

# HAGUE QUESTIONNAIRE

## (1) The role and functioning of Central Authorities

- *General questions:*

### ***1 Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify.***

New Zealand emphasises the general duty of the Central Authorities, as specified in Article 7, to co-operate with each other to ensure the Conventions objects are achieved (paragraph 89 Perez-Vera Report) It is considered that this duty requires Central Authorities to work together to ensure the principles of the Convention are upheld when dealing with specific cases. This duty is not complied with if one Central Authority sets unnecessary bureaucratic or administrative hurdles or fails to expedite matters at all. In these cases, such an approach in effect defeats the proper and efficient processing and outcome of applications and demonstrates a reluctance to uphold the very principles the Convention is based on.

Some Central Authorities have such stringent requirements in terms of the documentation needed (with translations) that many New Zealand applicants are unable to pursue their applications. Although Article 24 is noted, New Zealand suggests whether translation of each and every document is in fact always necessary.

High levels of initial deposit on legal fees before legal aid is considered and lack of access to experienced Hague Counsel in those Contracting States without a legal aid system, do in effect result in proper applications not being pursued and erodes the effectiveness of the Convention on purely economic grounds.

New Zealand has also experienced difficulties with some Central Authorities failing to respond to queries.

### ***2 Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?***

New Zealand has no major difficulties.

3. ***What measures are taken by your Central Authority or others to secure the voluntary return of a child or to bring about an amicable resolution of the issues (Article 7 c)? Do these measures lead to delay?***

Once an application has been received and the child located, the Central Authority will appoint counsel to represent the applicant. Counsel will be instructed to initiate proceedings and to determine, after communication with the solicitor acting for the abducting parent, whether it is possible to achieve a voluntary return. These measures do not lead to delays as they run parallel to the timetabling of the court proceedings. If voluntary return negotiations are successful, the proceedings are withdrawn.

4. ***What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague Proceedings, including the participation of legal counsel and advisors (Article 7 g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?***

New Zealand's legislation implementing the Hague Convention (Guardianship Amendment Act 1991) requires that unrepresented applicants seeking the return of children be appointed legal representation. The Court may, if it thinks proper, order any party to the proceedings to refund any or all fees and expenses to the Crown.

The Central Authority has a small pool of senior counsel who are experienced with Hague cases and are willing to be appointed to act on behalf of applicants. In New Zealand proceedings, there is no delay in the appointment of Counsel as it is a routine procedure as soon as the application is sent to the Court nearest to where the abducting parent is residing.

In other jurisdictions, apart from return applications to Australia and the United Kingdom, there are sometimes lengthy delays as pro bono lawyers are found or if the New Zealand applicant has to find the funds to pay an initial deposit.

5. ***Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?***

The Central Authority sees its role as facilitative and administrative only and consequently appoints Counsel to act on behalf of the applicant parent. However, conflict of interest issues have been raised by Counsel in terms of who they take instructions from and who is their client. Is it the applicant parent or the Central Authority? The Central Authority takes the view that once Counsel is appointed they represent the applicant, but as officers of the Court they have a duty to ensure the Court is reminded of Convention principles. The Central Authority remains interested in any decision of the Court but only to the extent of deciding whether the Court has applied the Convention according to law and upheld its principles, rather than in the

particular outcome of the case itself. If the Central Authority considers that the Court has made an error of law it will consider an appeal.

**6** *What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protection, especially where issues of (alleged) abuse or violence have arisen? In particular, does your Central Authority*

- A ensure that appropriate child protection bodies are alerted;*
- B provide information to either parent in respect of legal, financial, protection and other resources in your State;*
- C facilitate contact with bodies providing such resources;*
- D assist in providing any necessary care for the child pending custody proceedings;*
- E provide any other support, advice or information to a parent who accompanies the child on return;*
- F provide any assistance in ensuring that undertakings attached to a return order are respected*

Given that the vast majority of cases concern New Zealand born and raised parents the issue of advice concerning services available does not usually arise.

The Central Authority will provide, on request, information concerning services and any other support facilities that might be available to either parent.

As a rule, the Central Authority will not of its own volition ensure that appropriate protection bodies are alerted when a child is being returned. However, once proceedings are filed the Court has jurisdiction to place children in a place of safety. In New Zealand it is not difficult to obtain emergency hearings. In addition, if there are concerns for the safety of the child, these can be dealt with by ensuring the child is surrendered directly to the State Authorities.

New Zealand refers to the discussions which took place during the third Special Commission (paragraphs 57 to 64) which put the recommendations surrounding Article 7h into context and explain the above responses. A number of qualifications were placed around these recommendations which are directly relevant to New Zealand.

New Zealand law would only contemplate disclosure of information to child protection bodies in circumstances where an imminent threat to safety was established and it was necessary to disclose the information to lessen this risk. New Zealand would not rule out that such a situation might occur, but it would be truly exceptional, particularly in the case where the returning parent had not raised any concerns and the safety of the child for some reason could not be protected by surrendering the child directly to State Authorities.

If the returning parent did raise such concerns, the Central Authority would provide contact information for the appropriate bodies but would not take an active role. As stated above, once the matter is before the Court, the Court can deal with any specific allegations or concerns and the returning parent can involve agencies such as the Police, at anytime.

The provision of information fits comfortably with the Central Authorities facilitative and administrative role, but involving itself directly in arranging care for the child or ensuring undertakings are enforced is the responsibility of the Courts, not the Central Authority.

**7** *What arrangements does your Central Authority make for organising or securing the effective exercise of rights of access (Article 7 f)?*

*In particular, in the case of an applicant from abroad, does your Central Authority:*

- A provide information or advice;*
- B facilitate the provision of legal aid or advice;*
- C initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;*
- D assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;*
- E assist in cases where modification of existing provisions is being sought.*

See answer to question (4) 1 as an identical process applies.

**8** *Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why?*

It is intended that the Central Authority will forward annual statistics from 1998.

**9** *Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions?*

Note the comments under question (6)1 concerning Article 7h and the discussions by the third Special Commission. The context of the discussions and in particular the qualifications should be noted when looking at the synthesis of that discussion drawn up by the Permanent Bureau (Annex III, third Special Commission Report).

**10** *Would you support any other recommendations in respect of the particular functions which Central Authorities do or may carry out, especially with regard to the matters raised in questions 6 and 7 above?*

The Central Authority would support clarification in terms of the assistance to be provided when an access application is made.

Central Authorities can play an important role in ensuring Hague Counsel appointed by the Central Authority and respondents Counsel have access to relevant material. After organising a forum for Hague Counsel in Wellington (November 2000), the Central Authority will be setting up a database of decisions (including interlocutory decisions) and an introductory pack for new Counsel to assist them to understand the unique nature of the Convention. Such an approach promotes understanding and will hopefully minimise the likelihood of weak defences being argued. It is intended this information will be equally available to respondent Counsel.

**(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation**

**1** *How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.*

Since 1981 New Zealand has had a specialised Family Court as a division of New Zealand's District Courts. The Family Court is made up of 17 Courts and 35 Judges. Family Court cases may be appealed to the High Court, the Court of Appeal and finally, the Judicial Committee of the Privy Council.

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

Hague proceedings are dealt with by the specialist Family Court.

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

**A** *is it possible for the application to be determined on the basis of documentary evidence alone?*

Yes it is possible for the application to be determined on the basis of documentary evidence. Generally Hague Convention hearings in New Zealand are conducted on counsel's submissions and affidavit evidence only. It is unusual for oral evidence to be adduced at hearings in Hague cases. However the New Zealand Family Court has statutory authority to receive any evidence that it thinks fit.

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

The Court has inherent power to control its own proceedings and there are no specific rules to limit this power in respect of Hague proceedings.

***C who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised?***

The Court exercises control once proceedings have been filed.

***D what appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations?***

The normal appeal provisions contained in the domestic legislation apply. The time for filing an appeal from a Family Court Judgment is 28 days.

***4 In what circumstances, and by what procedures/methods, will a determination be made as to whether a child objects to being returned? In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any)***

In a paper presented to the Conference Washington in September 2000, His Honour Judge Mahony (Principal Family Court Judge) explained that in New Zealand the Court has jurisdiction to appoint Counsel for the Child or to direct a psychologist's report to ascertain the child's level of maturity and the nature of the child's objection. Factors ascertained include ascertaining the child's developmental age, intelligence and ability to articulate, whether the views expressed are the child's own or those of the abducting parent and the child's reasoning process.

Once the Court has determined the age and maturity it will then decide how much weight should be given to the child's opinions.

The accepted definition in New Zealand currently is an "expressed wish not to return." The Court must also find that the reasons for objecting are valid and well founded and not based on a desire to stay with the abducting parent.

***5 Where the person opposing return raises any other defences under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? Does the raising of defences under Articles 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?***

The timetabling of the case by the Court will reflect the need for additional preparation and hearing time.

It is mandatory for the Court to order the return of the child where the requirements of section 12 of the Guardianship Act (Article 4) are established.

However, if a successful defence is established by the abducting parent, who has the burden of proof, the Court then has a discretion to order return. The Court will take account of the principles of the Convention in exercising this discretion.

- 6** *Please specify the procedures in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. Do return orders require separate enforcement proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?*

Two state agencies assist the Central Authority to ensure prompt compliance with Hague Convention decisions. These are the Department of Child Youth & Family Services and the New Zealand Police.

If at the conclusion of a hearing for the return of a child there are doubts as to whether the abducting parent will comply with the order, the Court may on the application of any party or of its own motion issue a warrant to uplift the child. The warrant may authorise the Police, any social worker, or any other named person to take possession of the child and to deliver the child to a person nominated by the Central Authority. In two cases the Central Authority has been obliged to enlist the help of a Department of Child Youth & Family social worker to accompany the child back to the country of habitual residence. All orders made by New Zealand Courts have been complied with although in one case the Police took 12 months to locate the abducting parent and child.

When an order for return has been made but the parents clearly do not have the means to fund the return the Crown will pay the return airfares to ensure the Court order is complied with.

- 7** *Would you support any of the following recommendations?*

- A** *calling on States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.*

As stated above the recommendation has no relevance to New Zealand, as it has a specialised Family Court. In New Zealand the Principal Family Court Judge is able to provide direct ongoing education of his Family Court judiciary on developments in Convention thinking.

- B** *underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligations extends also to appeal procedures.*

New Zealand would support this recommendation because although not with a blemish free record itself, the Central Authority has been

frustrated in the past at the delays and total lack of information concerning the status of appeals in other States.

***C calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications***

New Zealand would support this recommendation and has recognised the merit of the judicial timetabling of cases. The Principal Family Court Judge has proposed that all Hague applications be dealt with in the following manner:

- Once the application has been filed it is placed before a Judge;
- Initial Orders will be made;
- A statement of defence is to be filed within 72 hours of the application being served;
- A judicial telephone conference is to be held within 72 hours of the statement of defence being filed or the expiry of the time for filing the statement of defence;
- The conference is to timetable the filing of the respondent's affidavit at 14 days and to allocate the date of a 2<sup>nd</sup> conference.

***D calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.***

New Zealand supports this recommendation. In New Zealand once the application has been received by the Central Authority the Administrative Judge of the area concerned is advised of the receipt of the application so that the case can be allocated to a Judge for case management.

***E calling upon States Parties to enforce return orders promptly and effectively.***

New Zealand supports this recommendation.

***F Recommending that the "grave risk" defence under Article 13 should be narrowly construed.***

The cases *S & S* [1999] 3NZLR 513 and *Wagner & Holt* (11/8/2000, Justice Young, HC Christchurch AP No 15/00) have reaffirmed the narrow parameters of the grave risk defence in the New Zealand Courts, underlining the principles behind the recommendation.

***G Proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.***

In addition to the proposed timetabling set out in C above, consideration is being given to the merits of allocating one Judge for each case to deal with Hague cases from start to finish.

**8** *Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:*

- *rights of custody (Article 3 a and Article 5 a)*
- The Court of Appeal in *Dellabarca & Christie* [1999] NZFLR 97 extended the definition of “rights of custody” from the traditional approach of being synonymous with the right to determine the place of the child’s residence to a wider concept that was not necessarily confined to national concepts of guardianship or custody.
- *grave risk (Article 13b)*
- *exposure to physical or psychological harm (Article 13b)*
- *intolerable situation (Article 13b)*
- The High Court in *S&S* [1999] 3NZLR 513 considered:

*The Hague Convention was concerned with the appropriate forum for determining the interests of the children, not with determining their interests per se. Consequently where the legal system of the country of habitual residence could be relied upon to give paramountcy to the interests of the child, a Convention application could not be used for rehearsing those matters which would be relevant if and when custody and access issues fell to be determined. It would not be sufficient to satisfy s 13(1)(c) that allowing the applicant parent custody of, or access to, the child would gravely risk physical or psychological harm or otherwise place the child in an intolerable situation. The absconding parent must go on to show why the legal system of the habitual residence country would fail to protect the child against the risk pending the custody and access hearing.*

**(3) Issues surrounding the safe and prompt return of the child (and the custodial parent where relevant)**

- 1** *To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (ie promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject matter of undertakings required/requested. At what point in return proceedings are possible undertakings first raised and how?*

The Court of Appeal in *A & A* [1996] NZFLR said that;

*There can be no power to attach conditions to an order under s12 in the absence of a finding of a defence under s13. On the other hand, if such a defence has been made out and the court is solely concerned with the exercise of its discretion under s13 of the Act then it may be possible that conditions could be attached....Nevertheless it is not the role of a New Zealand Court to interfere with the functions and responsibilities of the relevant Central*

*Authorities and courts of another jurisdiction. It would be an unusual case which might give rise to the consideration of conditions.”*

Increasingly however judges are asking for undertakings to safeguard the return. Undertakings are normally first raised during the course of the Hearing where the Court intimates that undertakings may eliminate concerns that might persuade the Court not to order return of the child.

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

It is the discretion of the Court which determines how New Zealand Courts deal with undertakings given in an overseas jurisdiction. The Central Authority is no longer involved. The New Zealand Courts however are very mindful of their international obligations and the facts of the case will determine the weight given to overseas undertakings by the New Zealand Courts. A breach of an undertaking given to an overseas court is not likely to be looked at favourably by a New Zealand Court.

**3** *To what extent are your courts entitled and prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned) to overcome obstacles to the prompt return of a child?*

c.f. comment under question (3) 1

**4** *Is consideration being given to the possible advantages 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, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)?*

New Zealand is considering this matter.

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

New Zealand has had no problems with the return of children with abducting parents to other contracting states however we have had one case where the New Zealand Immigration Dept would not grant a visa to allow an abducting parent to return to New Zealand with her child without proof of a return ticket.

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

There is currently no criminal offence for international child abduction by a parent under New Zealand law.

- 7** *Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes. What procedural safeguards surround such communications?*

New Zealand has only had one case in which there has been formal judicial communication, this was for the purpose of timetabling. The case involved two applications (one in New Zealand and one in Australia) relating to two children of the same family and the necessity for one to precede the other within a co-ordinated timeframe.

- 8** *Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?*

In New Zealand the Principal Family Court Judge has expertise and experience in Hague matters.

- 9** *Where a child is returned to your Country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?*

The returning parent is entitled to legal aid according to the rules applying to any application under New Zealand's domestic legislation.

- 10** *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 abducting parent?*

It would be open to the abducting parent to make an application to the Court for custody and relocation in the normal manner under the domestic legislation.

- 11** *Would you support any of the following recommendations?*

**A** *that Contracting States should consider ratification of or accession to 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, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.*

New Zealand would consider the appropriateness of ratification or succession.

***B that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.***

Yes

***C that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.***

Yes

***D that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement.***

Yes

***E that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority***

Yes

***F that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.***

Yes

#### **(4) Procedures for securing cross-frontier access/contact between parent and child**

##### ***1 What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?***

Section 20 of the Guardianship Amendment Act 1991 provides that;

Where the New Zealand Central Authority receives, in respect of a child, an application in which the applicant claims-

- (a) To have rights of access in respect of a child; and
- (b) That the child is habitually resident in New Zealand; and
- (c) That the child is present in New Zealand, -  
the Authority shall make such arrangements as may be appropriate to organise or secure the effective exercise of the applicant's rights of access.

In practical terms when the Central Authority receives an application for access to a child in New Zealand, it will appoint Counsel who will be instructed to attempt to negotiate an access arrangement between the parties.

If that is not successful the lawyer will file proceedings in the court to enforce existing rights of access. If however applications are made on an ongoing basis the applicants will be asked to instruct Counsel privately to make an application under domestic legislation.

**2** *On what basis do your courts at present exercise jurisdiction to:*

**A** *grant and*

**B** *modify access/contact orders*

The Guardianship Amendment Act 1991 (section 20) or the Guardianship Act 1968 (section 15), provides the necessary jurisdiction.

**3** *What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's habitual residence? In this context is consideration being given to 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?*

Not currently

**4** *What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?*

The process follows the same path as that of a return application.

**5** *What facilities/procedures are in place to promote agreement between parents in international access/contact cases?*

There are no formal procedures in place. It is understood that the normal requirements for co-operation between Central Authorities are sufficient to achieve appropriate outcomes. Counsel appointed by the Central Authority are instructed to attempt to promote an agreed access regime in the first instance and only if no agreement can be reached to file proceedings.

**6** *Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?*

Where an application has been made to a New Zealand Court by a Central Authority of a Contracting State for assistance to secure access rights, there have been no cases as yet where the Court has refused to grant access.

**7** *What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?*

Any conditions imposed are at the discretion of the Judge after consideration of the facts of the case. Conditions which might be imposed include surrender

of passports and other travel documents, supervision of access and having the child's name loaded on to the border control computer system.

**8** *What information concerning services and what other facilities are available to overseas applicants for access/contact orders?*

When an application for access is received section 23 of the Guardianship Amendment Act provides for a lawyer to be appointed to represent the applicant in the same process as would a lawyer be appointed to represent an applicant seeking return.

**9** *What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:*

- A the effective exercise of rights of access in your/in the other jurisdiction;*
- B the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;*
- C the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.*

The issue which has the greatest impact in New Zealand in terms of the effective exercise of rights of access is the distance of New Zealand from other contracting states and therefore the greatest problem is the cost of travel between parents. The ongoing nature of access problems is also a problem.

**10** *What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (eg financial guarantees, surrender of passports)?*

The Guardianship Act 1968 permits a number of conditions to be imposed to ensure that access takes place such as surrender of passports and the paying of a bond into Court.

**11** *How in practice are access orders enforced?*

It depends on the reason for the non-compliance of the agreement or order.

**12** *Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please specify.*

**(5) Securing State compliance with Convention obligations**

**1** *Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.*

New Zealand has had one case in which an applicant applied for the return of a child from a Contracting State. After many weeks the Solicitor General of

the Contracting State advised that although the state had acceded to the Convention they had not enacted any implementing legislation and thus could not progress the application.

**2** *What measures, if any, do your authorities take, before deciding whether or not to accept a new access (under Article 38) to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations?*

There are a number of factors which have to be considered before accepting a newly acceding state. The relevant Government Agencies start from the position that it is desirable that treaty relations under the Convention be established with as many countries as possible. This is to avoid the situation arising where it is not possible for a NZ parent to initiate proceedings for the return of a child abducted to another state party simply because New Zealand has not accepted that state's accession.

However the decision the decision to accept a new accession is taken through consultation with the relevant bilateral division of the Ministry of Foreign Affairs. The Ministry advises that the bilateral division advises of any possible reason why it may be inappropriate to accept an accession. Ultimately there is a need to balance the general desire that the treaty is operative between as many countries as possible against the need to ensure that NZ accepts only those countries who are in a position to comply with the provisions of the treaty.

**3** *Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or nor to accept the accession? What questions would you include?*

The relevant Government Agencies support the drawing up of a standard questionnaire as it would help them to determine, among other things, whether a country would be able to comply with the Convention. Information along the following lines is suggested;

1. Information about the legislative arrangements:
  - Has all legislation required to implement the Convention been enacted?
  - Is the legislation in force or when will it come into force?
2. Information about administrative and organisational arrangements for the Central Authority such as:
  - Has the Central Authority been established?
  - Is it a stand-alone agency?
  - If located within another agency, which agency is it located within?
  - What staff does the Central Authority have and who is the principal officer?
3. Information about the operation of the judicial system that will support the Convention including which Court(s) will exercise jurisdiction.

- 4 *Are you in favour of an increase in the number of Special Commissions (or similar meetings) to review the practical operation of the Convention? Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?*

Yes

5. *Are there any other measures or mechanisms which you would recommend:*

New Zealand would support the proposals of the Central Authority for England & Wales to;

- draw up a code of best practice based on Member State's experiences
- draw up membership criteria for acceding countries
- encourage states to improve training for their judges

## **(6) Miscellaneous and General**

- 1 *Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?*

Meetings should not always be held in the Hague as it precludes those at a distance from the Hague attending.

- 2 *Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose.*

The Central Authority would like the Permanent Bureau to consider setting up a type of dispute resolution process which would give Central Authorities a communication channel if issues with the other Contracting State relating to a specific case cannot be resolved. It is noted that this matter was discussed at paragraph 32 of the third Special Commission Report.

- 3 *Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?*

The States should be required to expressly set out how their Central Authorities are going to operate.

- 4** *Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject-matter of the Convention?*

Yes

- 5** *Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?*

- 6** *Please provide information concerning any bilateral agreements made with non-Hague States with a view to achieving all or any of the objectives set out in Article 1 of the Convention.*

New Zealand has not yet negotiated any bilateral agreements with non-Hague countries.

- 7** *Do you have any comments on the following proposition:*

*Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention.*

New Zealand fully supports this recommendation.