

**RECUEIL DES RÉPONSES SUR LE PROJET DE PRINCIPES GÉNÉRAUX RELATIFS AUX  
COMMUNICATIONS JUDICIAIRES**

*document établi par le Bureau Permanent*

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**COLLECTION OF RESPONSES ON THE DRAFT GENERAL PRINCIPLES FOR JUDICIAL  
COMMUNICATIONS**

*document drawn up by the Permanent Bureau*

*Document préliminaire No 3 C de juin 2011 à l'intention de la  
Commission spéciale de juin 2011 sur le fonctionnement pratique de la  
Convention Enlèvement d'enfants de 1980 et de la  
Convention Protection des enfants de 1996*

*Preliminary Document No 3 C of June 2011 for the attention of the  
Special Commission of June 2011 on the practical operation of the  
1980 Hague Child Abduction Convention and the  
1996 Hague Child Protection Convention*

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**MEXIQUE / MEXICO**

**RESERVADA**

Se hace referencia al Documento Preliminar 3 A, que el Buró Permanente de la Conferencia de la Haya sobre Derecho Internacional Privado (CHDIP), ha hecho llegar a todos sus Estados miembros, con motivo de la Sexta Reunión de la Comisión Especial sobre el funcionamiento práctico de la Convención de La Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores y de la Convención de La Haya de 1996 sobre las Medidas de Protección a los Niños, que se llevará a cabo en La Haya del 1º al 10 de junio de 2011, a fin de que sea comentado.

Al respecto, se transmiten los comentarios realizados por la Dirección General de Protección de los Mexicanos en el Exterior (DGPME) de la Cancillería, en su carácter de Autoridad Central competente:

1. *"En términos generales se recomienda alentar a las autoridades centrales de cada país y a sus jueces que forman parte de la Red Internacional de La Haya a sostener consultas para definir qué acciones deberán ser coordinadas y/o compartidas entre ambas entidades.*

*Un ejemplo de coordinación puede referirse a adoptar y ejecutar medidas de seguridad y protección de los menores, así como diversas cuestiones procesales. Entre las funciones compartidas pueden encontrarse las actividades de capacitación y difusión de información a los jueces del país, o el monitoreo de determinada información.*

2. *Derivado de lo anterior, se estima conveniente que, una vez identificadas las necesidades, se promueva un mecanismo continuo de seguimiento y colaboración entre la autoridad central y los jueces de enlace de cada país.*
3. *La lista de asuntos sujetos a comunicaciones directas enunciadas al final de la sección 5 (página 12) se estima adecuada. En el caso de México, las consultas que los jueces encargados de resolver procedimientos de restitución de menores con base en la Convención de 1980 realizan con mayor frecuencia, son las reflejadas en los incisos b), c), e) y f).*
4. *Con el fin de garantizar la seguridad de las comunicaciones, se estima adecuado que los jueces integrantes de la red Internacional de La Haya inicien el contacto directo entre jueces, de acuerdo con lo expresado en el numeral 7.3.*
5. *Respecto del numeral 8, se sugiere promover la coordinación entre jueces y autoridades centrales que facilite el intercambio de información sobre los casos y el trato que deberá darse a la información de seguimiento, a fin de garantizar el flujo de información y la adopción de medidas pertinentes, en particular cuando se manejen aspectos confidenciales dentro de un caso".*

Asimismo, se destaca que el **Magistrado Oscar Gregorio Cervera Rivero**, Integrante de la 2ª Sala Familiar del Tribunal Superior de Justicia del Distrito Federal, en su calidad de Juez perteneciente a la Red de Jueces de La Haya, hizo llegar a la DGPME y a esta Oficina sus comentarios en relación con el documento 3A, en los que manifiesta su conformidad y adhesión a las conclusiones a las que se llegó durante la Reunión Interamericana de la Red de Jueces de La Haya y Autoridades Centrales, sobre Sustracción Internacional de Menores.

Aunado a lo anterior, el Magistrado Cervera celebra la atención brindada al punto objetado por los Representantes de Uruguay durante la Reunión mencionada, relativo a la aparición del nombre del Juez de la Red de La Haya del *Estado de destino*, situación aparentemente atendida en el apartado 2.6, hoja 10 del documento Preliminar 3ª, en el que se establece la recomendación a las Autoridades Centrales de que en las Solicitudes que se realicen en el ámbito de aplicación en el Convenio de La Haya de

1980 sobre Sustracción de Menores, aparezca el nombre del Juez de la Red de La Haya del *Estado solicitante*.

Se agradecerá a esa Representación Diplomática, de no mediar inconveniente, hacer llegar estos comentarios al Buró Permanente de la Conferencia ([secretariat@hcch.net](mailto:secretariat@hcch.net)) a la brevedad posible.

**Relaciones,**

3/ALV/PER  
CJA1105403

Se hace referencia al correo electrónico del 25 de mayo de 2011, mediante el cual Philippe Lortie, Primer Secretario de la Conferencia de La Haya sobre Derecho Internacional Privado (CHDIP) solicitó a esta Consultoría el envío de la versión en español de los comentarios emitidos sobre el Documento Preliminar 3ª para la Sexta Reunión de la Comisión Especial sobre el Funcionamiento Práctico de las Convenciones de 1980 y 1996.

Al respecto, el Oficial Letrado de Enlace para América Latina de la CHDIP, Ignacio Goicoechea, realizó una traducción que fue enviada a esta Consultoría y transmitida para comentarios a la Dirección de Derecho de Familia de la Dirección General de Protección a Mexicanos en el Exterior (DGPME). Dichos comentarios fueron recibidos y se anexan a la siguiente versión, misma que deberá ser considerada como la versión final en español de dichos comentarios:

"Reference is made to Preliminary Document 3 A, that the Permanent Bureau of the Hague Conference on Private International Law (CHDIP) has circulated to all Member States, on the occasion of the Sixth Meeting of the Special Committee on the practical operation of the Hague Convention of 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 1996 on Measures to Protect Children, which will be held in The Hague from 1 to 10 June 2011, to be discussed.

In this regard, the following comments are made by the Foreign Affairs Ministry through the Directorate General of Protection of Mexicans Abroad (DGPME), in its capacity as Central Authority:

1. "Overall it is recommended to encourage the central authorities of each country and its judges that are part of the Hague International Network to hold consultations to determine what actions should be coordinated and / or shared between both entities.

An example of coordination may be the adoption and execution of measures for the protection and security of minors, as well as several procedural issues or the implementation of practical. Among the shared functions may be found training activities and dissemination of information to judges in the country, the joint proposal of uniformed practices, or the monitoring of certain information.

2. Due to the above, it is considered advisable that, once needs are identified, to promote an ongoing mechanism for follow-up and collaboration between central authorities and liaison judges in each country.

3. The list of issues subject to direct communications contained at the end of Section 5 (page 12) is deemed adequate. In the case of Mexico, the most frequent queries posed by judges in resolving child return procedures based on the 1980 Convention, are reflected in paragraphs b), c), e), and f).

4. To ensure the security of communications, it is deemed appropriate that judges members of The Hague International Network initiate direct contact between judges, according to the statement in paragraph 7.3.

5. Concerning paragraph 8, it is suggested to promote coordination between judges and central authorities to facilitate information exchange on cases and the treatment to be given to information tracking, to ensure information flow and appropriate actions, especially when handling sensitive or confidential issues in a case. "

It is further noted that Judge Oscar Gregorio Cervera Rivero, Member of the 2nd Family Chamber Superior Court of Justice of the Federal District, as a Judge member of the Judges Network of The Hague sent DGPME and this Office his comments regarding Document 3A, in which expresses his satisfaction and adherence to the conclusions reached during the Inter-American Meeting of the

Network of Judges in The Hague and Central Authorities on International Child Abduction.

In addition to this, Judge Cervera welcomes the attention given to the point contested by the representatives of Uruguay during the above meeting on the appearance of the name of the Hague Network Judge of the requested State, situation apparently addressed to in paragraph 2.6, page 10, of Preliminary Document 3A, which provides a recommendation to Central Authorities that applications made in the scope of the Hague 1980 Child Abduction Convention, display the name of the Hague Network Judge of the requesting State.

It will be appreciated that that a diplomatic mission, should there be no inconvenience, forward these comments to the Permanent Bureau of the Conference (secretariat@hcch.net) as soon as possible."

Se agradecerá transmitir estos comentarios al Secretariado de la CHDIP.

**Relaciones,**

3/ALV

**NORVÈGE / NORWAY**



Norway would first like to emphasize that preliminary document 3 A addresses very important issues which can support the Convention's aim to be effective and lead to more prompt and correct decisions.

In general we support the principles. However, we would like to emphasize that the member state's size, and amount of cases, have to be taken into consideration when the principles are discussed. The possibility of establishing a separate secretariat to contact judges may for small states like Norway be less meaningful than for larger states.

Trude Sørby Einersen  
Adviser  
The Norwegian Ministry of Justice and the Police

**NOUVELLE-ZÉLANDE / NEW ZEALAND**

**Emerging Rules Regarding the Development of the International Hague Network of Judges and Draft Principles for Judicial Communications, Including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, Within the Context of the International Hague Network of Judges.**

The Ministry of Justice thanks the Permanent Bureau for the opportunity to comment on the draft "*Emerging Rules Regarding the Development of the International Hague Network of Judges and Draft Principles for Judicial Communication, including commonly accepted safeguards for direct Judicial Communications in Specific Cases, within the context of the International Hague Network of Judges*" (Prel. Doc. No 3 A).

We acknowledge the considerable work that has gone into developing the Emerging Rules. The Hague Network of Judges has been, and continues to be, an important tool in raising the profile of the Child Abduction Convention with members of the judiciary. We consider that the Network has been essential to ensure judges in member States appreciate the fundamental principles underlying the Convention, including the limited exceptions to prompt return for an abduction which can require a different approach than domestic cases. The Network undoubtedly assists in fostering consistent judicial interpretations and the provision of general information.

The documentation sets out *Principles for General Judicial Communications* and *Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards*. We support the communication of general information between Hague Network Judges. However, direct judicial communication in specific cases has, in our view, the potential to create problems and requires careful consideration.

In supporting the *Principles for General Judicial Communications* we note that Article 7 of the Convention summarises the principle obligations of States under the Convention. The Convention recognises the diversity of the legal systems of Member States and that it is for each government to decide upon the most appropriate means of discharging those obligations while working within the context of its own internal system and within the spirit of co-operation of the Convention. We acknowledge the importance of the reference to respecting the law of the State's own jurisdiction. It is ultimately for States to determine how they deliver on their obligations under the Convention.

In relation to the *Principles for Direct Judicial Communications in specific cases*, we are concerned that some of the functions outlined in the emerging rules may duplicate the work of Central Authorities. We note that some Central Authorities have established and operate systems very effectively to meet the Convention obligations in their State and it would be unfortunate if these were undermined by duplication or any confusion over the respective roles.

New Zealand has reservations about some aspects of the role of the judiciary and matters that may be subject of direct judicial communications. Our concern is that unless they are carefully read in context of the subsequent text, they could be applied in a way that is outside the spirit of the 1980 and 1996 Conventions and do not provide the safeguards required. We consider that some of the examples are administrative matters that would more properly be addressed by Central Authorities or by the parties themselves rather than the judiciary. We consider there is a risk that if the judiciary were involved to the extent outlined it could call into question the impartiality of the judiciary. This perhaps highlights the diversity of the different legal systems and difficulty when attempting to draft rules or principles that are too specific rather than of a general nature.

As stated in the background to the draft paper, the scope of the Hague Network Judges has developed and evolved over time and has grown to encompass international child protection matters. Careful consideration should be given to whether there is sufficient recognition in the *Emerging Rules* for the 1980 Convention and the limited scope of judicial communications under that Convention. We caution that possible future

developments could risk altering the interpretation or undermine the operation of the 1980 Convention unless carefully managed.

For many States, their domestic law would allow for general judicial communication, but would not have envisaged direct judicial communication on specific cases. The question of whether to establish a proper legal basis for judicial communication is in our view a matter for each state to consider and determine in accordance with their domestic law. New Zealand will need to consider further how international judicial communication between judges may be recognised under our domestic law, particularly when New Zealand accedes to the 1996 Convention.

We suggest deferring further development of the emerging rules until more States have become parties to the 1996 Convention and there is more extensive practical operational experience. While a number of States have become parties to the 1996 Convention, and there are likely to be more in the near future, it will take some time for the Convention to start being used and for parties to develop experience of how it is working and whether it mitigates some of the need for judicial communication under the 1980 and 1996 Conventions and other international child protection matters.

The *Possible Conclusions and Recommendations* in the *Report on Judicial Communications in Relation to International Child Protection* (Prel. Doc. No 3 B) proposes some options for future work. We suggest that in these times of fiscal restraint and limited resources that priority be given to encouraging States to become members of the 1996 Child Protection Convention and further work on international surrogacy arrangements. If the Special Commission proposes developing binding rules for judicial communication, we consider that member States should have the opportunity to endorse the rules.

Accordingly, New Zealand would like to reserve its position on the emerging rules and the draft general principles for judicial communications in specific cases, within the context of the International Hague Network of Judges, until there is more practical experience of the 1996 Convention and further consideration completed. We are not in a position to endorse the principles about direct judicial communication in specific cases at this stage but will be interested in the discussion at the Special Commission.