

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

établi par le Bureau Permanent

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**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION AND THE HAGUE CONVENTION
OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION,
ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL
RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

drawn up by the Permanent Bureau

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

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

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INTRODUCTION TO THE QUESTIONNAIRE

Objectives of the Questionnaire

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

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

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

Scope of the Questionnaire

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

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

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

¹ References in this document to the "1980 Convention" and the "1996 Convention" are to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* respectively.

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

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

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

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

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE 1980 AND 1996 CONVENTIONS

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 and / or the 1996 Convention(s), **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit:³ NORWAY

For follow-up purposes

Name of contact person: Ms Hanne Kristensen Løseth, Ms Trude Einersen and Ms Kristin Ugstad Steinrem

Name of Authority / Office: The Royal Ministry of Justice and the Police, Department of Civil Affairs

Telephone number: +47 22 24 54 51

E-mail address: postmottak@jd.dep.no

www.government.no/child-abduction

PART I: RECENT DEVELOPMENTS⁴

1. Recent developments in your State

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

Where possible, please state the reason for the development in the legislation / rules.

No significant developments to report.

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

We would like to mention two significant decisions in a case from 2007 regarding the interpretation of one of the Convention's exemption clauses.

A mother abducted her child to Norway in 2007 and the father petitioned to have the child returned pursuant to the 1980 Convention. When received by the Norwegian Central Authority, the case was sent to the District Court for consideration. The mother argued before the court that the father was violent, and that the petition for return should be refused. The District Court decided that the petition for return of the child should be granted. The reference to Section 12 b below relates to the Norwegian Child Abduction Act, which mirrors the Convention Article 13 (1) b. The District Court found that the father

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

⁴ This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter "the 2006 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2006 Special Commission, please provide such information here.

⁵ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 and 1996 Conventions. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

had behaved violently towards the mother and that his reprehensible conduct partly had taken place in the child's presence. The Court stated in its decision that:

"The Court cannot ignore the fact that conflicts between the parents will arise in [the requesting State] that will be harmful to [the child]. There is thus a certain risk of "mental harm". The risk cannot, however, be characterized as serious, which is the criterion of Section 12 b).".

The decision was appealed to Borgarting Court of Appeal, that upheld the District Court's ruling. Borgarting Court of Appeal stated in its decision that:

"With regard to the risk that the father will harm the mother – physically or mentally – and thereby harm [the child] mentally, the parties have given very different accounts of the relationship between them during their cohabitation and of various events and incidents. The mother has submitted a (...) criminal conviction whereby in (...) the father was fined EUR 360 for having harmed the mother, and offered witness testimony to illuminate the father's behavior at that time (...) The father claims that this is the sole violent incident.

In its decision the District Court has accepted the mother's factual descriptions. In the interlocutory appeal the father has disputed the mother's description on several points. The Court of Appeal does not find it necessary to decide which version is the more probable, in that it, like the District Court, does not find that the mother's description means that there is a serious risk of [the child] being harmed by a return. [...]

What would be the best care solution for [the child] in the future is not relevant to the question of return. The question of return is, on the other hand, a question of where [the child] shall be while [the child's] future care is being decided, and thereby also which country's authorities are to make that decision."

The Appeal Court upheld the District Court's ruling, and their decision was appealed to the Norwegian Supreme Court. However, the Appeals committee of the Supreme Court dismissed the appeal.

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

The Norwegian Ministry of Justice and the Police has together with the Norwegian Ministry of Foreign Affairs created a child abduction web site, www.government.no/child-abduction, where information about these cases can be found. The site contains information about application procedures in Child Abduction cases, legal aid, what to do in urgent matters etc. The site is available in both English and Norwegian.

Furthermore, the Norwegian Central Authority has established a list of lawyers in Child Abduction cases, so that affected parents quickly can get in touch with a lawyer with particular competence and knowledge on Child Abduction. The list contains contact information to selected lawyers all over the country, hereunder each lawyer's Curriculum Vitae, where the applicant amongst other can find what languages the lawyer speaks. The list is available in both English and Norwegian.

There has also been a rise in competence toward police/prosecuting authorities.

Further, there has been established a national co-operation forum consisting of representatives from the Norwegian Central Authority/Ministry of Justice, the Norwegian Ministry of Foreign Affairs (who handle abduction cases to non-Hague countries), the Norwegian Ministry of Children, Equality and Social Inclusion, representatives from the Police, legal aid authorities and several other agencies that from time to time have contact with issues relating to International Child Abduction. This national forum comes in

addition to the already established Nordic co-operation forum.

2. Issues of compliance

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

The three main problems we experience are length of proceedings, problems with localization, and cases which are treated more as custody cases than Hague cases. Overall, we experience that the main problem lies with the Courts. We do however find it important that Central Authorities do more when they see that a Hague case is not treated in accordance with the Convention.

Length of proceedings is a problem we experience in several cases. For instance, in a case where a child has been abducted from Norway, the case has been ongoing for 11 1/2 years. Needless to say, we find it most difficult that a Hague case can go on for such a long time without a solution being reached.

In one country, we find that length of proceedings is a systemic problem. In one particular case, it has taken more than four years since the abduction took place, and a final court decision has still not been reached.

Further, we would like to express our concern about the length of the proceedings in one particular case as the case has been going on for as long as 5 1/2 years. The length of proceedings is partially caused by the fact that the abductor went into hiding with the children for a period of time, but it is a fact that the legal procedure itself has taken a very long time. Further, there are separate enforcement proceedings, which again causes the total time aspect to be most worrying.

The length of proceedings has also been a challenge in a case where more than a year passed without the Court of First Instance reaching a decision. In addition, six hearings were held, and the Court seems to have handled the case more as a custody case than as a Child Abduction case.

We have also experienced several problems with the Hague process in an other case, hereunder challenges with length of proceedings as there were held six court hearings during a period of a little less than a year before a decision in the Court of First Instance was passed.

We have also experienced difficulties in a case where a child was abducted from Norway in breach of the rights of custody of the Norwegian Child Welfare Service. The Court of Appeal heard the case in September 2010. However, by April 2011 there is still no decision from the Appeal Court.

In one case, that seems to have been handled more as a custody case than a Hague case, it seems as if the Court favoured the mother as caretaker.

Further, another problem we have encountered is the use of a representative from the prosecuting authority in a Hague case, where he/she gives his/her opinion on the question on return without seeming to know the Convention and its purpose.

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

Yes. One country who has acceded to the 1980 Convention has not implemented the Convention in their internal law.

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

In general

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

In general we feel that the communication with other Central Authorities works well.

We have, however, had some experience with Central Authorities where it takes quite a long time before proceedings are initiated before the competent authorities in their country, and where we are not informed about the internal procedures in their country. We have also been met with requirement for authentication of documents, in conflict with Article 23 in the 1980 Convention.

Furthermore, we experience some problems with effective communication in situations where the Central Authorities are not able to communicate in the same language.

We have also experienced difficulties in obtaining the decision from the Court of First Instance in time for the appeal, not giving the left-behind parent the possibility to review the decision before it has to be appealed. Even though the left-behind parent's legal representative gets the decision in time to go through it before the time-limit for an appeal runs out, the fact that the left-behind parent is not aware of the reasons for the Court's conclusion before the appeal has to be sent, results in a difficult position for him/her.

Further, we have experienced that the left-behind parent is notified of a Court hearing in the requested State less than two working days prior to the hearing. Thus, the Court disregarded the fact that the left-behind parent in an International Child Abduction case should be given the opportunity to be present at the hearing in the same way as the abducting parent. In our opinion, the Central Authority should at least inform the Court of the difficulties of such a practice and thus inform the requesting State that they have done what is possible to postpone the date in order for the left-behind parent to arrange for his/her participation.

We have also experienced that a Central Authority did not inform us of the time limit for an appeal before the time limit had run out, resulting in the fact that the left-behind parent lost his/her possibility to appeal the decision. In that particular case, the time limit for appeal was five days, and we were informed of the decision from the Central Authority of the requested State more than two weeks after the decision was passed. Before we found out about the short time limit, we several times stated that the left-behind parent wanted to appeal the decision and asked the Central Authority of the requested State to inform us of the time limit for an appeal. However, we received a fax transmission stating that they had closed the case.

We also have one case where we forwarded the application to the Central Authority in September 2010, and where we still, in April 2011, do not know if the case has been forwarded to the court yet. We have asked for updates, but have not received any information from the Central Authority.

- 3.2 Have any of the duties of Central Authorities, as set out in Article 7 of the 1980

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

Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

In some cases we find the application insufficient relating to information about the unlawfulness of the abduction according to internal law of the requesting State. In these cases we ask for more information. However, due to the time perspective in these cases, insufficient information may cause delays as lack of information on whether the case actually regards an unlawful action may result in the case being forwarded to the Court for consideration later than necessary.

In one case we experienced that the Central Authority refused to forward the case to the Court as they believed that Article 3 was not fulfilled. However, we found that this was not clear and argued that Article 27 required the Central Authority to forward the application to the Court for examination as long as it is not clear that the conditions in the Hague Convention are not fulfilled.

We have also experienced problems with lack of involvement from the Central Authority when there are difficulties with enforcement of return orders.

Some States automatically require a social rapport in the Hague case. In our opinion an extensive use of social reports may be problematic as it may lead to more of a custody proceeding instead of return proceedings according to the 1980 Convention.

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

In outgoing cases, we have experienced a wide interpretation of the exemption clauses, where for example the climate in Norway and the child's health problems are used as arguments for not returning a child to Norway.

Furthermore, we have encountered discord in the interpretation of the term "habitual residence" in a case where the child was wrongfully removed while being very young and where the application was refused by the receiving Central Authority on the basis that the child was so young that it did not have habitual residence in Norway.

Legal aid and representation

3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (Art. 7(2) g)) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with? If so, please specify.

We have not experienced that these procedures in Norway have delayed the return procedures before the Court.

3.5 Are you aware of any other difficulties in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁷

⁷ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "Conclusions and Recommendations of the 2006 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings"):

In one outgoing case we had problems obtaining information about the legal aid scheme and how to apply.

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

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

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

1.1.6 The Special Commission recognises that the impossibility of, or delays in, obtaining legal aid both at first instance and at appeal, and / or in finding an experienced lawyer for the parties, can have adverse effects on the interests of the child as well as on the interests of the parties. In particular the important role of the Central Authority in helping an applicant to obtain legal aid quickly or to find an experienced legal representative is recognised."

Locating the child

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

As requested State:

As a requested State, we have had problems locating a child in a case where neither the left-behind parent nor the Central Authority of the requesting State had any information on whether the abducting parent and child actually were in Norway, or where they might stay if they were here. We searched our National Population Register and the Police searched their registers, but they could still not be found. As it turned out, we received new information from the requesting State at a later stage that the child was not in Norway.

In another case which has been ongoing for years, the child was initially in Norway and a decision for return was made. However, after this time it has not been possible to locate the child. There is reason to believe that the child is in another country. In Norway we have searched the National Population Register, and the Police have searched their registers. In addition the police have been out searching for the child.

As requesting State:

We have encountered difficulties in locating children after a legally binding decision for the return of two children to Norway. The abductor in this case was in hiding and we experience great difficulties in getting the children returned. The case is still ongoing after 5 1/2 years.

Further, we have encountered great difficulties with locating a child in a case that has been ongoing for 11 1/2 years. In that case, the question of return has not been handled by the Court due to the fact that the abducting parent has not been located. The requested State has still not been able nor seemed willing to locate the child.

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

The Central Authority may assist in a situation where the child's whereabouts is unknown. The Central Authority has the possibility to investigate our National Population Register to see if the child or the abductor is registered in Norway. The police may also assist, but if there is no information that the child is in Norway, the police will only be able to go through their registers to see if the child and/or parent is staying in Norway.

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

We have not encountered any such challenges.

We may use the Schengen Convention Article 97 to assist with locating children, and further, the Schengen Convention Article 95 regarding arrest and extradition of the abducting parent if there is an ongoing criminal case against him/her.

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

enquiries?

The Norwegian Central Authority will inform the requesting State what measures that have been used in an attempt to locate the child. Further, we will encourage the Central Authority in the requesting State to contact the police in their own country in order to provide us with more detailed information which we might be able to use in trying to locate a child here.

- 3.10 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)? Have you encountered any particular difficulties in working with these external agencies? Is there any good or bad practice you wish to share on this matter?

We have good experience with co-operating with external agencies in trying to locate children. These agencies are Interpol Oslo, the National Criminal Investigation Service (NCIS), hereunder the Schengen/SIRENE Office in Norway, and local police. We have not experienced any difficulties in this co-operation.

Information exchange, training and networking of Central Authorities

- 3.11 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁸

Yes. The Central Authorities of the Nordic Countries have yearly meetings, last in Sweden in 2010, where we share experience from both Hague and non-Hague abduction cases.

In one case where we have experienced several problems, we visited the Central Authority in the requested State and had good discussions about the procedures in both countries.

We have also in several cases contacted the Central Authority in the requested State if we have been of the opinion that a case has not been handled according to the Convention.

We have also benefited from other Central Authorities by learning about the way they deal with Convention cases and trying to implement what we see is useful.

- 3.12 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call, as proposed in Recommendations Nos 1.1.9 and 1.1.10⁹ of the 2006 Special Commission?

Yes, The Norwegian Central Authority organised a Nordic Baltic Seminar for judges and representatives from Central Authorities in June 2010, consisting of both presentations and a work-shop addressing problematic issues that have arisen in actual cases.

We also participate in yearly Nordic meetings, cf. 3.11.

⁸ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

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

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

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

In addition, the Central Authority in Norway was present at the International Child Abduction Seminar that was hosted by Brazil in December 2010. The seminar was meaningful and moreover, gave us the possibility to address some difficult cases with representatives from the other State.

We have also participated in a conference arranged by the Central Authority of Denmark on child related issues, hereunder International Child Abduction. The seminar took place in 2010.

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

We consider attendance at networking activities with other Central Authorities and government representatives to be very important as it enhances the operation of the 1980 Convention and improves the co-operation between member States. Good communication and co-operation between Central Authorities are fundamental to a successful operation of the Convention, and we value the opportunity to share experiences with other Central Authorities and to discuss the interpretation and application of the Convention. We believe it would be useful to have networking activities with other Central Authorities in addition to Special Commission meetings and the regular meetings we have with the other Nordic Countries.

Statistics¹⁰

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

Unfortunately, we have not submitted statistics to INCASTAT as we have been forced to prioritize different duties. We are however planning to submit statistics to INCASTAT as soon as possible in 2011.

Views on possible recommendations

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

"The Special Commission encourages Central Authorities to arrange international networking activities with both representatives from Central Authorities and judges in order to improve the operation of the 1980 Convention."

"The Special Commission encourages every Central Authority to facilitate training and national networking activities amongst representatives from the Central Authority and judges in order to improve the operation of the 1980 Convention."

4. Court proceedings

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

We have from time to time considered concentrated jurisdiction in Child Abduction cases. At present, no such arrangements are being contemplated. There is no tradition in Norway for centralising judicial competence to certain courts with particular jurisdiction in any judicial matter.

We have assigned two judges who are specialized on Child Abduction cases who can be contacted by other judges when they handle Child Abduction cases, and we always include contact information to these judges when we send a new Child Abduction case to Court.

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

The Hague Convention has been implemented into Norwegian law by an act of 08.07.1988 no. 72 (Child Abduction Act). A case under the Hague Convention is tried in the same manner as all other civil trials in Norway, except for the time aspect. The procedures take place according to both the Child Abduction Act and the Norwegian Dispute Act (17.06.2005 no. 90). It is clearly stated in the Child Abduction Act Section 16 that return proceedings according to the 1980 Convention are to be treated expeditiously and the six

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

¹¹ See, for example, the "Conclusions and Recommendations of the Fourth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (22-28 March 2001)" (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings") at para. 3.1:

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

weeks limit in the Convention is mirrored in the Child Abduction Act.

We do not consider that delays in return proceedings are linked to lack of appropriate procedures. However, we find that there may be other obstacles such as translation of documents, appointments of experts etc. that may cause delays.

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

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

It is difficult to comment on the general effect accusations of domestic violence or abuse may have on a Hague case. It will differ from each case depending on the factual grounds of the case. Furthermore, please be advised that in our experience the issue of domestic violence or abuse is not often raised.

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

The burden of proof lies with the taking parent.

The legal theory and the limited case law show that the courts set a high standard of proof when parents rely on Article 13 (1) b. Reference is made to the case mentioned under question 1.2.

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

In cases where there is reason to investigate further, it will cause some delay. This will happen in special cases where there is particular reason to consider it. In that regard, we remark that the Court has a responsibility to ensure progress in the judicial proceedings.

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

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

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

Expert evidence is permitted in these cases.

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

Such reports will be taken into consideration.

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

Any evidence that can be brought within the strict time frames will be taken by the Courts.

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

No

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

There seems to be inconsistencies regarding how much allegations of domestic violence means for the Courts' result. It is problematic if some countries do not return children solely based on one parents allegation and without any further proof of violence. It can be problematic that some countries use a very long time to investigate allegations of domestic violence, and this information may be better assessed by the country where the child has his/her habitual residence. Further, there seems to be inconsistencies between countries regarding whether the Court finds that the requesting state can deal with this issue or not.

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

No

6. Ensuring the safe return of children¹⁵

*The implementation of previous Special Commission recommendations*¹⁶

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

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

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

We use the recommendations as guidelines in our work with child abduction cases.

Concrete measures are:

The Norwegian Central Authority will alert appropriate child protection bodies if a child's safety is at risk. If the Norwegian Central Authority is asked by the requested State, we will provide information of the protective measures and services available in our State (see rec 2006 1.1.12).

Furthermore, we have information on our website about the possibility to bring charges against the abductor. Information about the possible negative effect is also listed. If we are contacted by the left-behind parent, we will inform about what implications criminal charges may give (see rec. 2006 1.8.4).

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

¹⁷ *Id.*

- 6.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

We will contact and alert the Central Authority in the requesting State in order for them to contact their Child Welfare Service.

*Methods for ensuring the safe return of children*¹⁸

- 6.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns? How does the relevant authority in your State ensure that the conditions or requirements put in place are implemented and adhered to?

If there are such concerns in the requested State, we can provide information on how children are cared for in Norway, hereunder forward information regarding the Norwegian education system, health care, Child Welfare Services etc.

Direct judicial communications

- 6.4 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome? What procedural safeguards surround such communications in your State?¹⁹

We are familiar with judges communicating with the liaison judges in Norway. However, we do not always have information about in what cases they have been contacted and the outcome. In our transmissions of applications for return to a Central Authority, we always inform the Central Authority in the requested State of our two liaison judges and their contact information.

In one case we know that the judge in the other country based his decision on information given by the Norwegian judge. The outcome was that the child was to be returned to Norway.

We also have examples where we as the Central Authority have been asked to provide written information to the judge in the requested State regarding what measures can be put in place in Norway to secure a safe return.

Use of the 1996 Convention to ensure a safe return

- 6.5 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (Arts 7 and 11), in providing for their recognition by operation of law (Art. 23), and in communicating information relevant to the protection of the child (Art. 34)?

Norway is currently considering accession to the 1996 Convention, herunder taking all the possible advantages into consideration.

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

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

Other important matters

- 6.6 Are you aware of cases in your State where a primary carer taking parent has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please provide case examples where possible.

We are not aware of any such cases.

- 6.7 What steps has your State taken to ensure that all obstacles to participation by parents in custody proceedings after a child's return have been removed (in accordance with Recommendation No 1.8.5 of the 2006 Special Commission)? In particular, where a custody order has been granted in the jurisdiction of, and in favour of, the left-behind parent, is the order subject to review if the child is returned, upon application of the taking parent?

When a child is returned, both parents may initiate custody proceedings in Norway. In such cases, legal aid can be granted to anyone with income and wealth under certain limits.

Where a custody order has been granted in Norway in favour of the left-behind parent, the order can be subject to review if the abducting parent initiates custody proceedings before the Court after a return, cf. the Norwegian Children Act Section 64, which states that a Court judgment can be amended if special grounds so indicate.

- 6.8 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

As of today, the Norwegian Central Authority does not follow up such measures after a return. However, we find it useful to discuss such a recommendation at the Special Commission.

7. The interpretation and application of the exceptions to return

In general

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

The taking parent has to give full proof of any exception.

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

The raising of an exception may cause delay, as the court may take evidence, appoint an expert etc. Moreover, there will more likely be an appeal. However, it is the taking parent that has to give full proof of the exception he/she raises.

It is clearly stated in the Norwegian Child Abduction Act Section 16 that return proceedings according to the 1980 Convention are to be treated expeditiously, and the six weeks limit in the Convention is mirrored in the Child Abduction Act.

Article 13(2) and hearing the child

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

The Norwegian Child Abduction Act Section 17 states the following: "Before reaching a decision on (...) an application for the return of a child pursuant to Section 11, the Court shall ascertain the child's views unless this is impossible having regard in particular to the child's age and degree of maturity."

According to the Norwegian Children Act Section 31, children over the age of seven may be heard in custody proceedings, and we believe that judges may use the same principle in Child Abduction cases. The child can either be heard by the judge or by an expert witness.

- Who will assess the child's maturity for the purposes of Article 13(2)?
It is the judge handling the case who will decide whether the child has attained an age and maturity that makes it natural to take its views into account.
- In what circumstances, in practice, might the relevant authority in your State refuse to return a child based on his or her objections? Please provide case

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

examples where possible.

The child's opinion is always to be taken seriously, but will not be binding for the judge.

In one case, the Court gave the opinion of a 10 year old child decisive weight as he seemed mature for his age, he strongly opposed being returned, even for shorter visits for access, and the Court did not find evidence of impermissible interference from the abducting parent.

We have however several examples both on cases where the exception is raised and resulted in non-return, and where the child's opinion was not given decisive weight.

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

We are not aware of any other international and / or regional instruments that have affected the manner in which the child's voice is heard in return proceedings.

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

Hearing of childrens opinions are well incorporated in Norwegian Courts, and we do not have reason to believe that it will delay the process. However, as mentioned earlier, it is clearly stated in the Norwegian Child Abduction Act Section 16 that return proceedings according to the 1980 Convention are to be treated expeditiously, and the six weeks limit in the Convention is mirrored in the Child Abduction Act. Further, the Norwegian Central Authority always makes the Courts aware of the six weeks limit when we forward an application for return to the Court, in order to emphasize the importance of prompt proceedings.

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

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

Article 20

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

We are only aware of one case where Article 20 has been used in Norway. The case regarded two children brought to Norway by their mother. The left behind parent was the father of one of the children, but was not the father of the other child. He was however granted custody for both children in the requesting State by an interim decision, and there was given a prohibition for the mother to leave the requesting State with the children. The left behind parent requested the return of both children. The Norwegian Appeal Court did however find that according to the Norwegian Children Act, the mother had custody for the child who was not the biological child of the requesting parent, and referred to that rules regarding custody according to Norwegian law is connected to biological, not social, parenting positions. They argued that according to the European Convention for the Protection of Human Rights Article 8, everyone has the right to respect for one's family life, and that a return would be in breach of the mother's right to family life with her son. Thus, the Court did not comply with the request for return.

Any other comments

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

In our opinion the exception clauses are sometimes used too widely in other countries in order to refuse return. This can lead to long court proceedings in the requested State and that the Court treats the case more as a custody case than a Hague case. It is problematic that these Courts spend time and resources on deciding issues which would be better decided in the country where the child has his/her habitual residence.

8. Article 15 of the 1980 Convention

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

In our experience the provision is very seldom used, and we have not encountered any difficulties with the use of Article 15.

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

We have not experienced that the use of Article 15 has caused any undue delay in return proceedings in Norway.

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

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

²³ See *supra*, note 19.

We are not aware of any cases in Norway where direct judicial communications have been used in relation to Article 15.

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

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

No experience with cases where this is clearly stated as a reason for denial of a request for return.

We have however had two cases where the left behind parent could not enter Norway to collect the child due to visa restrictions. (one Hague and one non-Hague case) In both of these particular cases, the child was under temporary care by the Norwegian Child Welfare Service prior to its return, and the Child Welfare Service brought the child to the parent in the other State.

- 9.2 Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the State in which the application for return is to be considered. How have such cases been resolved?

We do not have any such experience.

- 9.3 Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?
No such experience.
- 9.4 Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?
No such experience.

10. Newly acceding States to the 1980 Convention

- 10.1 If your State has recently *acceded* to the 1980 Convention, what steps have been taken to inform other States Parties of the measures taken to implement the Convention in your State?²⁴ Did you find the Standard Questionnaire for newly acceding States²⁵ useful for this purpose?
Not relevant.
- 10.2 How regularly does your State consider declaring its acceptance of the accessions of new States Parties to the 1980 Convention (Art. 38)?

Our goal is to consider new parties to the Convention regularly.

We will not consider the accession before the Questionnaire for newly acceded States at the HCCH website is filled out or the Central Authority provides us with the same information by other means.

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

When we are notified that a new State has acceded to the Convention, we investigate if the state has filled out the Standard Questionnaire for newly acceded States. If we don't find the filled out form at the HCCH website, we contact the designated Central Authority and ask that the form is filled out or that they provide us with the same information by other means. We use the filled out questionnaire when we consider newly acceded States. However, see our response to question 23.2.

11. The Guide to Good Practice under the 1980 Convention

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

The Guides are read and used by the Central Authority, hereunder referred to in outgoing cases where we find that the case is not being handled in accordance with the Convention.

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

When we forward an application for return to the relevant court, we write in the transmission letter where the judge may find relevant information. In all transmission letters to the Court, we recommend the Hague Conference's website, www.hcch.net (Child

²⁴ See Art. 38 of the 1980 Convention.

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

²⁶ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

Abuction Section).

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

We find the HCCH website suitable for making the Guide public. Further, our website www.government.no/child-abduction has a link to the HCCH website.

- 11.4 Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures; Part IV on Enforcement; and the draft of Part V on Mediation)?

No comment.

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

We find the Guides to Good Practice most useful as they provide a thorough review of the obligations set forth in the Convention, which are useful both for us as a Central Authority and when communicating with other Central Authorities in difficult cases.

We have especially used Guide to Good Practice – Part I and IV.

12. Relationship with other instruments

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

No comment.

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

No comment.

13. Publicity and debate concerning the 1980 Convention

- 13.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national Parliament or its equivalent? What was the outcome of this debate or discussion, if any?

The Convention itself has not raised any debate or publicity of such. However, some return cases have given rise to debates relating to the Convention and the Central Authority's measures to assist the children and the left behind parents. Amongst these cases is one case that has made very slow progress and of which the Hague Secretariat has been informed. In general, cases which take a long time before a decision is made can give rise to negative publicity.

Cases resulting in negative publicity are especially the problematic cases mentioned under question 2.1.

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

Our website www.government.no/child-abduction provides information on what left-behind parents should do if a child abducted. Information and advice is also given over the phone or by e-mail to those who contact the Central Authority.

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

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

a. How it has been implemented?

Not Party to the 1996 Convention

b. How it is operating?

c. Further, when implementing the 1996 Convention, did your State use the

²⁷ *Op. cit.* note 14.

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

implementation checklist drawn up by the Permanent Bureau in consultation with States Parties?²⁹ If so, do you have any comments regarding the implementation checklist and how it might be improved in future?

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

Norway is currently studying a possible accession to the the 1996 Convention and the need for changes in our national legislation in this regard.

A study from 2007, ordered by Norwegian authorities, did not reveal any major obstacles for ratification, but a need for smaller changes in several of our internal laws.

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

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

15.1 If your State is Party to the 1996 Convention:

a. Did you encounter any difficulties designating a Central Authority?

Not Party to the 1996 Convention

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

Not relevant.

c. Have any of the duties of Central Authorities within the 1996 Convention raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

Not relevant.

d. Has your Central Authority encountered any particular difficulties with the interpretation or application of the 1996 Convention provisions? If so, please specify.

Not relevant.

e. Would you consider the development of any model forms under the 1996 Convention useful (e.g., in relation to the provisions regarding transfer of jurisdiction (Arts 8 and 9), or in relation to the certificate which may be given by the relevant authorities under Art. 40)?

Not relevant.

16. Publicity concerning the 1996 Convention

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

Not Party to the 1996 Convention

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

We do not have such a list as the studying of a possible ratification of the 1996 Convention is at an early stage.

17. Relationship with other instruments

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

No comment.

PART IV: TRANSFRONTIER ACCESS / CONTACT AND

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

INTERNATIONAL FAMILY RELOCATION
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18. Transfrontier access / contact³¹

- 18.1 Since the 2006 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access.
No development to be reported.

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

- 18.2 Please indicate any important developments in your State, since the 2006 Special Commission, in the interpretation of Article 21 of the 1980 Convention.
Nothing to report.
- 18.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:
- the granting or maintaining of access rights;
We have not experienced problems with co-operation with other States in access cases.
 - the effective exercise of rights of access; and
 - the restriction or termination of access rights.
- Please provide case examples where possible.
- 18.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"³² to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

19. International family relocation³³

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

According to the Norwegian Children Act a parent who has sole custody may move abroad without the consent of the other parent. However, when the parents disagree about matters of custody and where the child shall live, one parent may not move out of the country with their common child before the matter is decided upon, cf. the Norwegian Children Act Section 40 final paragraph. This applies even if one of the parents has sole custody.

When custody is shared, both parents must agree before the child can move abroad. Either parent can take the child on short trips abroad without the permission of the other parent. The Court may, however, prohibit such trips if it is uncertain whether the child will return. The Norwegian police may impose temporary travel prohibitions that apply until the matter has been decided upon by the Court.

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

When one parent has sole custody, he/she can move abroad with the child without any permission from the authorities. See more information in our answer above, in question 19.1.

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

³³ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

If the parents share custody, one parent can move abroad with the child if the other parent agrees to this. If the remaining parent does not agree to this, the parent who wants to move abroad with the child has to initiate custody proceedings before the Court and request the Court to give him/her sole custody. If he/she gets sole custody, he/she can move abroad with the child.

19.3 Are you aware of any recent decisions in your State concerning international family relocation which may be of interest to the Special Commission meeting? In particular, are you aware of any cases where the international relocation of a child was permitted by the relevant authorities in your State following the return of the child to your State under 1980 Convention procedures?
No

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

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

No comment.

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

20. Non-Convention cases and non-Convention States

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

There are several demanding cases of Child Abduction in non-Contracting States worldwide.

We are aware of one troubling non-Hague case to Norway where a small child was abducted by a parent who did not have custody over the child. In that case, the child was taken into custody by the Child Welfare Service.

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

No particular country is overrepresented in terms of numbers. However, there are several cases in North Africa and the Middle East. In general, these cases are extremely complicated.

20.3 Are there any States that you would particularly like to see become a State Party to (a) the 1980 Convention and / or (b) the 1996 Convention? If so, what steps

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

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

would you suggest could be taken to promote the Convention(s) and encourage ratification of, or accession to, the relevant Convention(s) in those States?

We would like to see any country in the above mentioned regions become State Party and implement the Convention in their internal law. Joint demarches by State Parties towards non-members could be a way to promote accession to the Convention(s).

20.4 Since the 2006 Special Commission, has your State concluded:

a. Any bilateral, or other, agreements on international child abduction with States not Party to the 1980 Convention?

No

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

No

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

N/A

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

Norway suggests to invite Russia, in anticipation of Russia's accession to the 1980 Convention.

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

*The "Malta Process"*³⁷

20.6 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?³⁸ Have any steps been taken towards implementation of the Principles in your State?

No.

- b. Do you have any comment to make on the "Malta Process" generally?

- c. What is your view as to the future of the "Malta Process"?

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

21. Training and education

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

Judicial conferences and seminars are very important for effective functioning of the Convention, both with regards to common understanding and interpretation of the Convention and with regards to an effective cooperation between Central Authorities. We would like to see more training at national, regional and international levels. We believe that the conclusions and recommendations are effective for establishing a well functioning Convention.

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

The Nordic countries meet once a year to exchange experiences. Furthermore, we arranged a Nordic Baltic seminar in June 2010 in Estonia. We have also held a training

³⁷ The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

³⁸ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

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

session at national level for lawyers selected for our list of lawyer in Child Abduction cases, cf. our answer to question 1.3.

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

In general

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

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

We find INCADAT to be a very good instrument in order to see how different Courts interpret the provisions in the Convention.

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

We find the Judges' Newsletter very informative and useful.

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

The Child Abduction Section of the Hague Conference is in use on a daily basis and it is a very practical instrument. It is of great value to have all the Guide's to Good Practice, questionnaires, conclusions and recommendations etc. gathered in one site. Further, it is very useful in order to get updated contact details on the Central Authorities of other Member States.

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

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

We have no experience with use of iChild.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.⁴⁴ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau (often through the International Centre for Judicial Studies and Technical Assistance) organising,

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

⁴¹ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is now possible to download individual articles as required. Further, an index of relevant topics is being created to enable more user-friendly searches of the publication. The publication is also in the process of being re-designed. Further information regarding this publication will be provided in the report to the 2011 Special Commission meeting (see Info. Doc. No 1).

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

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

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

or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

We received support from HCCH during the Nordic Baltic seminar we arranged in 2010, which was very useful.

Further, see our suggestion under question 23.2.

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

We believe this is useful.

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

Norway considers this to be very important and useful. See our suggestion under 23.2.

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

Norway considers this to be very important for a well functioning co-operation.

Other

- 22.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;

We believe it is very useful if Central Authorities can contact the Permanent Bureau when they have problems with a particular country, and that the Permanent Bureau can follow up on the matter.

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

See below 23.1.

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

See under a.

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS

23. Views on priorities and recommendations for the Special Commission

- 23.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation

⁴⁵ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

supporting your response.

As we from time to time experience that some cases are not handled in accordance with the objectives and obligations set forth in the 1980 Convention, we believe that more can be done when new states accede to the Convention. We propose that all new states get an offer to visit a state where the Convention has functioned well over time in order to exchange experience and to understand which measures they have to undertake in their own country when acceding to the Convention. The training should refer to both judges and representatives from the State's Central Authority. We do not suggest a mandatory program, but that every acceding state get such an offer shortly after accession. This can be of significant importance when a Member State makes a decision on whether to accept a new state or not. This will also make new states aware of the responsibility they undertake when they accede to the Convention.

In addition we would like to propose that the Permanent Bureau can contact Member States where there has been evasion of the Convention, and that the Permanent Bureau can suggest that the State initiates training, that they can assist with the training or recommend a visit to another State to see how they have implemented and practice the Convention.

Further, we believe it might be useful to discuss the time aspect in Child Abduction cases and the importance of prompt procedures, as we find it problematic that many cases are not handled in an expeditious manner as stated in the Convention, but take a long time before a final decision is reached, with the negative impact this can have for the children involved.

We would also like to discuss the matter of enforcement and the importance of having prompt procedures in order to enforce return orders as soon as possible.

Finally, we would like to raise the issue regarding cases where the Child Welfare Service or similar body is granted custody over a child, and the parents, before the custody order has been carried through, abduct the child to another country in order to avoid the enforcement of the custody decision. We experience receiving more of these cases, and consider them to be very serious. We have experienced that the Court in the requested State does not treat such a case as other Hague cases. The reason for that may be that they don't have similar rules in their country for taking custody over children. We would like a discussion during the Conference on how to deal with these cases. We find it clear that these cases are to be dealt with like all other Hague cases according to the Convention, cf. Article 3, and we find that the time aspect is of outmost importance in these cases.

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

Norway proposes the following recommendations:

"The Special Commission encourages the Permanent Bureau to develop a training program for newly acceded States, which is to be offered to all States after accession."

"The Special Commission underlines the importance of acknowledging cases where a child is abducted from the custody of the Child Welfare Service, and emphasizes the importance of expeditious procedures in these cases."

"The Special Commission refers to the 1980 Convention Article 7 h, and emphasizes the Central Authorities' obligation to secure that return orders are enforced as soon as possible. This includes close co-operation between the Central Authority in the requested State and enforcing bodies, in addition to keeping the Central Authority in the requesting State continuously informed of the process."

Further, reference is made to our proposals in 3.15.

24. Any other matters

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