

## Table of Contents

<b>CHAPTER 2</b> .....	<a href="#"><u>39</u></a>
<b>Consular and Judicial Assistance and Related Issues</b> .....	<a href="#"><u>39</u></a>
<b>A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE</b> .....	<a href="#"><u>39</u></a>
1. State Actions Relating to <i>Avena</i> .....	<a href="#"><u>39</u></a>
2. Lawsuits Seeking Evacuation from Yemen.....	<a href="#"><u>41</u></a>
<b>B. CHILDREN</b> .....	<a href="#"><u>43</u></a>
1. Adoption .....	<a href="#"><u>43</u></a>
a. <i>Assistant Secretary Bond's Senate Judiciary Committee Testimony</i> .....	<a href="#"><u>43</u></a>
b. <i>Report on Intercountry Adoption</i> .....	<a href="#"><u>47</u></a>
c. <i>Meeting of the Special Commission to Review the Hague Convention</i> .....	<a href="#"><u>48</u></a>
2. Abduction.....	<a href="#"><u>48</u></a>
<b>Cross References</b> .....	<a href="#"><u>54</u></a>

## CHAPTER 2

### Consular and Judicial Assistance and Related Issues

#### A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE

##### 1. State Actions Relating to *Avena*

For further background on efforts to facilitate compliance with the Vienna Convention on Consular Relations, as well as the decision of the International Court of Justice in *Avena*, see *Digest 2004* at 37-43; *Digest 2005* at 29-30; *Digest 2007* at 73-77; *Digest 2008* at 35, 153, 175-215; *Digest 2011* at 11-23; *Digest 2012* at 15-16; *Digest 2013* at 26-29; and *Digest 2014* at 68-69.

On July 28, 2015, Secretary Kerry sent a letter to Ohio Governor John Kasich regarding Jose Trinidad Loza Ventura, a Mexican national whose case was addressed by the International Court of Justice in the *Avena* case. Secretary Kerry's letter appears below.

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\* \* \* \*

I am writing you today regarding an important matter that implicates the welfare of U.S. citizens traveling abroad, including the members of our Armed Forces and their families, our relations with key allies, and our nation's reputation as a country that upholds the rule of law.

As you may know, a Mexican national named Jose Trinidad Loza Ventura is currently on death row in Ohio. Mr. Loza was named in a decision issued by the International Court of Justice (ICJ) in *Avena and Other Mexican Nationals (Mex. v. US)*, 2004 I.C.J. 12 (Mar. 31) (*Avena*). The *Avena* case involved consideration of Article 36 of the Vienna Convention on Consular Relations (VCCR), which requires parties to the convention to inform detained foreign nationals of their option to have their consulate notified of their detention without delay and permit consular access to those individuals. The ICJ found that the United States breached these obligations with respect to 51 Mexican nationals, including Mr. Loza. As a remedy, the ICJ ordered the United

States to provide judicial “review and reconsideration, of their convictions and sentences to determine whether they were prejudiced by the VCCR violations. Mr. Loza has not yet received review and reconsideration of his conviction and sentence to determine whether the violation caused actual prejudice, and therefore, his execution would place the United States in irreparable breach of its legal obligations.

The Federal Executive Branch has worked hard to bring the United States into compliance with its obligations under the *Avena* decision. Former President George W. Bush sought compliance by issuing a Presidential Memorandum directing the state courts to provide the review and reconsideration required by the ICJ. In *Medellin v. Texas*, 552 U.S.491 (2008), the Supreme Court held that effort to be legally insufficient, but found that *Avena* imposed a binding legal obligation that could be discharged through the adoption of federal legislation. Accordingly, we have been working with Congress to pass compliance legislation. Such legislation was most recently included in the President’s Fiscal Year 2016 budget request for the Department of State and Other International Programs. We have also made significant efforts to ensure prospective compliance with our VCCR obligations by, among other things, amending the Federal Rules of Criminal Procedure to require a federal judge to inform a foreign national charged with a federal crime of his or her consular notification option at the initial appearance.

While the Federal Executive Branch remains committed to pursuing *Avena* compliance legislation, I cannot predict when Congress will act. The State of Ohio and the other relevant states, however, can provide judicial review and reconsideration to the Mexican nationals named in *Avena* without federal legislation. Two states—Oklahoma and Nevada—have, in fact, taken steps to secure review and reconsideration for *Avena* defendants in their states. I am writing to respectfully request that Ohio do likewise by providing judicial review and reconsideration to Mr. Loza. If, for whatever reason, the State of Ohio is unable to provide Mr. Loza with review and reconsideration at this time, I would respectfully ask that you take all measures available to ensure Mr. Loza is not executed until he receives review and reconsideration.

I would like to emphasize this request is not a comment on either the conviction or sentence in Mr. Loza’s case, or on whether Mr. Loza would be able to demonstrate actual prejudice resulting from the VCCR violations. Rather, it is simply a request that Ohio take the necessary steps to enable the United States to comply with our binding legal obligations, just as the States of Oklahoma and Nevada have done. Taking these steps, and thus ensuring the United States can comply with our binding legal obligations under *Avena*, is critical to the national security and foreign policy interests of the United States.

Noncompliance would undercut our ability to protect U.S. citizens traveling and working abroad, including the thousands of Ohioans who travel abroad every year and the members of our Armed Forces and their families stationed abroad. The United States is severely hampered in our efforts to compel other countries to respect their obligations under the VCCR when U.S. citizens are detained abroad, if we do not respect our own obligations with respect to detained foreign nationals here. It would thus not only create uncertainty as to whether the United States can follow through on our own commitments, but would also damage U.S. credibility in our insistence that other countries respect their obligations. The protection of U.S. citizens overseas will always be our highest priority, and it is important that we can continue to rely on the protections of VCCR so our consular officers can continue to provide essential consular assistance.

In addition, our failure to comply with our *Avena* obligations has placed great strains on our bilateral relationship with Mexico. Proceeding with Mr. Loza's execution before providing him with review and reconsideration could jeopardize our collaboration with Mexico in many vital areas, including law enforcement, security, and immigration. Mexico has written to us about *Avena* compliance on numerous occasions and raises this subject in bilateral and multilateral forums regularly. Most recently, the Mexican Legal Adviser wrote to highlight the urgency of Mr. Loza's case. In addition to Mexico, many other key U.S. partners and allies—including the United Kingdom—have also repeatedly urged the United States to comply with our obligations.

If an execution date is set for Mr. Loza without first fulfilling the legal condition of judicial review and reconsideration, it would unquestionably damage these vital U.S. interests. It is our sincere hope that the State of Ohio will do everything possible to avoid such an outcome.

\* \* \* \*

## 2. Lawsuits Seeking Evacuation from Yemen

In 2015, U.S. citizens filed suit in two courts, claiming the United States government was required to evacuate them from Yemen. The dismissal of these lawsuits, based on the political question doctrine, is discussed in Chapter 5. Excerpts below from the U.S. briefs seeking dismissal explain further the legal context surrounding evacuation decisions.

First, in *Sadi v. Obama*, No. 15-11314 (E.D. Mich. June 8, 2015), the district court dismissed the claims. In the U.S. brief in support of its motion to dismiss, filed on May 11, 2015, the background section, excerpted below, explains the statutory and regulatory framework pertaining to evacuations. (The United States also submitted a brief in opposition to plaintiffs' motion for a preliminary injunction containing a similar background section on the same date.) The U.S. brief in support of its motion to dismiss in another case, *Mobarez v Kerry*, No. 1:15-cv-0516 (D.D.C. 2015), in federal court in the District of Columbia, includes a similar background section and remains pending.

\* \* \* \*

The statutory and regulatory authorities related to overseas evacuation activities of the U.S. government address two general matters: (1) planning and preparation for the possibility of evacuation of private U.S. citizens; and (2) the actual expenditure of funds to carry out any appropriate evacuation. However, no authorities govern as to what circumstances an evacuation of private U.S. citizens should be carried out by the Government, nor do any authorities require the Government to conduct such an evacuation.

### A. PLANNING AND PREPARATION FOR EVACUATIONS

#### 1. Statutory Authorities.

The Secretary of State bears responsibility for: develop[ing] and implement[ing] policies and programs to provide for the safe and efficient evacuation of United States Government personnel, dependents, and private United States citizens when their lives are endangered.

22 U.S.C. § 4802(b). This responsibility involves 1) developing a model contingency plan for evacuation; 2) developing a mechanism by which United States citizens can request to be placed on a list to be contacted in the event of an evacuation, or which, in the event of an evacuation, can maintain information on the location of U.S. citizens in high risk areas submitted by their relatives; 3) assessing the transportation and communications resources in the area being evacuated; and 4) developing a plan for coordinating communications regarding the whereabouts of U.S. citizens abroad. *Id.* §§ 4802(b)(1)(2)(3)(4). Nothing in these provisions establishes or mandates when the Government should evacuate U.S. citizens from a foreign country.

## 2. Other Authorities.

Executive Order 12656, 53 Fed. Reg. 47491 (Nov. 18, 1988), as amended by E.O. 13074, 63 Fed. Reg. 7277 (Feb. 9, 1988) (attached as Ex. 1 hereto), assigns to the Secretary of State the responsibility to

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to: . . . .

(f) Protection or evacuation of United States citizens and nationals abroad . . .

E.O. 12656 § 1301(2)(f), 53 Fed. Reg. at 47503-04. Under that Executive Order, the Secretary of Defense is to “[a]dvise and assist the Secretary of State . . . as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas.” *Id.* § 502(2), 53 Fed. Reg. at 47498. The amendment to Executive Order 12656 adds that the Secretary of Defense:

Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, [is] responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.

E.O. 13074, 63 F.R. 7277.

On July 14, 1998, the Departments of State (“DOS”) and Defense (“DoD”) entered into a Memorandum of Agreement (“MOA”) concerning their “respective roles and responsibilities regarding the protection and evacuation of U.S. citizens and nationals and designated other persons from threatened areas overseas.” MOA, 1 (July 14, 1998) (attached as Ex. 2). The MOA clarifies that DOS retains ultimate responsibility for such evacuations from foreign countries. MOA, §§ C.2; C.3.b. In addition, “[o]nce the decision has been made to use military personnel and equipment to assist in the implementation of emergency evacuation plans, the military commander is solely responsible for conducting the operations . . . in coordination with and under policies established by the Principal U.S. Diplomatic or Consular Representative.” *Id.* § E.2. The MOA further notes that while “[t]he safety of U.S. Citizens is of paramount concern . . . successful evacuation operations must take into account risks for evacuees and U.S. forces.” *Id.* App. 1. Again, nothing in this executive authority purports to establish any requirements as to when or under what circumstances an evacuation shall take place.

## B. IMPLEMENTATION OF EVACUATIONS

Once a decision to evacuate has been reached, statutory law provides authority to the Secretary of State to “make expenditures, from such amounts as may be specifically appropriated therefor, for unforeseen emergencies arising in the diplomatic and consular service and, to the extent authorized in appropriation Acts” for the evacuation of “private United States citizens or third-country nationals, on a reimbursable basis to the maximum extent practicable.” This statute provides that the Secretary of State is authorized, but not required, to make certain expenditures “for unforeseen emergencies arising in the diplomatic and consular service . . .” 22 U.S.C. § 2671. Activities subject to such expenditures must, inter alia, “serve to further the realization of foreign policy objectives,” and must be “a matter of urgency to implement.” *Id.* § 2671(b)(1). Such activities may include “the evacuation when their lives are endangered by war, civil unrest, or natural disaster of . . . private United States citizens or third-country nationals.” *Id.* § 2671(b)(2)(A)(ii). Here again, these provisions merely authorize the expenditure of funds to carry out a decision to evacuate, but do not purport to direct or control when an evacuation should occur.

\* \* \* \*

## B. CHILDREN

### 1. Adoption

#### a. *Assistant Secretary Bond’s Senate Judiciary Committee Testimony*

On November 18, 2015, Assistant Secretary of State for Consular Affairs Michele Bond testified before the U.S. Senate Judiciary Committee at a hearing on intercountry adoption. Assistant Secretary Bond’s statement is excerpted below and available at <http://www.judiciary.senate.gov/imo/media/doc/11-18-15%20Bond%20Testimony3.pdf>.

\* \* \* \*

...Over the past 15 years, U.S. families have welcomed more than 250,000 adopted children from more than 100 different countries. In a sense, intercountry adoption also reflects our country’s history as a nation of immigrants made stronger by our diversity.

\* \* \* \*

My testimony today highlights recent steps the Department has taken to advance U.S. intercountry adoption policy and diplomacy in a complex and dynamic global environment. The Bureau of Consular Affairs is the U.S. Central Authority under The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention). I will describe our efforts to encourage countries to further the goals of the Convention and

become a party when they have established the procedures necessary to do so. I will share examples of how the Department of State provides technical consultation to countries around the world. I will touch on two of our most challenging bilateral adoption relationships, with the Democratic Republic of the Congo and Russia, to provide context to some of the heart-wrenching situations that U.S. adoptive parents have faced in the course of intercountry adoption. Finally, I will highlight the Department's unwavering commitment to intercountry adoption by citing the work of our embassies in Port-au-Prince and Guatemala City. Both have worked consistently over a number of years to assist U.S. adoptive families by working with the host governments to clarify intercountry adoption policies and procedures and to resolve pending U.S. cases.

### **The Bureau of Consular Affairs' Intercountry Adoption Strategy**

The Bureau of Consular Affairs has taken several steps over the past year to enhance our efforts in support of our belief that intercountry adoption must be among the range of options to provide for the welfare and best interests of children around the world. Intercountry adoption remains one of our highest priorities. We work diligently to establish and maintain intercountry adoption as a viable option for children throughout the world who need permanent families.

Under our new intercountry adoption strategy, we are assessing the state of intercountry adoption worldwide, and developing specific initiatives and tools to strengthen intercountry adoption processes. For example, we are developing tools to map the intercountry adoption process in other countries. This enhances our knowledge of and insight into each country's procedures. From Cambodia to Haiti to Zambia, this detailed understanding of individual countries' procedures helps us to be more focused and productive in bilateral discussions with foreign government officials. It provides effective communication support to our work to establish the long-term, personal relationships essential to cooperation on intercountry adoption. And because we recognize that intercountry adoption is in the best interests of some children in the United States, we work with foreign counterparts and colleagues at the Department of Health and Human Services to expand outgoing Convention adoption opportunities for children in U.S. foster care.

In collaboration with U.S. Citizenship and Immigration Services (USCIS) and the Council on Accreditation, we organized and hosted the first Adoption Service Provider (ASP) Symposium here in Washington, D.C., in September this year. More than 70 ASPs from across the United States attended this two-day conference. We discussed the Department's intercountry adoption strategic plan and critical issues at play in the field today, including unregulated custody transfers, often referred to as "rehoming." While intercountry adoption is truly beneficial for many children, some families confront difficulties that stem from early trauma, institutionalization, and other challenges that are difficult to overcome. When parents place a child with others outside of existing safeguards, including appropriate authorities such as social services, medical professionals, counselors, and the court, that lack of oversight creates a risk of harm for that child. At the ASP Symposium, we updated ASPs on efforts by several USG agencies to assess the breadth of the issue, and our work on strategic initiatives aimed specifically at intervention and prevention; we also support their ideas and input. The Department of State leads a working group dedicated to unregulated custody transfers, convened by Ambassador Susan Jacobs, the Special Advisor for Children's Issues, and comprised of experts from the Departments of Justice, Health and Human Services, and Homeland Security, and the Association of Administrators of the Interstate Compact on the Placement of Children. After working with the Department to research state laws, the National Association of Attorneys

General offered to participate in the working group. In September, we were pleased to welcome the Attorney General from Utah, who volunteered to share his expertise and commitment to child protection.

Over the last year, we have focused on engagement with countries that have announced their intent to ratify or accede to the Convention. U.S. embassies and consulates overseas are actively encouraging those countries to establish intercountry adoption procedures that protect children and parents and are consistent with the Convention and U.S. immigration procedures. We encourage them to develop robust domestic child welfare systems that support family reunification or domestic adoption, and intercountry adoption when permanent placements in the country of origin have been given due consideration. We encourage the continued availability of intercountry adoption, even as a country is developing new procedures in anticipation of becoming a party to the Convention. We offer technical consultation to all countries interested in working with us, regardless of whether they are a party to the Convention, in the form of information resources, training materials, guidance regarding U.S. adoption and immigration laws and procedures, and visits from experts in our government. Always, we are brainstorming new and creative ways to facilitate more assistance – governmental and nongovernmental – to address specific needs in countries of origin and support intercountry adoptions between the United States and those countries.

To illustrate, while I was the Ambassador to the Kingdom of Lesotho, I worked closely with adoption officials and stakeholders as the country prepared to accede to the Convention. The Convention entered into force for Lesotho in December 2012. There were some initial procedural difficulties with regard to processing adoption cases consistently. However, the Convention provides a framework for cooperation to improve the effectiveness of the adoption process, and the United States and Lesotho have worked together to address out-of-order cases and process them in a manner consistent with the Convention and U.S. immigration law.

As an even more recent example, the Convention entered into force for Côte d'Ivoire and Zambia on October 1, 2015, making those countries the 94th and 95th States Parties. Prior to their accession, the Department of State offered and provided technical consultation to both countries, through our Embassies in Abidjan and Lusaka and through direct communication between their adoption authorities and the Bureau of Consular Affairs in Washington, D.C. We discussed how to facilitate processing under the Convention in a way that was compatible with U.S. immigration law and sought to promote a smooth transition to adoption processing under the Convention. Côte d'Ivoire is still developing Convention adoption procedures, and in the interim, the United States will process intercountry adoption petitions under the Convention on a case-by-case basis. We are already processing intercountry adoptions consistent with the Convention in Zambia.

#### **The Bureau of Consular Affairs' Technical Consultation on Intercountry Adoptions**

Another part of the world, East and Southeast Asia, illustrates our context-specific approach to intercountry adoption diplomacy and technical consultation. Ambassador Susan Jacobs recently returned from meetings in Cambodia, the Republic of Korea (ROK), and Vietnam. In Cambodia, which acceded to the Convention in 2007, Ambassador Jacobs hand-delivered to government officials a letter requesting clarification of Cambodia's envisioned Convention adoption process, a request endorsed by the Central Authorities of Belgium, France, Luxembourg, the Netherlands, the United Kingdom, and the United States. She made clear that the Government of Cambodia's response is necessary for the United States to fully understand how Cambodia will supervise and monitor ASPs authorized by the Cambodian Government.

Ambassador Jacobs advocated for permanency for all children, and for intercountry adoption to be included in the range of permanency options. She congratulated the Government of Cambodia on progress to establish a foster care system that removes children from institutions in favor of living as part of a family, which we all recognize to be better for children's physical, social, emotional, and cognitive development.

In the ROK, which has expressed its intent to ratify the Convention next year, Ambassador Jacobs advocated for intercountry adoption as a viable option for Korean children after due consideration has been given to domestic placements. She recognized the ROK's social, cultural, and political reforms, which have generated efforts to encourage more domestic adoption – a positive step for both the country and its children.

In Vietnam, the Convention entered into force in 2012, and recently [Vietnam] established a Special Adoption Program for children with special needs, older children, and children in sibling groups. Ambassador Jacobs received updates on the Convention adoption system and on the progress of the Special Adoption Program.

We also have ongoing efforts in several countries in Eastern Europe. For example, Ambassador Jacobs will soon visit Moldova and Romania to advance U.S. policy goals with respect to both intercountry adoption and international parental child abduction. The Romanian Central Authority provided the Department with draft amendments to its adoption code, and requested our comments. We are conducting our review and Ambassador Jacobs will personally deliver the results. We continue to raise our belief that intercountry adoption opportunities in Romania should be expanded beyond Romanian citizens residing abroad, to increase the availability of permanent placement options for children. In Chisinau, Ambassador Jacobs will work with Moldova's Central Authority to expand intercountry adoption opportunities and establish a more efficient process.

In addition to our important work in support of the Convention, we regularly engage with countries that are not party to the Convention and that are not planning to become party to the Convention. The Department has developed intermediary programs for countries that wish to improve their adoption processes.

An example is the Pre-Adoption Immigration Review (PAIR) program, developed in coordination with USCIS, and currently in place in Ethiopia and Taiwan. PAIR helps governments confirm children are eligible for U.S. orphan visas before they are adopted in the foreign country. PAIR represents the U.S. government's innovative response to the diverse intercountry adoption realities in different countries, and helps maintain intercountry adoption as a[n] option for children around the world.

### **Challenging Intercountry Adoption Environments**

Consular Affairs constantly and actively pursues solutions to problems that U.S. families face in the course of their intercountry adoptions. Some of those problems are very grave. Resolving the cases from the Democratic Republic of the Congo (DRC) is a top U.S. government priority. The DRC government recently agreed to allow 14 children adopted by U.S. parents to leave the country. That is a cruelly small number. Nearly 400 more children legally adopted by U.S. parents are awaiting permission to leave the DRC, with no indication of when this permission might be granted. The more than two-year-old exit permit suspension for legally adopted children must be lifted now. It is unacceptable that children adopted by U.S. citizens and several other countries are languishing in institutional care, and in some cases dying, when they have loving, permanent families waiting for them. There is no excuse for the continuation of the DRC's exit permit suspension. I have personally pressed this point with Congolese officials

during two trips to Kinshasa this year and in multiple meetings with the Congolese Ambassador to the United States. I know that many Members of Congress share these views, and I thank you for supporting the actions taken by President Obama and the Department of State to push the Government of the DRC to do the right thing and release the children to their families.

The Department also remains committed to continued dialogue and engagement with Russia, a non-Convention country, on intercountry adoption and the protection of the interests of children. The Russian Federation banned the adoption of Russian children by U.S. families on January 1, 2013, in response to the Magnitsky Act. This followed the conclusion of a U.S.-Russia Adoption Agreement created in part to address Russian concerns over Russian children adopted by U.S. parents, which was in force for only one month when Russia provided notice of its intent to terminate the Agreement effective January 1, 2014. Since the ban entered into force, the Department has worked for a resolution to all adoptions from Russia initiated prior to January 1, 2013, and has formally proposed several options to the Russian government to resolve more than 250 pending adoptions. Despite our attempts, the Russian government has not allowed any exceptions to the ban. We unfortunately have no reason to believe there is a path forward for these U.S. prospective adoptive parents and children at this time.

#### **Our Focus on Bilateral Engagement to Assist U.S. Adoptive Families**

We remain focused on intercountry adoptions from Haiti, which is now a Convention country. Well before the Convention's entry into force for Haiti, the Department of State and USCIS were closely engaged with Haitian officials to promote smooth adoption processing and to provide technical consultation in support of Haiti's plans to ratify the Convention. The Department and USCIS sent delegations to Haiti in March and October of 2015. These trips provided a wealth of knowledge about Haiti's processing procedures, which we have communicated to the U.S. adoption community. We are in daily contact with U.S. Embassy Port-au-Prince to discuss adoption issues. Our goals are to clarify Haiti's intercountry adoption procedures for transition cases (cases initiated prior to the Convention's entry into force for Haiti) and for new cases (initiated after entry into force), while addressing procedural problems that affect U.S. prospective adoptive parents.

We know that our persistence, our dedication, and our commitment to serving children and families in intercountry adoption can produce results. We remain resolute in support of intercountry adoption. We have seen its life-changing impact on so many lives. For example, Guatemala's 2007 suspension of intercountry adoptions amid concerns about child-buying, kidnapping, and fraud, left approximately 3,000 adoptions by U.S. citizens in limbo. The Department and USCIS have repeatedly urged Guatemalan authorities to resolve the pending cases, and we are hopeful that the last five remaining cases will be resolved soon.

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#### **b. Report on Intercountry Adoption**

In April 2016, the State Department released its Annual Adoption Report to Congress. The report is available at [https://travel.state.gov/content/dam/aa/pdfs/2015Annual\\_Intercountry\\_Adoption\\_Report.pdf](https://travel.state.gov/content/dam/aa/pdfs/2015Annual_Intercountry_Adoption_Report.pdf). The report includes several tables showing numbers of intercountry

adoptions by country during fiscal year 2015, average times to complete adoptions, and median fees charged by adoption service providers.

**c. *Meeting of the Special Commission to Review the Hague Convention***

See Chapter 15 for discussion of the fourth meeting of the Special Commission to review the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

**2. Abduction**

As described in *Digest 2014* at 71, the International Child Abduction Prevention and Return Act (“ICAPRA”), signed into law on August 8, 2014, increased the State Department’s annual Congressional reporting requirements pertaining to countries’ compliance with the 1980 Hague Convention on the Civil Aspects of International Child (“Convention”). In accordance with ICAPRA, the Department submits an Annual Report on International Parental Child Abduction to Congress by April 30 of each year and a report to Congress on the actions taken toward those countries determined to have a pattern of noncompliance in the Annual Report by July 30 of each year. See International Parental Child Abduction page of the State Department Bureau of Consular Affairs, <http://travel.state.gov/content/childabduction/en/legal/compliance.html>.

The 2015 Report on International Parental Child Abduction is available at [http://travel.state.gov/content/dam/childabduction/complianceReports/\(S\\_238726\)FINALNCC - 2015 ICAPRA Annual Report \(5-5-15\).pdf](http://travel.state.gov/content/dam/childabduction/complianceReports/(S_238726)FINALNCC-2015ICAPRAAnnualReport(5-5-15).pdf). The reporting period for the 2015 Annual Report was October 1 to December 31, 2014, only a partial year due to ICAPRA taking effect late in the year. The 90-day report on actions taken is available at [http://travel.state.gov/content/dam/childabduction/complianceReports/2015 - Report on Actions.pdf](http://travel.state.gov/content/dam/childabduction/complianceReports/2015-ReportonActions.pdf). For the reporting period ending July 31, 2015, the Department identified 22 countries as demonstrating patterns of noncompliance: Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Guatemala, Honduras, India, Jordan, Lebanon, Nicaragua, Oman, Pakistan, Peru, Poland, Romania, Saudi Arabia, Slovakia, The Bahamas, and Tunisia. ICAPRA defines a pattern of noncompliance as the persistent failure: (1) of a Convention country to implement and abide by provisions of the Hague Abduction Convention; (2) of a non-Convention country to abide by bilateral procedures that have been established between the United States and such country; or (3) of a non-Convention country to work with the Central Authority of the United States to resolve abduction cases.

On November 19, 2015, Assistant Secretary Bond testified before the Foreign Affairs Committee of the U.S. House of Representatives regarding implementation of ICAPRA. Her testimony is excerpted below and available at <http://docs.house.gov/meetings/FA/FA16/20151119/104208/HHRG-114-FA16-Wstate-BondM-20151119.pdf>.

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... The law has given us an important framework to leverage our diplomatic engagement both with our partners under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention) and with countries with whom we are not yet partners under the Convention. ...

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The Bureau of Consular Affairs' Office of Children's Issues coordinates the many dedicated officials of the Department of State, in Washington, at passport agencies across the United States, and in our diplomatic missions worldwide, who are committed to preventing abductions, safeguarding the welfare of children abducted across international borders, facilitating the return of abducted children to their place of habitual residence, and helping parents resolve these complex cases. The Office of Children's Issues, a team of over 80 dedicated and well-trained professionals, serves as the U.S. Central Authority (USCA) under the Convention and leads U.S. government efforts within the Department and with other U.S. government agencies, to prevent international parental child abduction, to assist children and families involved in abduction cases, and to promote the principles of the Convention.

#### **Prevention of International Parental Child Abduction**

From a child's first U.S. passport application, we work to protect children from international parental child abduction. U.S. law and regulation requires the consent of both parents for passport issuance to children under the age of 16. This minimizes the possibility that a passport could be issued to a child without the consent of both parents. In addition, enrolling a child in the Children's Passport Issuance Alert Program (CPIAP) provides an extra notification check to the enrolling parent to ensure they are either aware of or supportive of the passport application. When children are enrolled in the CPIAP the application and all supporting documents are sent to the Prevention Branch of the Office of Children's Issues for review and clearance. Prevention officers reach out to the requesting parent to notify them of the application and confirm their consent to the passport application.

In addition to administering the CPIAP, prevention officers conduct extensive outreach to judges, law enforcement, and parent groups, among others. They also work closely with non-governmental organizations dedicated to seeking the return of abducted children. When the unthinkable occurs and a parent reports that an abduction is in progress, the Prevention Branch works with parents, legal guardians, or their attorneys, to try to stop the travel of the child out of the United States.

If parents have a court order that prohibits the child's removal from the United States, or can obtain one, the Prevention Branch can contact the Department of Homeland Security (DHS) Customs and Border Protection (CBP) and/or law enforcement to ask them to take action. The child is added to CBP's Prevent Departure list which will notify CBP if international travel reservations are made for the child. If international travel reservations are located for the child, CBP alerts law enforcement and appropriate airport security personnel in an effort to stop the child's travel.

Depending on the circumstances of the child's custody arrangement, other law enforcement tools can be utilized including having Interpol notices activated for the taking parent and child and having the child added to the FBI's National Crime Information Center

missing person database.

To strengthen these critical working relationships, the Department of State's Interagency Working Group on Prevention, which includes representatives from State, DHS (Immigration and Customs Enforcement and CBP), and the Department of Justice (Federal Bureau of Investigation), as well as the Department of Defense and other federal entities, meets twice annually to discuss ways to collaborate on abduction prevention measures. The Department of State works closely with CBP to help ensure that parents who have court orders that prohibit the international travel of a child can request assistance from CBP and U.S. law enforcement to prevent outbound abduction attempts. Key to the program's success, and a byproduct of the law's mandated interagency working group, has been streamlined communications and information sharing among agencies on child abduction prevention initiatives. These new measures were instrumental in preventing the more than 140 potential abductions since the law took effect.

### **How We Work to Resolve Abduction Cases**

As we assist U.S. citizens overseas and protect the integrity of our processes and treaty obligations, we are on the front lines of U.S. diplomacy. We coordinate with our colleagues throughout the Department about your constituents' abduction cases using a variety of diplomatic tools to ensure host governments fully appreciate our deep concern for the welfare of our citizens, especially children. We hold our Convention partners responsible for complying with the Convention, raising concerns with them at the highest levels. In the Bureau of Consular Affairs and throughout the Department of State, U.S. diplomats raise these issues and your constituents' cases at every opportunity with our foreign government counterparts.

When an international parental child abduction does occur, left-behind parents turn to the Office of Children's Issues outgoing abductions divisions for information and assistance. The country officers and case assistants of Children's Issues' two outgoing abduction divisions work to return children who have been wrongfully removed from and/or retained outside their habitual residence in the United States. They also facilitate access requests in countries that are Convention partners and evaluate the compliance of signatory partners to the Convention.

The Convention provides the most effective way to facilitate the prompt return of abducted children. When a child has been abducted to or retained in a country that is one of the U.S.'s 73 partners under the Convention, a country officer helps the left-behind parent file a Convention application for the child's return, explains the parent's civil options under the Convention, works with law enforcement to file reports, and pursues criminal remedies if appropriate. Officers work with U.S. and foreign authorities and resources to facilitate the return of the abducted child. Country officers are the left-behind parent's (LBP) point of contact in the Department of State. In addition, country officers are responsible for sending completed Convention application materials to foreign central authorities, and monitoring the progress of cases, ensuring that they move forward as expeditiously as possible, keeping the LBP apprised of case progress, and advocating for effective implementation of the Convention in the foreign government, courts, and legal system.

Many of the abduction cases handled by the USCA involve abductions to countries not yet parties to the Convention. In these cases, country officers work closely with U.S. embassies and consulates overseas to provide parents with information about foreign legal options, conduct welfare visits to monitor the well-being of the child, and engage foreign government officials to seek the child's return.

In addition to handling cases, the Outgoing Abductions Divisions are responsible for

pursuing the Department's objectives to strengthen and expand the Convention worldwide. Officers work with the Department's regional bureaus to engage foreign governments in discussion about why the United States believes the Convention is the best mechanism for protecting a child's best interests when custody disputes cross international borders. When working with countries that are already members of the Convention, officers engage bilaterally to ensure both governments work together to implement the treaty properly so that abducted children may benefit through swift return to the country of habitual residence.

Country officers are specialists within the consular field and function as desk officers in their capacity to apply country-specific expertise to the pursuit of the Department's policies on abduction. Country officers liaise with law enforcement officials (local and federal), foreign authorities, attorneys, and organizations in the United States (such as the National Center for Missing and Exploited Children) in order to assist parents and move cases toward resolution.

Using all of the tools available in abduction cases, we assisted in the return of 374 children to the United States in 2014. Yet, because of the differences in laws, legal systems, and enforcement mechanisms, achieving the return of children, even with the treaty relationship and law enforcement tools, can be difficult. The laws of the country where an abducted child is physically located apply, and although it can be frustrating to endure delays, the U.S. government cannot interfere with the legal system or judiciary of another sovereign nation, just as no other country may interfere with the law enforcement or judicial system of the United States.

The law identifies actions the United States may consider to encourage better alignment with Hague goals and standards. Many of these measures are the same tools the State Department uses in diplomacy with nations around the world on a range of important issues. For those countries that have not yet partnered with us under the Convention, we appeal to the universal interest in safeguarding children, even as we urge countries to turn to the Convention as a reliable way to protect these interests in future abduction cases.

We are committed to fully and successfully implementing the law. The tools it contains reflect the constant balance diplomats seek in advancing the many interests of the United States around the world. Your support and this law underscore the fact that IPCA is a priority for the U.S. government.

### **The 90-Day Report on International Parental Child Abduction**

In compliance with the law, which took effect on August 8, 2014, the Department presented an annual report to Congress that provided data and other information about cases around the world and the Department's efforts to resolve them. The 2015 Annual Report covers the period of October 1 to December 31, 2014. It reflected the fact that the law had been in effect only for part of the year. The Department identified 22 countries as demonstrating patterns of noncompliance. Subsequently, the Department reported to Congress (90-Day Report) on the specific actions taken against countries determined to have been engaged in a pattern of noncompliance as reported in the 2015 Annual Report.

### **Diplomacy and Actions**

As noted in the 90-Day Report, which covers actions through July 31, 2015, diplomatic engagement remains one of our most effective tools with all countries to assist in resolving abduction cases. In Convention partner countries, we have reiterated that we expect our partners to implement the Convention effectively. In non-Convention countries, we take every appropriate opportunity to raise abduction cases with foreign government officials at the highest appropriate levels and to ensure host governments understand the high priority the U.S.

government attaches to resolution of these cases.

As part of the process of demarcating each of the countries cited in the 2015 Annual Report for demonstrating patterns of noncompliance, our embassies held frank conversations with foreign government officials, discussing what actions their countries could take to avoid being cited in the future. The Department also met with foreign missions in Washington to deliver the same clear message.

For example, we have requested the Government of India's assistance in resolving reported abduction cases. In May, Special Advisor for Children's Issues Ambassador Susan Jacobs pressed India to resolve reported cases. In September, I urged India to make progress on its accession to the Convention and resolve reported cases. In October, Principal Deputy Assistant Secretary for South and Central Asian Affairs Ambassador William Todd encouraged India to resolve reported cases. I again reiterated our strong interest that India make progress on its accession to the Convention and resolve reported cases at the annual U.S.-India Consular Dialogue this month. Officials at the U.S. Embassy in New Delhi are in regular contact with ministry officials on these issues.

We continue to have serious concerns in some countries we could not cite in the annual report as demonstrating a pattern of noncompliance per the criteria established in the law. These include countries with pending abduction cases that do not benefit from the Convention, such as abduction cases in Japan that occurred before Japan became party to the Convention. We are keenly aware of the pre-Convention cases and are as actively engaged on them as we are on all of our non-Convention cases. We continue to engage with Japan intensively through bilateral visits, digital video conferences, and in coordination with the U.S. Embassy in Tokyo and the Department's Bureau of East Asia and Pacific Affairs to resolve these cases.

### **Beyond the Reports**

The diplomatic tools and engagement noted in the 90-Day Report have yielded important results. For example, Slovakia was cited for demonstrating patterns of noncompliance in the 2015 Annual Report. In January 2016, Slovakia will implement legislation that limits the number of court appeals in Convention cases and mandates that Convention cases be adjudicated within 12 weeks. This important step should improve Slovakia's compliance with the Convention and resolution of cases. It also has the potential to make Slovakia a European leader on Convention compliance.

As we continue to coordinate and interact with our partner central authorities in foreign countries to monitor individual cases, we are obtaining critical information to assess countries' compliance with the Convention. At the same time, we are developing the personal contacts and relationships with our counterparts that build trust and make our interactions more productive over time.

In addition, the USCA and other Department officials regularly engage with non-Convention countries in Washington and overseas, to encourage them to ratify or accede to the Convention. In September 2015, the U.S. Embassy in Abu Dhabi hosted a symposium on the Convention to follow up on an October 2014 regional symposium held in Amman, Jordan. The event educated government officials about the Convention and how it can be implemented in countries with Islamic law traditions. An official from the Moroccan Central Authority joined presenters from the Department, the Hague Conference on Private International Law, and the Canadian Ministry of Foreign Affairs to discuss the Convention and its implementation. We continue to press countries such as Egypt, Tunisia, and the United Arab Emirates to follow in the footsteps of Morocco, with which we partnered in 2012, to become party to the Convention.

In the 2015 Annual Report, we cited Brazil for demonstrating patterns of non-compliance in the area of judicial performance. As a result of the citation and follow-up meetings, the U.S. Embassy in Brasilia coordinated an International Visitor Leadership Program that brought Brazilian judges and federal prosecutors to the United States to see and experience firsthand how the United States implements the Convention. These exchange programs are a prime opportunity to share best practices and Convention obligations with the same judges who will decide abduction cases. They met the judges who handle abduction cases in the United States. We also used the opportunity to discuss significant delays we have observed in pending abduction cases.

During my discussions with Brazilian officials in Brasilia last month, we agreed that their slow, deliberate judicial process does not align well with the Convention's emphasis on a narrowly-focused and rapid judicial decision. Brazil is working to increase judges' familiarity with the Hague Convention, and to develop a network of expert judges to whom family court judges can turn for guidance. I was also informed Brazil is drafting legislation intended to address shortcomings in its performance to date. I note that we have seen positive developments in our Hague cooperation with Brazil, notably with respect to communication and cooperation with the Brazilian Central Authority. During my visit to Brasilia I learned of an additional resource, mediation, which may enable some parents to resolve their situations outside the judicial process.

On November 14, I returned to Washington following bilateral discussions with the Russian government, which included examination of the status of our cooperation on abduction. Russia has acceded to the Hague Convention but has not yet been accepted by the U.S. as a partner; we seek additional information to determine whether they have laws and procedures in place to enable full compliance with Convention requirements. Both countries expressed strong interest in partnering under the Convention and I will work to accelerate realization of that goal. Meanwhile we also seek agreement on how to resolve outstanding cases which at the time of my meetings involved 39 families and 47 children since the Convention does not apply retroactively.

\* \* \* \*

**Cross References**

*Evacuations from Yemen*, **Chapter 5.C.1.**

*Rights of the Child*, **Chapter 6.C.**

*Child abduction in UN annual report on children in armed conflict*, **Chapter 6.C.2.a.**

*Diplomatic relations*, **Chapter 9.A.**

*Enhanced consular immunities*, **Chapter 10.D.3.**

*Family law*, **Chapter 15.B.**