Gita Ramaswamy & Bhanya Bhukya, *The Lambadas: A Community Besieged*, UNICEF, 4-5 (2001).

²² See, Haji Sayyid Bukenya, "Policy Workshop on Children and Promoting Strategies for Community Care of Vulnerable Children, The Uganda Experience", 2001, available from ISS, Geneva.

The search for relatives to care for a child should not unnecessarily prolong institutional care for children. Child-friendly time frames are essential.

In developing its implementing measures, a Contracting State should consider what steps it will take to locate relatives and how much time will be allowed for this process. It is also necessary to consider whether the parent's views will be taken into account, including any objection to the extended family raising the child for reasons such as domestic violence or substance abuse.

Contracting States should also ensure that persons involved in counselling parents about their placement preferences have the highest ethical standards and do not receive financial incentives to encourage placement with non-family members.

4.3 *Developing family preservation programs*

The list below contains brief descriptions of the types of family preservation programs utilised by some countries. This list is not exhaustive, and is meant only to encourage discussion about the types of programs that could be offered. Details about the successful implementation of such programs can be obtained from social service organisations.²³

Aid to low income families: Income level and poverty guidelines are often used in determining eligibility for domestic assistance. States then pay a small subsidy amount to families with incomes below a certain level to assist in caring for their children.

Counselling: Counselling may be available to provide support or advice to a family needing to decide on a course of action. For example, a family may need assistance to decide if changes could be made in the current family situation which would enable them to keep their child or if options for family placement exist.

Domestic Violence Assistance: Programs addressing violence or physical abuse by a spouse, domestic partner or family member may take many forms including emergency shelter, counselling, and public information campaigns to raise awareness.

Substance Abuse Assistance: Programs to address overindulgence in and dependence on an addictive substance, especially alcohol or a narcotic drug may take the form of addiction treatment, rehabilitation, prevention and mental health programs.

Crisis Pregnancy Services: Outreach services may provide specific pregnancy, childbirth and postpartum educational support, free pregnancy testing, maternity and baby clothes, referrals, peer counselling, post-abortion help, as well as information about birth control, pregnancy symptoms, foetus development, and pregnancy options.

Temporary Housing Assistance: Financial assistance to secure temporary accommodation may be offered; State-sponsored public housing or emergency shelter may be available.

²³ For example, the International Social Services, Geneva, Switzerland; see <<http://www.issi.org/index.html>>.

Educational Funding: Financial aid programs, grants or loans may be available to assist with educational expenses.

Temporary Food Provisions: Temporary food assistance programs provide food for low-income households through periodic emergency food distributions. Such programs are intended to serve as a last resort for households in need of short-term, immediate food assistance.

Medical / Rehabilitation Services: Medical or social rehabilitative services may be provided to children and adults with disabilities or who are recovering from an illness.

Small Business Loans / Business Development: A business loan program may be developed to provide indigent households with loans to begin small businesses that support families for years to come.

4.4 *Provision of services*

Once a State has identified services that it would like to offer to families, it has to determine which entity could and should deliver those services, what mechanisms will be utilised to do so, and how services will be funded.

It may be possible for a single governmental entity to provide family preservation and reunification services to families and to oversee a child's entry into care if necessary. Many States have child protection or child care services that are funded through government grants. In turn, the child protection department provides all the services needed by families in crisis, often preventing a child's entry into care.

To operate effectively such programs need ideally to be fully staffed and funded. Creating such a system is difficult at best, and requires sustained funding and governmental support. Many States find the creation of such a system beyond the immediate possibilities for their country. States may need to seek ways to institute immediately low-cost protective mechanisms and make use of interim measures while working on long-term reform.

4.5 *Utilising other resources*

Where there is no centrally operated program, States may have other assistance programs for certain segments of the population. Such programs may be administered under departments of health, social care, economic development, or veterans affairs. Families in need can be referred to other programs to obtain assistance. Such programs may have to be expanded or modified but it may be possible to make them appropriate to families who would otherwise place their children in institutions.

4.6 *Co-operative agreements*

States may also be able to refer families to programs they have established in co-operation with international organisations (that do not perform adoption or child care work) to provide services. This may be particularly helpful if used for a brief and limited amount of time, and if the programs utilised are of substantial size and can be accessed by many families. There are, for example, NGOs that provide small business loans to help families establish businesses that can improve their economic situation, aid agencies that provide short-term food and housing relief, and programs that provide medical and surgical services to underserved populations.

In order to do so as part of a formal implementation plan, States may consider drafting formal agreements with NGOs for such services. While not ideal, such an arrangement could assist a State in establishing short-term family preservation programs. These types of funding measures cannot be considered long-term solutions. Relying on outside funding is risky, and doing so provides little security and assurances to other States. However, they could be used as interim measures if the arrangements were a formalised part of a larger implementation plan.

4.7 *Utilising accredited bodies*

Some States use private adoption service providers and orphanages to perform family preservation or reunification services. There are some advantages to these programs. Private organisations often have more funding to implement programs, and adequate and well-trained social service personnel to do so.

These programs tend to be most successful when they are carefully monitored by authorities to ensure that adequate efforts are being made to preserve families and proper safeguards are in place. There is potential for a conflict of interest between preserving families and providing intercountry adoption services. Some States may separate the decision about what services to offer, or by whom those services may be offered, from the actual delivery of services. It has been noted that the States that are most successful in operating family preservation programs may utilise a small number of agencies that are carefully monitored and controlled. It may be difficult for States adequately to monitor an unlimited number of service providers.

STATISTICS FORMS

Introduction and explanation

In response to the request made during the Special Commission of 2000, the Permanent Bureau is developing a set of standard forms for the reporting of statistics, and we have attached the Draft Adoption Statistics Forms (State of origin forms - 1a, 1b, 1c; receiving State forms - 2a, 2b, 2c).

We would like to receive the completed forms from as many States as possible by 14 June 2005, and welcome comments or suggestions on the forms and their ease of use. If possible, we would like to receive statistics from the years 2001, 2002 and 2003. Compiled statistics will be made available at the Special Commission meeting.

Annual adoption statistics for States of origin

Country _____

Year _____

1a. Intercountry adoptions to Hague States

Country	Total # completed adoptions for year ²⁴	# Children entrusted to PAPs ²⁵	Age and gender of child at adoption ²⁶								# Adoptions of special needs children ²⁷	Average time child spent in care or awaiting adoption ²⁸	Location of child prior to adoption ²⁹			Average total cost of adoption services in State of origin (in local currency) ³⁰			
			<1		1-4		5-9		>10				Institution	Foster care	Family of origin				
			M	F	M	F	M	F	M	F									
Totals / Averages																			

²⁴ Number of adoptions completed in State of origin e.g. by adoption order or decree. If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

²⁵ Number of children entrusted to prospective adoptive parents with a view to adoption in the receiving State.

²⁶ If your national statistics are compiled according to other age groups, please indicate accordingly e.g. if you only count the number of children under 5, you should combine the two columns here that refer to children under 1 year old and between 1 and 4 years old.

²⁷ Number of adoptions of special needs children.

²⁸ Calculated from time child entered the institution or foster care, or from the date the Central Authority was first contacted about a child currently living with his or her family of origin that was in need of adoptive placement.

²⁹ Location of child prior to adoption: these numbers should only relate to children adopted (not entrusted).

³⁰ Travel related costs should not be included in this amount.

Annual adoption statistics for States of origin

Country _____

Year _____

1b. Intercountry adoptions to non-Hague States³¹

Country	Total # completed adoptions for Year ³²	# Children entrusted to PAPs ³³	Age and gender of child at adoption								# Adoptions of special needs children	Average time child spent in care or awaiting adoption ³⁴	Location of child prior to adoption			Average total cost of adoption services in State of origin (in local currency) ³⁵		
			<1		1-4		5-9		>10				Institution	Foster care	Family of origin			
			M	F	M	F	M	F	M	F								
Totals / Averages																		

³¹ Some Central Authorities do not or are not able to count, or do not have access to, the statistics for non-Hague Convention adoptions. If you are unable to provide these statistics, please make a note of this to the Permanent Bureau, and if possible, state the name of the competent authority that completes non-Hague adoptions.

³² If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

³³ Number of children entrusted to prospective adoptive parents with a view to adoption in the receiving State.

³⁴ See footnote 13.

³⁵ Travel related costs should not be included in this amount.

Annual adoption statistics for States of origin

Country _____

Year _____

1c. Domestic adoptions

³⁶ If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

³⁷ Numbers of children for whom another form of permanent care, excluding adoption, was found in the country of origin.

³⁸ Calculated from time child entered the institution or temporary care.

Annual adoption statistics for receiving States

Country _____

Year _____

2a. Intercountry adoptions from Hague States

Country	# Adoptions completed for year ³⁹	# Adoptions completed in State of origin for year ⁴⁰	Age and gender of child at adoption ⁴¹								# Adoptions of special needs children	Total # of known failed placements ⁴²	Average total cost of adoption services in receiving State (in local currency) ⁴³	Average total cost of adoption services in State of origin (in local currency) ⁴⁴				
			<1		1-4		5-9		>10									
			M	F	M	F	M	F	M	F								
Totals / Averages																		

³⁹ Number of adoptions completed in receiving State e.g. by adoption order or decree. If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

⁴⁰ Number of adoptions completed in the State of origin, whether or not the child was entrusted to prospective adoptive parents before the adoption.

⁴¹ If your national statistics are compiled according to other age groups, please indicate accordingly e.g. if you only count the number of children under 5, you should combine the two columns here that refer to children under 1 year old and between 1 and 4 years old.

⁴² Number of placements that failed before the adoption was completed (Art. 21).

⁴³ Travel related costs should not be included in this amount.

⁴⁴ Travel related costs should not be included in this amount.

Annual adoption statistics for receiving States

Country _____

Year _____

2b. Intercountry adoptions from non-Hague States⁴⁵

Country	Total # completed adoptions for year ⁴⁶	# Adoptions completed in State of origin for year ⁴⁷	Age and gender of child at adoption ⁴⁸								# Adoptions of special needs children	Total # of known failed placements	Average total cost of adoption services in receiving State (in local currency) ⁴⁹	Average total cost of adoption services in State of Origin (in local currency) ⁵⁰				
			<1		1-4		5-9		>10									
			M	F	M	F	M	F	M	F								
Totals / Averages																		

⁴⁵ Some Central Authorities do not or are not able to count, or do not have access to, the statistics for non-Hague Convention adoptions. If you are unable to provide these statistics, please make a note of this to the Permanent Bureau, and if possible, state the name of the competent authority that completes non-Hague adoptions.

⁴⁶ If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

⁴⁷ Number of adoptions completed in the State of origin, whether or not the child was entrusted to prospective adoptive parents before the adoption.

⁴⁸ If your national statistics are compiled according to other age groups, please indicate accordingly e.g. if you only count the number of children under 5, you should combine the two columns here that refer to children under 1 year old and between 1 and 4 years old.

⁴⁹ Travel related costs should not be included in this amount.

⁵⁰ Travel related costs should not be included in this amount.

Annual adoption statistics for receiving States

Country _____

Year _____

2c. Domestic adoptions

Year	Total # completed adoptions for year ⁵¹	# Children placed in other forms of permanent care ⁵²	Age and gender of child at adoption ⁵³								# Adoptions of special needs children	Average time child spent in care or awaiting adoption ⁵⁴	Location of child prior to adoption			Average total cost of adoption services (in local currency)		
			<1		1-4		5-9		>10				Institution	Foster care	Family of origin			
			M	F	M	F	M	F	M	F								
Totals / Averages																		

⁵¹ If relative adoptions are included in the total, please provide in a note a separate total for these adoptions if possible.

⁵² Numbers of children for whom another form of permanent care, excluding adoption, was found.

⁵³ If your national statistics are compiled according to other age groups, please indicate accordingly e.g. if you only count the number of children under 5, you should combine the two columns here that refer to children under 1 year old and between 1 and 4 years old.

⁵⁴ Calculated from time child entered the institution or temporary care.

ORGANIGRAM

Introduction and explanation

In response to the Recommendation of the Special Commission of 2000⁵⁵ the Permanent Bureau has prepared a model form designed to provide information on which entity in each State performs each function outlined in the Convention.⁵⁶ The form is applicable to both States of Origin and Receiving States, and also includes space for the reporting and updating of names and contact information for the Central Authorities, Public Authorities, Courts, Accredited Bodies and Non-accredited Persons in each State.

With reference to the Recommendation of the Special Commission of 2000, it was not possible in the time available to develop a simple form that would show the interaction of the competent authorities and bodies in each State. Any additional information could be provided by States in a separate document.

We would welcome comments on the form and its ease of use, and any suggested changes or additions. It is thought that the exercise of preparing answers to the form may be the best way to test its value and may highlight any need for revision. Therefore, we would like, if possible, to receive completed forms from States prior to 14 June 2005. If your State has already sent the information requested in Section C, please send only revisions as necessary.

⁵⁵ N.B. A Special Commission on the Convention was held from 28 November - 1 December 2000 on the Practical Operation of the Convention. The Report of this meeting, *Report and Conclusions of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, was published in English and French and is available on the Hague Conference website at: < <http://hcch.e-vision.nl/upload/script33e2000.pdf> >.

⁵⁶ See Report of the Special Commission of 2000, page 41, paragraphs 1 and 2.

ORGANISATION AND RESPONSIBILITY UNDER THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION

Country: _____

Please check the box(es) that indicate(s) which body performs the stated function. States which are solely States of origin should complete only section A; States which are solely receiving States should complete only section B; States which act as both States of origin and receiving States should complete sections A and B. All States are requested to ensure that the Permanent Bureau has the information requested in Section C and to provide updated information where changes are needed.

(CAN)	Central Authority National
(CAR)	Central Authority Regional
(PA)	Public Authority
(CT)	Court or Tribunal
(ABN)	Accredited Body National
(ABF)	Accredited Body Foreign
(APN)	Non-accredited Person National
(APF)	Non-accredited Person Foreign
(IAE)	Independent Accrediting Entity appointed by Central Authority

Section A: States of origin

Article	Action	Responsible Party
4 a)	Establishes that the child is adoptable	? CAN ? CAR ? PA ? CT
4 b)	Determines that possibilities for placement of the child within the State of origin have been considered	? CAN ? CAR ? PA ? CT
4 b)	Determines that intercountry adoption is in the child's best interests	? CAN ? CAR ? PA ? CT
4 c); 16(1) c)	Ensures that all involved parties have been counselled; consent has been obtained; consent was freely given; and was only given after birth of child	? CAN ? CAR ? PA ? CT
4 d)	Ensures that child has been counselled and consulted when appropriate	? CAN ? CAR ? PA ? CT
8	Takes all appropriate steps to prevent improper financial gain	? CAN ? CAR ? PA ? CT
9 a); 30	Preserves adoption records and information; Ensures availability of information to child when appropriate	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 b)	Facilitates, follows and expedites proceedings with a view to obtaining the adoption	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 c)	Promotes the development of adoption counselling and post adoption services	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 d)	Provides Central Authorities with general evaluation reports about experiences with intercountry adoption	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 e)	Replies, in so far as it is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation	? CAN ? CAR ? PA ? CT ? ABN ? ABF

Article	Action	Responsible Party
10; 11	Accredits bodies and ensures that accredited bodies meet the requirements of the Convention and the State	? CAN ? CAR ? PA ? CT ? IAE
12	Authorises foreign accredited bodies to act in the State	? CAN ? CAR ? PA ? CT
16(1) a)	Prepares report on the child	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
16(1) a); 22(5)	Supervises preparation of report by non-accredited persons	? CAN ? CAR ? PA ? CT ? ABN ? ABF
16(1) b)-d)	Determines, after giving due consideration to the child's circumstances and ensuring that consents have been properly obtained, that the envisaged placement is in the best interests of the child	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
16(2)	Transmits reports and documentation to receiving State	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
17 a)	Ensures that the prospective adoptive parent(s) agree to the placement	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
17 c)	Agrees that the adoption may proceed	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
18	Takes all necessary steps to obtain permission for the child to leave the State of origin	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
19(2)	Ensures that the transfer of the child takes place in secure and appropriate circumstances	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
19(3)	Returns reports if transfer of the child does not take place	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
20	Provides information on the progress of the adoption to the Central Authority of the receiving State	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
21	Consults with Central Authority or other body in receiving State in the event the placement fails and a new placement is necessary	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
23	Certifies that the adoption has been made in accordance with the Convention (if the adoption is completed in State of origin)	? CAN ? CAR ? PA ? CT
24	Retains authority to refuse adoption if manifestly contrary to the public policy of the State	? CAN ? CAR ? PA ? CT

Article	Action	Responsible Party
29	Ensures that no contact takes place between the prospective adoptive parent(s) and the child's parents or any other person who has care of the child until the requirements of Articles 4 a) and 5 a) have been met in accordance with the law of the State	? CAN ? CAR ? PA ? CT
32	Ensures that no one derives improper financial gain, and that service providers do not receive remuneration which is unreasonably high in relation to services rendered	? CAN ? CAR ? PA ? CT

Section B: Receiving Countries

Article	Action	Responsible Party
5 a)	Determines the eligibility and suitability of adopters	? CAN ? CAR ? PA ? CT
5 b)	Ensures that prospective adoptive parents have been counselled	? CAN ? CAR ? PA ? CT
5 c)	Determines that the child is or will be authorised to enter or reside permanently in that State	? CAN ? CAR ? PA ? CT
8	Takes all appropriate steps to prevent improper financial gain	? CAN ? CAR ? PA ? CT
9 a); 30	Preserves adoption records and information; Ensures availability of information to child when appropriate	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 b)	Facilitates, follows and expedites proceedings with a view to obtaining the adoption	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 d)	Provides Central Authorities with general evaluation reports about experiences with intercountry adoption	? CAN ? CAR ? PA ? CT ? ABN ? ABF
9 e)	Replies, in so far as it is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation	? CAN ? CAR ? PA ? CT ? ABN ? ABF
10; 11	Accredits bodies and ensures that accredited bodies meet the requirements of the Convention and the State	? CAN ? CAR ? PA ? CT ? IAE
12	Authorises foreign accredited bodies to act in the State	? CAN ? CAR ? PA ? CT
14	Accepts adoption applications from prospective adoptive parents	? CAN ? CAR ? PA ? CT ? ABN ? ABF
15	Prepares report on prospective adoptive parents and transmits to the State of origin	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
15(1); 22(5)	Supervises preparation of reports by non-accredited persons	? CAN ? CAR ? PA ? CT ? ABN ? ABF
15(2)	Transmits report to State of origin	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
16(2)	Receives report on child, proof of consents and reasons for recommended placement of child with prospective adoptive parents	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF

Article	Action	Responsible Party
17 a) b)	Approves decision made by State of origin regarding match of child and parents where required by law or appropriate; notifies State of origin of agreement of prospective adoptive parents to placement of child	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
17 c)	Agrees that the adoption may proceed	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
18	Takes all necessary steps to obtain permission for the child to enter and reside permanently in the receiving State	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
19(2)	Ensures that the transfer of the child takes place in secure and appropriate circumstances	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
19(3)	Returns reports if transfer of the child does not take place	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
20	Provides information on the progress of the adoption to the Central Authority of State of origin	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
21	Protects child, finds alternate care, consults with Central Authority or other body in State of origin in the event the placement fails and a new placement is necessary	? CAN ? CAR ? PA ? CT ? ABN ? ABF ? APN ? APF
23	Certifies that the adoption has been made in accordance with the Convention (if the adoption is completed in the receiving State)	? CAN ? CAR ? PA ? CT
24	Retains authority to refuse adoption if manifestly contrary to the public policy of the State	? CAN ? CAR ? PA ? CT
29	Ensures that no contact takes place between the prospective adoptive parent(s) and the child's parents or any other person who has care of the child until the requirements of Articles 4 a) and 5 a) have been met in accordance with the law of the State	? CAN ? CAR ? PA ? CT
32	Ensures that no one derives improper financial gain, and that service providers do not receive remuneration which is unreasonably high in relation to services rendered	? CAN ? CAR ? PA ? CT

Section C: Identification of responsible parties

Please provide the names and contact information for all applicable entities noted below. Separate sheets may be attached as necessary.

Central Authority

Regional Central Authorities

Public Authorities / Courts and Tribunals

Accredited Bodies

Non-accredited Persons

Please provide name and contact information of person / department completing this form.

LIST OF WEBSITES

Australia:

Central Authority

- ?? For the State of New South Wales: www.community.nsw.gov.au
- ?? For the State of Queensland: www.childsafety.qld.gov.au
- ?? For the State of South Australia: www.adoptions.sa.gov.au
- ?? For the State of Tasmania: www.dhhs.tas.gov.au
- ?? For the State of Victoria: www.dhs.vic.gov.au/commcare
- ?? For the State of Western Australia: www.dcd.wa.gov.au
- ?? For the Northern Territory: www.nt.gov.au

Accreditation criteria

- ?? <http://www.kidsguardian.nsw.gov.au/>

Brazil:

Central Authority

- ?? For the State of Maranhão: www.cgj.ma.gov.br
- ?? For the State of Mato Grosso do Sul: www.tj.ms.gov.br

Bulgaria:

Central Authority

- ?? www.mjeli.government.bg

Canada:

Agencies

- ?? For British Columbia: www.hopeadopt.org/feeschedules.htm; www.adoption-bc.com

Central Authority

- ?? For Nova Scotia: <http://www.gov.ns.ca/coms/files/services.asp>
- ?? For the Province of Saskatchewan: www.dcre.gov.sk.ca

Counselling and trainings for prospective adoptive parents

?? For British Columbia:

http://www.adoption.ca/pdfs/home_assessment_tools_e.pdf

Fees and costs

?? For Alberta: www.child.gov.ab.ca.

Post-adoption services

?? For British Columbia: www.bcadoption.com

?? For Saskatchewan:

<http://www.dcre.gov.sk.ca/services/famyouth/Adoption/ado6.html>

Colombia:

Central Authority

?? <http://www.bienestarfamiliar.gov.co>

France:

Central Authority

?? <http://www.diplomatie.gouv.fr/mai>

Germany:

Central Authority

?? Federal Central Authority: <http://www.bundeszentralregister.de/bzaa>

?? Hamburg: <http://fhh.hamburg.de/stadt/Aktuell/behoerden/soziales-familie/jugend-und-familie/dienststellen/gza/start.html>

India:

Central Authority

?? www.adoptionindia.nic.in

Italy:

Central Authority

?? www.commissioneadozioni.it

Lithuania:

Central Authority

?? www.ivaikinimas.lt

Norway:

Central Authority

?? www.bufdir.no

New Zealand:

Central Authority

?? www.cyf.govt.nz

Peru:

Accredited bodies

?? www.mimdes.gob.pe/ (adopciones / legislación)

Central Authority

?? www.mimdes.gob.pe

Sweden:

Central Authority

?? www.mia.adopt.se

USA:

Accredited bodies

?? http://cas2k3ftp01/family/adoption/convention/convention_462.html

Legal protections for internationally adopted children in the United States

?? http://travel.state.gov/family/adoption/info/info_450.html
?? <http://naic.acf.hhs.gov/>

Principle of subsidiarity

?? www.travel.state.gov (children & family)

"Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption"

?? www.travel.state.gov
http://cas2k3ftp01/family/adoption/notices/notices_2017.html

MODEL FORM

MEDICAL REPORT ON THE CHILD

**For contracting states within the scope of the Hague Convention
of intercountry adoption**

A duly licensed physician should complete this report.

Please decide on each heading.

If the information in question is not available please state "unknown".

Name of the child:			
Date and year of birth:			
Sex:			
Place of birth:			
Nationality:			
Name of the mother:			
Date and year of her birth:			
Name of the father:			
Date and year of his birth:			
Name of the present institution:	placed since:		
Weight at birth:	kg.	At admission:	kg.
Length at birth:	cm.	At admission:	cm.
Was the pregnancy and delivery normal?			
† Yes † No † Do not know			
Where has the child been staying?			
† with his/her mother	from	to	
† with relatives	from	to	
† in private care	from	to	
† in institution or hospital	from	to	

(please state below the name of the institution or institutions concerned)

Has the child had any diseases during the past time?

(If yes, please indicate the age of the child in respect to each disease, as well as any complication)

† Yes † No † Do not know

If yes:

Ordinary children's diseases (whooping cough, measles, chicken-pox, rubella, mumps)?

Tuberculosis?

Convulsions (incl. Febrile convulsions)?

Any other disease?

Exposition to contagious disease?

Has the child been vaccinated against any of the following diseases:

† Yes † No † Do not know

If yes:

Tuberculosis(B.C.G.)? Date of injection:

Diphtheria? Date of injection:

Tetanus? Date of injection:

Whooping cough? Date of injection:

Poliomyelitis? Date of injection: Date of oral vaccinations:

Hepatitis A? Date of injection:

Hepatitis B? Date of injection:

Other immunisations? Date of injection:

Has the child been treated in hospital?

† Yes † No † Do not know

If yes state hospital, age of child, diagnosis, and treatment:

Give if possible a description of the mental development, behaviour and skills of the child.

Visual † unknown	When was the child able to fix?
Aural † unknown	When was the child able to turn its head after sounds?
Motor † unknown	When was the child able to sit by itself? Stand by support? Walk without support?
Language † unknown	When did the child start to prattle? Say single words? Say sentences?

Contact † unknown	When did the child start to smile? How does it react towards strangers? How does it communicate with adults and other children?
Emotional † unknown	How does the child show emotions (anger, uneasiness, disappointment, joy)?
Medical examination of the child	
Date of the medical examination:	
1. The child	Weight: kg date:
	Height: cm date:
	Head circumference cm date:
Colour of hair: Colour of eyes: Colour of skin:	
Through my complete clinical examination of the child I have observed the following evidence of disease, impairment or abnormalities of:	
Date of the examination:	
Head (form of skull, hydrocephalus, craniotabes)	
Mouth and pharynx (harelip or cleft palate, teeth)	

Eyes (vision, strabismus, infections)
Ears (infections, discharge, reduced hearing, deformity)
Organs of the chest (heart, lungs)
Lymphatic glands (adenitis)
Abdomen (hernia, liver, spleen)
Genitals (hypospadias, testis, retention)
Spinal column (kyphosis, scoliosis)
Extremities (pes equinus, valgus, varus, pes calcaneovarus, flexation of the hip, spasticity, paresis)
Skin (eczema, infections, parasites)
Other diseases?
<p>Are there any symptoms of syphilis in the child?</p> <p>Result of syphilis reaction made (date and year):</p> <p><input type="checkbox"/> Positive <input type="checkbox"/> Negative <input type="checkbox"/> Not done</p>
<p>Any symptoms of tuberculosis?</p> <p>Result of tuberculin test made (date and year):</p> <p><input type="checkbox"/> Positive <input type="checkbox"/> Negative <input type="checkbox"/> Not done</p>
<p>Any symptoms of Hepatitis A?</p> <p>Result of tests for hepatitis A made (date and year):</p> <p><input type="checkbox"/> Positive <input type="checkbox"/> Negative <input type="checkbox"/> Not done</p>

Any symptoms of Hepatitis B?

Result of tests for HBsAg (date and year):

† Positive † Negative † Not done

Result of tests for anti-HBs (date and year):

† Positive † Negative † Not done

Result of tests for HBeAg (date and year):

† Positive † Negative † Not done

Result of tests for anti-HBe (date and year):

† Positive † Negative † Not done

Any symptoms of AIDS?

Result of tests for HIV made (date and year):

† Positive † Negative † Not done

Symptoms of any other infections disease?

Does the urine contain?

Sugar?

Albumen?

Phenylketone?

Stools (diarrhoea, constipation):

Examination for parasites:

† Positive (species): † Negative † Not done

Is there any mental disease or retardation of the child?

Give a description of the mental development, behaviour and skills of the child. This is of particular value for advising the prospective parents.

Any additional comments?

Signature and stamp of the examining physician

Date

CHECKLIST OF QUESTIONS WHICH MAY BE USEFULLY EXAMINED WITH A VIEW TO IMPLEMENTING THE HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The purpose of the following checklist is to highlight certain questions which may be usefully examined with a view to implementing the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Certain questions will concern more particularly "States of origin", others "receiving States". Of course, the list is not exhaustive and serves only as an illustration of questions which may arise on the occasion of the implementation of the Convention.

CHAPTER I - SCOPE OF THE CONVENTION***Article 2***

What form(s) of adoption creating "a permanent parent-child relationship" - paragraph 2 - provided for in the internal law of your country cause the "termination of a pre-existing legal relationship between the child and his or her mother and father" (cf. Article 26(1)(c) and (2))?

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

State of origin	Receiving State
<i>Article 4</i> <ul style="list-style-type: none">- Which are in your country the "competent authorities" under Article 4?- There may be occasion to include the following minimum requirements of Article 4 in the implementing legislation and/or to specify, as the case may be: paragraph <i>a</i><ul style="list-style-type: none">- adoptability according to which psycho-social criteria?	<i>Article 5</i> <ul style="list-style-type: none">-Which are in your country the "competent authorities" under Article 5?-There may be occasion to include the following minimum requirements of Article 5 in the implementing legislation and/or to specify, as the case may be: paragraph <i>a</i><ul style="list-style-type: none">-"the prospective adoptive parents are suited": psycho-social requirements?

State of origin	Receiving State
<p>paragraph <i>b</i></p> <ul style="list-style-type: none"> - "after giving due consideration"; see also Preamble, paragraphs 2 and 3; <p>paragraph <i>c</i></p> <ul style="list-style-type: none"> - establishment, if they do not already exist, or development of adoption counselling services (<i>cf.</i> Article 9 <i>c</i>)? - what is "the required legal form"? - provide means of expressing or evidencing consent in writing (see proposed model form); - how to make sure that the consents "have not been induced by payment or compensation of any kind"? - provide, where applicable, a special provision concerning the consent of mother, "after the birth of the child"; - additional provisions concerning the consent by the child: - how to take into consideration the child's wishes and opinions? 	<p>paragraph <i>b</i></p> <ul style="list-style-type: none"> - establishment, if they do not already exist, or development of adoption counselling services for prospective adoptive parents (<i>cf.</i> Art. 9<i>c</i>)? <p>paragraph <i>c</i></p> <ul style="list-style-type: none"> - requirements for the authorization for the child to enter and reside permanently in the receiving State and the form of such authorization. Possible co-ordination with the immigration authorities.

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

Articles 6 and 7

- Designation of the Central Authority referred to in Article 6(1).
- For federal States, States with more than one system of law or States having autonomous territorial units, designation of more than one Central Authority, if they so desire; in that case, specification of the territorial or personal extent of their functions plus designation of Central Authority to which any communication may be addressed (*cf.* Article 6(2)).

- By what means is (are) the Central Authority(ies) to discharge its (their) overall co-ordinating role (*cf.* Article 33), its (their) non-delegable duties under Article 7(1) and (2), and its (their) delegable duties under Articles 8, 9 and 15-21?

Article 8

- Which are the public authorities, if any, who will be acting in your country under Article 8?
- Specify, where applicable, "improper financial or other gain".
- Specify, where applicable, the means of implementing Article 8.

Article 9

- Establish the means of implementing the measures listed in Article 9 (the list is not exhaustive: "in particular to -").

Article 10

- Which are the requirements and procedures for granting and maintaining accreditation of the "accredited bodies"?
- "To carry out properly" according to what practical criteria? Will the requirements of Articles 11 and 32 be sufficient?

Article 11

- An accredited body "shall pursue only non-profit objectives". Which are the "competent authorities" establishing "the conditions and limits" of this criterion?
- "Persons qualified by their ethical standards": these standards may have to be specified, *e.g.* will it be necessary to check their past conduct; by whom and how must complaints about transgressions against standards be established, etc.?
- "By training or experience": who will develop and provide such training; who will set standards for such training?
- "Be subject to supervision by competent authorities":
 - . designate competent authorities
 - . provide conditions of supervision

Article 12

- Which are "the competent authorities" in your country?
- When will authorisation be given?
- Possible co-ordination with competent authorities of other States.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

<p>State of origin</p>	<p>Receiving State</p> <p><i>Article 14*</i></p> <ul style="list-style-type: none"> - How should prospective adoptive parents apply to the Central Authority? Expeditious handling of applications (<i>cf.</i> Article 35); feedback to prospective adoptive parents.
<p><i>Article 15**</i></p> <ul style="list-style-type: none"> - Provide preservation of confidentiality of the report prepared in accordance with paragraph 1 and transmitted according to paragraph 2, taking into account Article 19(3) (<i>cf.</i> Article 31)? 	<p><i>Article 15**</i></p> <ul style="list-style-type: none"> - Implementation of paragraph 1? Who provides "home study"? Who sets standards for "home study" and report? - Indicate in report public policy requirements for adoption in your country (<i>cf.</i> Article 24). - How to expedite transmission under paragraph 2 (<i>cf.</i> Article 35)? - Provide preservation of confidentiality of the report (<i>cf.</i> Article 31)? - Where applicable: take measures for implementation of Article 22(5).

<p><i>Article 16**</i></p> <ul style="list-style-type: none"> - Implementation of paragraph 1. Standards for report? - Provide conditions for preservation of the report (in particular duration). Provide for access (<i>cf.</i> Articles 30 and 31)? - How to expedite transmission under paragraph 2 (<i>cf.</i> Article 35)? - When applicable, take into account Article 22(5). 	<p><i>Article 16**</i></p> <ul style="list-style-type: none"> - Provide conditions for preservation of the report prepared in accordance with paragraph 1 and transmitted according to paragraph 2, taking into account Article 19(3). Provide for access (<i>cf.</i> Articles 30 and 31)?
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* According to Article 22(1), the functions of the Central Authority under this Article may be performed by public authorities or by accredited bodies.

** According to Article 22(1), the functions of the Central Authority under this Article may be performed by public authorities or by accredited bodies; if a declaration under Article 22(2) is made, those functions may, subject to paragraph 4, also be performed by the bodies or persons as referred to in that paragraph.

- Where applicable, provide cases where the Central Authority could or shall request the approval of the Central Authority of the receiving State.

- When applicable, provide refusals (public policy, *cf.* Article 24).

- Co-ordination with emigration authorities.

<i>Article 18**</i>	<i>Article 18**</i>
<p>Which are "the necessary steps" to obtain permission for the child to leave the State of origin?</p> <p>- When applicable, co-ordination with emigration authorities.</p>	<p>Which are "the necessary steps" to obtain permission for the child to enter and reside permanently in the receiving State?</p> <p>-- When applicable, co-ordination with immigration authorities. (<i>cf.</i> Article 5 c).</p>

*Article 19***

- Conditions for the preservation of the report when it is sent back: can it be utilized again (see paragraph 3)?

*Articles 20** and 21***

State of origin	Receiving State
	<p>-Establishment or development of post-adoption services (<i>cf.</i> Article 9 c).</p> <p>-Services offered and/or responsibilities assumed to help prevent disruption including replacement of child in adoption.</p>

* According to Article 22(1), the functions of the Central Authority under this Article may be performed by public authorities or by accredited bodies.

** According to Article 22(1), the functions of the Central Authority under this Article may be performed by public authorities or by accredited bodies; if a declaration under Article 22(2) is made, those functions may, subject to paragraph 4, also be performed by the bodies or persons as referred to in that paragraph.

Article 22

- As the case may be, make declaration of paragraph 2 with depositary and provide for regular information of Permanent Bureau of names and addresses under paragraph 3, and
 - . determine who "the competent authorities" are (paragraph 2);
 - . how to ensure the observance of the requirements of sub-paragraphs *a* and *b*: integrity; professional competence, experience and accountability; ethical standards and training or experience in intercountry adoption (*cf.* Articles 11 and 32).
- As the case may be (States of origin only), make declaration of paragraph 4.

CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

- Certificate of conformity of adoption with Convention: see proposed model form.
- What is/are the "competent authority/ies" in your country (if the adoption is made there)?

Article 25

As the case may be, declaration to be made.

Article 27

- Is there reason to regulate the conversion of a "simple adoption" into a "full adoption"?
- How to implement sub-paragraph 1 *b*?

CHAPTER VI - GENERAL PROVISIONS

State of origin	Receiving State
<i>Article 28</i> Does your country have a law as referred to in this article?	
<i>Article 29</i> <ul style="list-style-type: none">- Where applicable, designate "competent authority" charged with establishing conditions of contact.- Provide information on conditions of contact.	<i>Article 29</i> <ul style="list-style-type: none">- Where applicable, provide information to prospective adoptive parents on contact.

Article 30

Paragraph 1

- Provide conditions of preservation of information (duration): see *supra* Articles 15 and 16.
- Designate "competent authorities" - provide, for example, cases where this authority would be discontinued and for transfer, in that case, of the information kept by that authority to another authority.

Paragraph 2

- Provide conditions of access.

Article 32

- Is there reason to specify the requirements of paragraphs 1-3 in greater detail?

Article 39

Paragraph 1

- Is your country a Party to any such international instrument? Declaration to be made?

Article 45

- Declaration to be made?

RECOMMENDED MODEL FORM

STATEMENT OF CONSENT TO THE ADOPTION

Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

I STATEMENT OF CONSENT

Read the following statements carefully before completing them. Sign below only when you fully understand each statement. You have the right to receive any counselling or information which you may want to have about the effects of your consent. You have the right, if you so desire, to receive a copy of this document.

You should not have received any payment or compensation of any kind made or offered for the purpose of obtaining your consent to the adoption of the child.

I, the undersigned:

Family name:

First name(s):

Date of birth: day month year ...

Habitual residence:

mother [] father [] legal representative [] of the child:

Family name:

First name(s):

Sex: male [] female []

Date of birth: day month year

Place of birth:

Habitual residence:

declare as follows:

- 1 - I freely consent, without threat or coercion, to the adoption of this child.
- 2 - I understand that my child may be adopted by spouses or a person residing abroad.
- 3 - I understand that the adoption of this child will create a permanent parent-child relationship with the adoptive parent(s).
- 4 - I give my consent for the purpose of an adoption that terminates the pre-existing legal parent-child relationship between the child and his or her mother and father.
- 5 - I have been informed that I may withdraw my consent until and that after that date my consent will be irrevocable.

I declare that I have fully understood the above statements.

Done at on

Signature or Mark:

II DECLARATION OF WITNESS(ES) (where required by law or by the circumstances, e.g. in the case of illiterate or handicapped persons)

.....

.....

.....

.....

.....

III CERTIFICATION OF THE AUTHORITY AUTHORIZED TO ATTEST THE CONSENT

Name:

Title:

I hereby certify that the person (and the witness(es)) named or identified above appeared before me this date and signed this document in my presence.

Done at on

Signature / Seal:

RECOMMENDED MODEL FORM

CERTIFICATE OF CONFORMITY OF INTERCOUNTRY ADOPTION

Article 23 of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

1 The undersigned authority:

(Name and address of the competent authority of the State of adoption)

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

2 Hereby certifies that the child:

Family name:

First name(s):

Sex: Male [] Female []

Date of birth: day . . . month . . . year . . .

Place of birth:

Habitual residence:

3 Was adopted according to the decision of the following authority:

.....

Date of the decision:

Date at which the decision became final:

(If the adoption was made otherwise than by a decision of an authority, please specify the equivalent details)

4 By the following person(s):

a) Family name of the adoptive father:

First name(s):

Date of birth: day . . . month . . . year . . .

Place of birth:

Habitual residence at the time of the adoption:

b) Family name of the adoptive mother:

First name(s):

Date of birth: day . . . month . . . year . . .

Place of birth:

Habitual residence at the time of the adoption:

5 The undersigned authority certifies that the adoption was made in accordance with the Convention and that the agreements under Article 17, sub-paragraph c, were given by:

a) Name and address of the Central Authority¹ of the State of origin:

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

Date of the agreement:

b) Name and address of the Central Authority¹ of the receiving State:

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

Date of the agreement:

6 []The adoption had the effect of terminating the pre-existing legal parent-child relationship.

[]The adoption did not have the effect of terminating the pre-existing legal parent-child relationship.

Done at , on

Signature / Seal

(1) Or the public authority, body or person designated in accordance with Article 22(1) or
(2) of the Convention.

ANNEX 12

RECOMMENDATION CONCERNING THE APPLICATION TO REFUGEE CHILDREN AND OTHER INTERNATIONALLY DISPLACED CHILDREN OF THE HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

adopted on 21 October 1994

Pursuant to the Decision of the Seventeenth Session of the Hague Conference on Private International Law, held at The Hague from 10 to 29 May 1993, to convene a Special Commission to study the specific questions concerning the application to refugee children and other internationally displaced children of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*,

The Special Commission gathering at The Hague from 17 to 21 October 1994, in consultation with the Office of the United Nations High Commissioner for Refugees,

Adopts the following Recommendation -

RECOMMENDATION

Whereas the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* was concluded at The Hague on 29 May 1993,

Considering that in the application of the Convention to refugee children and to children who are, as a result of disturbances in their countries, internationally displaced, account should be taken of their particularly vulnerable situation,

Recalling that according to the Preamble of the Convention each State should take as a matter of priority appropriate measures to enable the child to remain in the care of his or her family of origin, and that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State,

The Hague Conference on Private International Law recommends to the States which are, or become, Parties to the Convention that they take into consideration the following principles in applying the Convention with respect to refugee children and to children who are, as a result of disturbances in their countries, internationally displaced -

- 1) For the application of Article 2, paragraph 1, of the Convention, a State shall not discriminate in any way in respect of these children in determining whether they are habitually resident in that State.

With respect to these children, the State of origin referred to in Article 2, paragraph 1, of the Convention, is the State where the child is residing after being displaced.

2) The competent authorities of the State to which the child has been displaced shall take particular care to ensure that-

a) before any intercountry adoption procedure is initiated,

- all reasonable measures have been taken in order to trace and reunite the child with his or her parents or family members where the child is separated from them; and

- the repatriation of the child to his or her country, for purposes of such reunion, would not be feasible or desirable, because of the fact that the child cannot receive appropriate care, or benefit from satisfactory protection, in that country;

b) an intercountry adoption only takes place if

- the consents referred to in Article 4 c of the Convention have been obtained; and

- the information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, the child's upbringing, his or her ethnic, religious and cultural origins, and any special needs of the child, has been collected in so far as is possible under the circumstances.

In carrying out the requirements of sub-paragraphs a and b, these authorities will seek information from the international and national bodies, in particular the Office of the United Nations High Commissioner for Refugees, and will request their co-operation as needed.

3) The competent authorities shall take particular care not to harm the well-being of persons still within the child's country, especially the child's family members, in obtaining and preserving the information collected in connection with paragraph 2, as well as to preserve the confidentiality of that information according to the Convention.

4) The States shall facilitate the fulfilment, in respect to children referred to in this Recommendation, of the protection mandate of the United Nations High Commissioner for Refugees.

The Hague Conference also recommends that each State take these principles and those of the Convention into account for adoptions creating a permanent parent-child relationship between, on the one hand, spouses or a person habitually resident in that State and, on the other hand, a refugee or internationally displaced child in the same State.