

The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017

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2nd Inter-American Meeting of Central Authorities and International Hague Network Judges on International Child Abduction

(Panama, 29-31 March 2017)

Conclusions and Recommendations

From 29 until 31 March 2017, 62 Hague Network Judges and Central Authority officials, representing 27 jurisdictions met in Panama City to discuss how to improve the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Child Abduction Convention). The following jurisdictions were represented at the meeting: Anguilla, Argentina, Bahamas, Belize, Bermuda, Brazil, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

The Inter-American Meeting was co-organised by the Ministry of Foreign Affairs of Panama, the Judiciary of Panama, and the Hague Conference on Private International Law (HCCH). The meeting also benefited from the support of the Canadian Department of Foreign Affairs, the State Department of the United States of America, as well as the organisation REUNITE.

Participants made the following Conclusions and Recommendations:

REDUCING DELAYS IN THE TREATMENT OF APPLICATIONS FOR RETURN

1. Participants agreed on the importance of finding ways to reduce delays in the treatment of applications for return.

2. Central Authorities¹ and Members of the International Hague Network of Judges² (hereinafter “judges”) present at the Meeting welcomed the idea of possibly reviewing existing procedures or developing new procedures in their respective States, with a view to reduce delays in the processing of return applications under the 1980 Child Abduction Convention, taking into consideration the discussions held at the meeting.

REDUCING DELAYS WITHIN THE CENTRAL AUTHORITY

3. In particular, it was observed in relation to Central Authorities’ procedures that in most cases:

- a. When the location of the child is provided by the left-behind parent, it is not necessary to confirm or report on this location before initiating return proceedings;
- b. Unless requested by the left-behind parent or the requesting Central Authority, it is not necessary to report on the well-being of the child before initiating return proceedings.

4. In order to learn and draw from experiences, the Central Authorities from Chile, Colombia, Honduras and the United States of America have generously offered to share information (e.g., internal guidelines) on the processing of return applications.

¹ Officials of Central Authorities from the following jurisdictions attended the Meeting: Anguilla, Argentina, Belize, Bermuda, Brazil, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Panama, Paraguay, Saint Kitts and Nevis, Trinidad and Tobago, United States of America and Uruguay.

² Members of the International Hague Network of Judges from the following jurisdictions attended the Meeting: Argentina, Bahamas, Belize, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay, and Venezuela.

Facilitating Access to Justice for Left-Behind Parents

5. Participants observed that the difficulty in obtaining legal aid at first instance or on appeal, or of finding an appropriate lawyer to bring the case to court, may result in delays. In this regard, the role of the Central Authority in helping an applicant to obtain legal aid quickly or to find legal representatives, to the extent possible, was recognised.

6. Participants also highlighted the importance of providing assistance to overcome language barriers. As an example, the Central Authority of the United States of America referred to the “language telephone line” that they have implemented, which helps applicants communicate with their attorneys when they don’t speak English.

Central Authorities Rejecting Applications under Article 27

7. Participants agreed that Central Authorities should recall the criteria established in the second paragraph of Chapter 4.5 of the *Guide to Good Practice, Part I – Central Authority Practice*, which reads: ‘*Issues such as rights of custody, habitual residence, whether the child is settled in the country of refuge, or is at grave risk of harm, are ultimately issues for determination by a court or tribunal, not the Central Authority.*’

8. For cases with possible grave risk circumstances, reference was made to Conclusion and Recommendation No. 80, adopted at the 6th Meeting of the Special Commission to review the operation of the 1980 Child Abduction Convention, which reads: “*The Special Commission notes that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) b)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.*”

REDUCING DELAYS WITHIN THE COURTS

9. Judges recognised and highlighted that by joining the 1980 Child Abduction Convention, States are bound to take all appropriate measures to secure the implementation of the objects of the Convention. It was underlined that this obligation is also in line with the Vienna Convention in the Law of Treaties as well as with other human rights instruments such as the 1989 UN Convention on the Rights of the Child and the American Convention on Human Rights (Pact of San Jose, Costa Rica).

10. Judges considered that there was a need to review their internal procedures to assess whether they allow for decisions to be taken within the timeframe of the 1980 Child Abduction Convention (*cf.* Art. 11), and if not, to adjust the relevant procedures accordingly. In this regard, judges from Argentina (Province of Cordoba), El Salvador and Uruguay reported that they have made procedural reforms which allow the taking of decisions within the Convention timeframes and offered to share their respective experience and procedures.

11. Many Judges highlighted the benefit of using existing models which facilitate the implementation of the procedural framework of the 1980 Child Abduction Convention, in particular the Inter-American Model Law of Procedure adopted in 2007.

12. When reviewing existing procedures or preparing new procedures, judges also recommended giving special attention to appeals, which are often the source of considerable delays. In this regard, some jurisdictions reported procedures establishing very strict timeframes for appeals and limiting or eliminating appeals to Supreme Courts. Judges also recalled that any procedure should respect the due process standards of the given jurisdiction.

13. Judges also recommended considering the concentration of jurisdiction in child abduction cases, and highlighted the importance of continued training and awareness-raising on the operation of the 1980 Child Abduction Convention. To this effect, it was reported that the following (territorial units of) Contracting States have already implemented concentration of jurisdiction policies: Argentina (Province of Córdoba), Belize, Brazil, Guatemala, Mexico (Federal District), Peru and Uruguay.

14. Judges agreed that, apart from the procedural frameworks existing in their respective jurisdictions, judges should be proactive in child abduction cases. Examples of this proactive approach include prioritising such cases when setting hearings, being restrictive with regards to the admission of evidence, setting clear guidelines with parties and monitoring the enforcement of their orders and, in general, developing efficient case management strategies. In this regard, some judges made reference to the Annex on Child Abduction, included in the Ibero-American Protocol on Judicial Cooperation (adopted in the Ibero-American Judicial Summit that took Place in Paraguay in April 2016), which provides guidance for judges to better address child abduction cases.

INTERNATIONAL CHILD ABDUCTION & THE UN CONVENTION ON THE RIGHTS OF THE CHILD

15. Participants recognised that the Hague Convention is consistent with the principle of the best interest of the child as provided under the UN Convention on the Rights of the Child. It complements the latter by providing effective means to combat international child abduction and protect victims of this wrongful conduct.

16. Participants recalled the guiding criteria to interpret the best interest of the child in an international child abduction situation included both in the Inter-American Model Law of Procedure and the Child Abduction Annex to the Ibero-American Protocol on Judicial Cooperation, which indicate that: *"... the best interests of the child, which, for the purpose hereof, means the right of the child not to be wrongfully retained or removed and to have the issue of the rights of custody determined before the Court of the State of his / her habitual residence, to remain in close contact with both parents and the families thereof, and to obtain a speedy determination of return or international access applications."*

ARTICLE 13(1)(B) - GRAVE RISK EXCEPTION

17. Participants reaffirmed the restrictive interpretation that should be given to the exceptions provided in the Convention, in particular the grave risk exception.

18. Participants also recognised the importance of developing guidelines that can help judges handle the grave risk exception and are looking forward to the publication of the Guide to Good Practice that is currently being developed by the HCCH.

ORDERING THE SAFE RETURN OF THE CHILD

19. Judges discussed the provision of protection measures where necessary to secure the safe return of the child. Judges understood that protection measures should be reasonable and applied when required. Judges underlined that in urgent proceedings, such as those requiring protection measures, the most rapid means of communication should be used.

20. During the discussion regarding returns ordered where concerns are raised under Article 13(1)(b) of the 1980 Child Abduction Convention, the following measures of protection upon return were discussed: stay away orders, interim supervised contact, the provision of shelter or separate housing, the arrangement of temporary support (also known as 'alimony' or 'maintenance') for the child and the taking parent, and, where required, expeditious hearing of custody claims. In addition, the following tools to secure protection measures were discussed when necessary to ensure safe return of the child: mirror orders (*i.e.*, an order made by the requesting State replicating an order made by the requested State), undertakings (*i.e.*, a promise, or commitment, or assurance given by a person to a court to do, or not do, certain things), and consent orders. However, it was noted that such measures will not always be required in every case where the return of the child is ordered.

21. Judges observed that most States could provide for mirror orders and undertakings but that their scopes differed depending on the jurisdiction. While all States could include stay away orders and interim supervised contact in mirror orders, a majority of them could not include in such mirror orders the provision of separate housing, and support for the child and the taking parent. However, separate housing and support for the child and the taking parent could be provided by way of undertakings.

22. Judges recognised that the best way to obtain information and co-ordinate the provision of protection measures is through judicial co-operation using direct judicial communications. It was underlined that all direct judicial communications should respect due process and the independence of the judiciary. In that respect, it was highly recommended to make use of the HCCH's General Guidance and General Principles for Judicial Communications, including the generally accepted safeguards for direct judicial communications.

23. During the discussion, reference was made to the use of Article 14, which allows competent authorities, with a view to expedite proceedings, to take notice directly of the law and / or judicial and administrative decisions of the requesting State.

ENFORCEMENT OF RETURN ORDERS

24. Participants recognised that, consistent with the *Guide to Good Practice, Part IV – Enforcement*, the inclusion of specific provisions in return orders regarding the manner and timing of the actual return of the child to the State of habitual residence increases compliance with the order and reduces delay.

25. Participants underlined that the effective enforcement of return orders requires that these orders be as detailed as possible, specifying, for example, with whom, where, when and how the child should be returned. In addition, participants recognised that such detailed provisions enhance predictability and alleviate stress for the children and parents involved.

26. Participants recognised the importance of enforcement for the proper operation of the 1980 Child Abduction Convention and recommend that it be included for discussion on the agenda of the next meeting of the Special Commission.

MEDIATION / SEEKING VOLUNTARY RETURN OF THE CHILD

27. Participants highly recommended the search for amicable solutions in child abduction cases. Many jurisdictions cautioned that where authorities are considering using alternative dispute resolution tools, such as mediation or conciliation, they should be implemented in a way that is consistent with the 1980 Child Abduction Convention, avoiding generating unnecessary delays in the return procedure.

1996 CHILD PROTECTION CONVENTION

28. It was noted that the 1996 Child Protection Convention provides a jurisdictional basis (Art. 11), in cases of urgency, for taking measures of protection in respect of a child, also in the context of return proceedings under the 1980 Convention. Such measures are recognised and may be declared enforceable or registered for enforcement in the State to which the child is returned, provided that both States concerned are Parties to the 1996 Convention.

29. Understanding the benefits of a legal framework for the resolution of international disputes concerning child custody and parental contact, and for the protection of children at risk in cross-border situations, the participants invited States from the Inter-American Region to study the 1996 Child Protection Convention with a view to future implementation.