

# Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

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

<b>Name of State or territorial unit:</b> <sup>1</sup> <i>For follow-up purposes</i> Name of contact person: Name of Authority / Office: Telephone number: E-mail address: Date:	England and Wales           Please note: the Central Authority for England and Wales is the International Child Abduction and Contact Unit (ICACU), referenced herein as "ICACU". "Practitioners" means members of the specialist panel of solicitors (legal advisers) who handle 1980 Hague Convention cases (see Q 15 below).
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## PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

### Recent developments in your State<sup>2</sup>

- Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No  
 Yes

Please specify:

Part 12 Chapter 6A Family Procedure Rules 2010 (FPR), 1 October 2022. This makes special provision concerning return proceedings, including under the 1980 Hague Convention (hereinafter the 1980 Hague), in proceedings with links to asylum claims.

Revised Practice Guidance on Case Management of Child Abduction Proceedings issued 9 March 2023 by the President of the Family Division of the High Court together with guidance from the Senior President of Tribunals (SPT). (Any appeal from the refusal to grant asylum is to a Tribunal.) The Family Division guidance deals with the case management of child abduction proceedings with a concurrent protection claim following the decision of the UK Supreme Court (UKSC) in G v G see Q3.

- Following the Covid-19 pandemic,<sup>3</sup> have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.

<sup>1</sup> The term "State" in this Questionnaire includes a territorial unit, where relevant.

<sup>2</sup> This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) ("2017 SC").

<sup>3</sup> This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

- a) Methods for accepting and processing return and access applications and their accompanying documentation;  
 ICACU  
 Prior to the COVID 19 pandemic ICACU was already operating electronically and so the worldwide shift to increased reliance on electronic communication/transfer of information did not hugely impact us. ICACU already had systems in place for processing electronic child abduction/access applications. Prior to the pandemic several States Party required paper applications (and supporting documentation) to be sent by traditional means/post and this delayed the end to end process. We have found that while a few countries have reverted to the 'paper system' this is not as widespread as it was pre-pandemic and this has seen an overall improvement in work turnaround/processing times.  
 Judiciary - Remote Access Family Court guidance was issued from the beginning of the pandemic and revised up to July 2020 to assist family court judges to use IT to keep the court functioning, to enable remote hearings and online mediation. Some elements have continued to be used.  
<https://www.judiciary.uk/wp-content/uploads/2020/06/The-Remote-Access-Family-Court-Version-5-Final-Version-26.06.2020.pdf>  
 Practitioners - IT is better and encourages respondents to participate. Easier for interpreters.
- b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);  
 Judiciary  
 Remote video hearings so the left behind parent can participate without travelling to the UK. Practitioners - Procedure improved. Arrangements now made for the left behind parent to attend each hearing remotely, where in the past it was only the final hearing. Cases involving domestic violence and/or abuse are easier to manage as cameras can be switched off and able to mute. Use of Teams recording.
- c) Promoting mediation and other forms of amicable resolution;  
 Judiciary  
 At court mediation continues to use video links to conduct mediation between parties in different jurisdictions. Practitioners - always considered and reunite willing to assist. Again, the use of remote, mute and cameras off means the parties are more likely to engage.
- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;  
 ICACU  
 See response at 2a) which includes access applications. Practitioners - Use of remote hearing is helpful. Promotion of Article 5 during the proceedings for Article 12 and Article 21.
- e) Obtaining evidence by electronic means;  
 Practitioners - no change; already electronic before the pandemic. Electronic bundles are now the standard process and are more efficient.
- f) Ensuring the safe return of the child;  
 Practitioners - no difference in securing safe return of child, IT makes it quicker.
- g) Cooperation between Central Authorities and other authorities;  
 ICACU  
 As for 2a) co-operation remains good. Wider adoption of paperless applications has led to improvement in terms of speedier processing times both as a requesting and requested central authority.

h) Providing information and guidance for parties involved in child abduction cases;  
Please insert text here

i) Other, please specify.

ICACU

The COVID 19 pandemic has raised awareness of the merits and benefits of meeting virtually as well as in person, which can result in huge savings both in terms of cost and time.

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities<sup>4</sup> in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
G v G [2021] UKSC 9	UK Supreme Court	UK Supreme Court (second and final tier of appeal)	The mother said she experienced persecution from her family in South Africa. As a result, she fled to England with the child and applied for asylum. Upon discovering that child had been taken to England, the father applied for the child's return under the 1980 Hague. At first instance, the High Court held the father's application for a return order should be stayed pending the determination of the mother's asylum claim. The Court of Appeal considered that the High Court was not barred from determining the father's application for a return order, nor was it barred from making such an order. The UKSC held that a child who can objectively be understood to be an applicant for asylum cannot be returned to the country from which he or she has sought refuge, pending determination of the asylum claim. However, the UKSC agreed with the Court of Appeal that this did not prevent the court determining the merits of the application under the 1980 Hague in the meantime.
In re C and another (Children) (international Centre for Family Law, Policy and Practice intervening) [2018] UKSC 8	UK Supreme Court	UK Supreme Court (second and final tier of appeal)	Father applied under the 1980 Hague following retention of the child in England and Wales after an agreed period of travel to the UK. The issues before the UKSC were: (a) what is the effect on an application under the Convention if a child has become habitually resident in the destination state before the act relied on as a wrongful removal or retention occurs and (b) if a child has been removed from their home state by agreement with the left behind parent for a limited

<sup>4</sup> The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such "authorities" will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

			<p>period can there be a wrongful retention before the agreed period of absence expires (so-called “repudiatory retention”).</p> <p>On (a) the UKSC held the 1980 Hague cannot be invoked if by the time of the alleged wrongful act, whether by removal or retention, the child is habitually resident in the state where the request for return is lodged. In such a case, that state has primary jurisdiction to decide on the merits, based on the child’s habitual residence, and there is no room for a mandatory summary decision. On (b) the UKSC held that repudiatory retention is possible in law. The Court considered that the objections to such a conclusion are insubstantial, whereas the arguments in favour are convincing and conform to the scheme of the Convention. An objectively identifiable act of repudiation is required, but it need not be communicated to the left-behind parent nor does an exact date need to be identifiable.</p>
<p>Re S (A Child: Hague Convention 1980: Return to a Third State) [2019] EWCA Civ 352</p>	<p>Court of Appeal</p>	<p>First tier of appeal</p>	<p>The child had been wrongfully removed from Germany by the mother to England. The father sought the return of the child to Hungary. The father had made attempts on his own life. He had received a suspended sentence of six months for assault on the mother. The mother appealed the judge's order that the child be taken to a third state. The Court of Appeal addressed the proper approach to assessing protective measures. The court highlighted the difference between protective measures and practical arrangements. The latter are put in place to ensure an orderly return so are directed towards facilitating and implementing the child's return. Protective measures designed or relied on to protect a child from an Article 13(b) risk are in a different category. If the court is considering such measures in the context of determining whether the risk has been established or whether such measures would sufficiently ameliorate an identified grave risk, the efficacy of the measures must be addressed with care. The more weight placed by the court on the protective nature of the measures when</p>

			determining the application, the greater the scrutiny required in respect of their efficacy.
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4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

Please insert text here

### Issues of compliance

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No  
 Yes

Please specify the challenges encountered:

ICACU

ICACU continues to encounter communication issues with some Central Authorities – where enquiries/communications remain unanswered or there are lengthy delays before a response is received. The problems appear to be systemic e.g., inadequate channels of communication; or infrastructure challenges or changes in personnel within the Central Authority.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?

- No  
 Yes

Please specify:

ICACU

There remains a concern that some States Parties place too great an emphasis on welfare principles when determining a return application, rather than focusing on the purposes of the Convention and the question of summary return.

There is an issue with enforcement of return orders in some States Parties. This can make it difficult to manage the applicant’s expectation as the applicant has had a successful court outcome but the child/children remain at large.

### Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - “ADR” phases)<sup>5</sup> in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

#### Central Authority

- No  
 Yes  
 Procedure not yet revised

<sup>5</sup> See C&R No 4 of the 2017 SC, “The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.”

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

### Judicial proceedings

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Judiciary

No reliable data, so difficult to identify accurately the sources of delay in judicial proceedings. Anecdotally, shortages of judicial resources and significantly increased workload in other areas of family law continue to impact the extent to which able to comply with the 1980 Hague timescale. Practitioners agree the difficulty is shortage of court time and resources.

### Enforcement

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

### Mediation / ADR

- No  
 Yes  
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

### Court proceedings and promptness

8. Does your State have mechanisms in place to deal with return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No  
 Yes  
 Please specify:

Judiciary

The revised Practice Guidance (see Q1 above) is the central mechanism to seek to deal with return decisions within the six week time limit. The Guidance aims to ensure that cases are managed to a final hearing (where necessary) within that timescale. The Practice Guidance also seeks to ensure that any appeal is dealt with promptly.

There are two levels of appeal: from the first instance decision in the High Court to the Court of Appeal and then to the Supreme Court. An appeal at each level can only be

pursued with the permission of the court. Practical arrangements are in place to seek to ensure that applications for permission to appeal and any substantive appeal are heard as swiftly as possible.

9. If the response to question 8 above is “No”, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No  
Please specify:  
Please insert text here
- Yes  
Please specify:  
Not applicable

10. Do the courts in your State make use of direct judicial communications<sup>6</sup> to ensure prompt proceedings?

- No  
 Yes  
Please specify:

Judiciary

The IHNJ provides a very effective means of judicial co-operation. There are, however, isolated examples of a designated member of the Network not responding to requests for assistance.

Judicial co-operation is inevitably impeded if a Contracting Party has not designated a judge to be a member of the IHNJ. For example, co-operation was made more difficult by there being no appointed HNJ in Greece in a 1996 Hague case (see *AM & Anor v KL & Anor* [2023] EWFC 15 (10 February 2023) (bailii.org)). This issue was resolved by another Greek judge fortuitously agreeing to pass on the questions of the English court to the judge seised of the matter in Greece and to return the answers to those questions.

Direct judicial communications about promptness usually only occur when there have already been substantial delays. We are, however, concerned about being seen to interfere in the progress of proceedings in another jurisdiction and typically just draw attention to the fact that the proceedings are continuing. See further Question 12 below

Direct judicial communications are occasionally used to seek to ensure promptness in other respects (e.g. transfer of jurisdiction; or progress of parental responsibility proceedings).

11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?

- No  
 Yes  
Please specify:  
Not applicable

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<sup>6</sup> For reference, see “*Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General 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*”.

12. Please comment upon any cases ( where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child’s safe return. What was the specific purpose of the communication? What was the outcome?

#### Judiciary

Examples of direct judicial communication since 2017 include:

AM v KL [2023] EWFC 15

Re P (Discharge of Passport Order) [2020] EWHC 3009 (Fam)

AH v CD [2018] EWHC 1643 (Fam)

S Re (A Child) [2022] EWHC 2053 (Fam)

Direct judicial communications have also taken place in a significant number of unreported cases. As above, these have included communications addressing the transfer of jurisdiction and the progress of parental responsibility proceedings. In addition, they have included requests for information generally about the progress of proceedings; to inform the courts of the other State of the nature of proceedings in England and Wales to seek to avoid conflicting decisions (when no relevant international instrument applies); to obtain copies of court orders or other documents from proceedings.

## The role and functions of Central Authorities designated under the 1980 Convention

### In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No  
 Yes

Please specify:

ICACU

There remains a concern about how some States Parties use Article 7(d). The courts in some States Parties appear to require a welfare report either pursuant to Article 7d) of the Convention (or under the 1996 Hague Convention) from child protection authorities in the requesting State as a matter of course, rather than the requests being tailored to the specific facts of the case. This impacts on the local authorities in England and Wales (in terms of cost and time); the reports are usually required urgently. Additionally, our local authorities' experience is more suited to issues of child protection. It can also lead to the 1980 Hague proceedings being delayed whilst these reports are obtained.

14. Has your Central Authority encountered any challenges with the application of **any of the 1980 Convention provisions**? If so, please specify.

- No  
 Yes

Please specify:

ICACU

- 1) The appeal process in some State Parties can be lengthy, which is contrary to the aims of the Convention;
- 2) A statement of reasons for the delay in obtaining a decision on the application is not always received from the requested Central Authority
- 3) Differing interpretation of rights of custody by State Parties can be an issue - for example, inchoate rights of custody are recognised in England and Wales but not in other jurisdictions.



## Legal aid and representation

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

- No  
 Yes

Please specify:

ICACU

Incoming cases – ‘no’: the left behind parent, applying from outside England and Wales for the return of their child under the 1980 Hague Convention, is entitled to non-means and non-merits tested legal aid. When ICACU refers a new incoming return application to a specialist solicitor (legal adviser), it also provides a funding letter to be sent to the Legal Aid Agency (which authorises legal aid). The solicitor is then responsible for applying for a legal aid certificate; such application is usually dealt with on an urgent basis by the Legal Aid Agency, so there is not usually a delay in the left behind parent obtaining legal aid.

Legal aid for the taking parent is subject to the normal means and merits test. If the taking parent provides their solicitor with the information required for the legal aid application and the parent is eligible on means, then there is usually no delay.

Outgoing cases – ‘yes’: For applicants who live in England and Wales, delays in receiving legal aid from the requested State Party can occur, especially where the legal aid is not available automatically. There can also be additional delay when the applicant in England and Wales does not speak the language of the requested State Party.

Some States Parties do not provide legal aid or representation for applicants or if they do then they require a substantial financial contribution and that is problematic.

16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?**<sup>7</sup>

- No  
 Yes

Please specify:

ICACU

Please see response to Q15.

Yes - Incoming cases; the means/merits test for taking parents for return applications in England and Wales can lead to problems in obtaining legal representation for some respondents. They can either i) pay privately, ii) act as a litigant in person or iii) find pro bono representation.

The difference in the availability of legal aid for left behind and taking parents reflects their circumstances in a child abduction case where prima facie the child has been

<sup>7</sup> See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Special Commission meetings”.

wrongfully removed or retained away from their country of habitual residence and the left behind parent is seeking the child's return.

Taking parents can instruct specialist solicitors but will need to pay privately or be financially eligible for legal aid. Details of these firms are provided to the taking parent when they are served with the return application and are also available on the government website at <https://www.gov.uk/find-legal-advice>

A Duty Advocates Scheme has been introduced by CALA (Child Abduction Lawyers Association) – a body of specialist child abduction lawyers. The scheme was introduced in 2022 and offers some assistance on a pro bono basis limited to the hearings.

Outgoing cases - see response to Q15 (above) – proceedings are sometimes delayed where legal aid is not automatically available and a legal aid application has to be made; some applicants experience difficulty in finding their own lawyer (due to language barriers etc) even where a list is provided by the requested State Party.

### Locating the child

17. Has your Central Authority encountered any **challenges with locating children** in cases involving the 1980 Convention, either as a requesting or requested State?

- No  
 Yes

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

In incoming cases, the application for a return order can be issued without the precise whereabouts of the child being known, provided it is believed that the child is in the jurisdiction. The Court has broad powers to make orders to assist in locating the child including requiring the disclosure of information from government agencies and other third parties and obtaining the assistance of the Police, which have been shown to be effective in addressing any difficulties in locating the child's location.

For outgoing cases some States Parties need a location.

### Voluntary agreements and bringing about an amicable resolution of the issues

18. How does your Central Authority (either directly or through any intermediary) take, or is considering taking, appropriate steps under **Article 7(c)** to bring about an amicable resolution of the issues? Please explain:

In England and Wales attempts to secure a voluntary or amicable solution normally begin after the left behind parent (the applicant) in a return case has been referred to a specialist solicitor by ICACU. The solicitor then acts on the instructions of the left behind parent. This allows the risk of flight by the taking parent if approached to be assessed in the light of the left behind parent's information. In the majority of cases judicial proceedings are issued although a parent may agree to a voluntary return at any stage. ICACU raises the awareness of both parties to the possibility of a voluntary return. The referral letter informs the specialist solicitor of this option and includes an information sheet covering voluntary return, mediation and contact details for organisations which may be able to assist, to be provided to the taking parent when they are served with the return application.

Organisations include the charity Reunite International, which provides an at court specialist mediation service (see link to Practice Guidance at Q1). Legal aid is available for mediation in appropriate cases.

<https://www.reunite.org/mediation-overview/>

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills<sup>8</sup>)?

Please specify:  
Not applicable

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

Please provide comments:  
No

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?<sup>9</sup>

- No  
Please explain:  
In England and Wales mediation is an independent profession, independently regulated.
- Yes  
Please explain:  
Please insert text here

### Ensuring the safe return of children<sup>10</sup>

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

Please explain:  
Judiciary  
Information provided to the court by the parties.  
ICACU  
ICACU will process requests from solicitors and/or the court if information on protective measures is needed from the requesting state, but it is usual for the court to source this information without coming to ICACU for assistance.

<sup>8</sup> For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, “Specific training for mediation in international child abduction cases”, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Guides to Good Practice”.

<sup>9</sup> As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on “Access to Mediation”. paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

<sup>10</sup> See Art. 7(2)(h) of the 1980 Convention.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

- No  
 Yes

Please specify:

Yes, ICACU will process such requests under Hague 1996 (if in scope) if the requesting state makes a follow up referral.

### Information exchange, training and networking of Central Authorities

24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online? <sup>11</sup>

- No  
 Yes

Please specify:

ICACU is happy to share information about best practice and procedure in the spirit of co-operation and does so regularly in the context of specific cases.

Since 2017, ICACU has been involved in a number of initiatives including the following: October 2018 Jamaica;  
 2019 Morocco;  
 2022 Norway and Barbados (separately);  
 2023 Brazil and Ukraine (separately).

ICACU has found that attendance at the EU European Judicial Network in Civil and Commercial Matters (EJN) meetings provides a useful opportunity to meet with Central Authorities of the European Union member states in between Special Commission meetings (ICACU has been invited to attend since the UK's exit from the EU). Internal to the UK jurisdictions, Child Abduction Co-ordination Group, quarterly meeting of officials.

### Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No  
 Yes

Please specify and share the relevant instruments whenever possible:

Applicants are encouraged to use a central e-mail address set up specifically for new applications.

All new applications are reviewed on day of receipt and the appropriate internal target for processing them is given. The targets are 3 working days for incoming return applications, 7 working days for outgoing return applications and 15 working days for all other applications/requests.

ICACU uses precedent correspondence (standard letters) to assist in the efficient processing of applications and associated correspondence.

<sup>11</sup> See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at [www.hcch.net](http://www.hcch.net) (see path indicated in note 8).

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

- No  
 Yes

Please specify:

ICACU uses the case management system of the Office of the Official Solicitor and Public Trustee, where ICACU is located, which is not a bespoke system solely for abduction cases.

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?<sup>12</sup>

- No  
 Yes

In case this information is publicly made available, please share the links to the statistical reports:

Statistics are published by the Royal Courts of Justice on the number of 1980 Hague applications handled each calendar year (according to case type) and the case outcome on cases closed each year.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1091791/RCJ\\_Tables\\_2021.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091791/RCJ_Tables_2021.ods) Tables 7.1 and 7.2

### Transfrontier access / contact<sup>13</sup>

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

- No  
 Yes

Please specify:

The Legal Aid Agency has issued guidance confirming that Article 21 1980 Hague cases are in scope of free legal aid.

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

- No  
 Yes

Please specify:

Some differences in legal aid entitlement present difficulty with some States Parties.

In ICACU's experience, some States Parties will not accept an Article 21 application unless:-

- i) the parent has parental responsibility for the child, or
- ii) there is already a contact order in existence and the primary carer is not complying with the order, or
- iii) the parent has an automatic right to contact with their child.

<sup>12</sup> In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

<sup>13</sup> See C&R Nos 18-20 of the 2017 SC.

This approach can cause difficulties with outgoing access requests because, under our domestic law, parents do not automatically have a right to contact with their child. In domestic law (i) the welfare of the child is the paramount consideration (section 1(1) Children Act 1989) and (ii) there is a ‘no order’ principle, that is, a principle that the court shall not make an order unless it considers that doing so would be better for the child than making no order at all (section 1(5) Children Act 1989). If the parents separate or their marriage or civil partnership breaks down, orders will not be made regulating issues such as residence and contact unless a parent makes an application to the court, and the court considers that making an order is better for the child than making no order at all. If divorce or dissolution proceedings are issued by either parent, that will not necessarily lead to orders being made in respect of any children of the family. Under domestic law applications in relation to the children are dealt with separately from the divorce or dissolution proceedings.

A parent does have an automatic right to make an application to the court (section 10(4)(a) Children Act 1989) unless there have been earlier proceedings in which the court has made an order that no application for a further order can be made without leave (permission) of the court (section 91(14)), If this is the position the parent’s initial application would be for leave to make an application for an order.

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?<sup>14</sup>

- No
- Yes

Please specify:  
Information not collected

31. In the case of access / contact applications under **Article 21**, which of the following **services** are **provided by your Central Authority**?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in <b>another Contracting Party</b> (as requesting State)	<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention</li> <li><input type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State</li> <li><input checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide</li> <li><input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State</li> <li><input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access</li> <li><input type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice</li> <li><input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State</li> <li><input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance</li> <li><input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application</li> <li><input type="checkbox"/> 10. Other, please specify: Please insert text here</li> </ul>

<sup>14</sup> According to C&R No 18 of the 2017 SC, “The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation.”

<p>A request of assistance to organise or secure effective exercise of rights of access <b>in your State</b> (as requested State)</p>	<p><input type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State</p> <p><input checked="" type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access</p> <p><input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice</p> <p><input checked="" type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State</p> <p><input type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance</p> <p><input checked="" type="checkbox"/> 6. Regular updates on the progress of the application</p> <p><input type="checkbox"/> 7. Other, please specify: Please insert text here</p>
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32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No  
 Yes

Please specify:

Please insert text here

## Special topics

### Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State's jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child's statements)?

Please explain:

Judiciary

Evidence about the child's views is usually only obtained when it is said that the child objects to being returned. When such evidence is obtained, it will be taken into account for the purposes of all relevant issues.

The court is likely to have the following evidence when determining whether (a) the child objects and (b) the child is of an age and maturity at which it is appropriate to take account of their views:

- Statements from the parents setting out what they contend the child has said;
- A report from an Officer of the Children and Family Court Advisory and Support Service (Cafcass) High Court Team (a social work professional) detailing:
  - o What the child has said on the subject of return when seen by that professional;
  - o Whether, in the opinion of the Cafcass Officer, what the child has said amounts to an objection to being returned for the purposes of Art 13 (as opposed to a preference for one parent or country);
  - o Whether the child is of an age and maturity that it is appropriate for the court to take account of their views.
  - o Whether there is any evidence of parental influence on the child's views.
- In rare cases, the child may be joined as a party and will instruct a lawyer to present the child's views.

Reports prepared on a child's views by a Cafcass Officer in abduction cases typically cover the above issues only.

If the Cafcass Officer speaks to the parents, the Officer must speak to both parents in the case.

The Cafcass Officer will not express a view on what the overall outcome of the abduction proceedings should be, unless expressly asked for that view by the court.

Re A [2021] EWCA Civ 194 provides an example of the application of these principles. Re A (A Child) (Hague Convention 1980: Set Aside) [2021] EWCA Civ 194 (familylaw.co.uk)

34. Are there any procedures, guidelines or principles available in your State to guide the person (e.g. expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No  
 Yes

Please specify:  
 see 33 above

### Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know  
 Never  
 Rarely  
 Sometimes  
 Very often  
 Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:

Applicants can access an electronic standard application form (including guidance) on gov.uk: International Child Abduction and Contact Unit application form - GOV.UK (www.gov.uk). This explains what the requirements of the Convention are and what documents are needed to support any application made.

For outgoing cases, the application is checked and if acceptable then the papers are transmitted to the requested Central Authority. ICACU allows 7 working days to process outgoing applications and if further information/documentation is required they will revert to the applicant within that 7 day period.



For incoming cases, internal targets ensure a quick turnaround on incoming return applications. Applications are checked and, if a prima facie case exists, referred on to a specialist solicitor within three working days – for the solicitor then to advise the applicant, take instructions and issue an urgent application to court. If more information is required then further questions will be raised with the requesting Central Authority (within the 3 working days).

38. Considering C&R No 7 of the 2017 SC,<sup>15</sup> what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:  
Please insert text here

### Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

- No  
 Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State:  
Judiciary

These challenges were addressed, in part, by our UK Supreme Court in *G v G* [2021] UKSC 9 (see Q3). There has not yet been any substantive appellate decision on the effect of the grant of asylum on an application under the 1980 Hague. At first instance, it has been decided that the grant of asylum is a bar to the making or enforcement of a return order under the Convention: *E v E* and the Secretary of State for the Home Department [2017] EWHC 2165 (Fam)

Other cases have dealt with the issue of the disclosure of information/documents, in particular from the asylum claim to the abduction proceedings for example *R (A Child) (Asylum and 1980 Hague Convention Application)* [2022] EWCA Civ 188.

As a result of the decision in *G v G*, revised Case Management Guidance (of March 2023) was issued (see Q1 above).

- Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

- No  
 Yes

Please provide comments:

None in England and Wales. Discussed at a judicial conference in South Africa in March 2023

### Use of the 1996 Convention<sup>16</sup>

<sup>15</sup> See C&R No 7: “The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group.”

<sup>16</sup> For this part of the Questionnaire, the [Practical Handbook on the Operation of the 1996 Child Protection Convention](#) can provide helpful guidance, available on the HCCH website at [under “Child Protection Section”](#).

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):
- (a) providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**)  
Please insert text here
  - (b) providing for the recognition of urgent protective measures by operation of law (**Art. 23**)  
Please insert text here
  - (c) providing for the advance recognition of urgent protective measures (**Art. 24**)  
Please insert text here
  - (d) communicating information relevant to the protection of the child (**Art. 34**)  
Please insert text here
  - (e) making use of other relevant cooperation provisions (e.g., **Art. 32**)  
Not applicable

42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?<sup>17</sup>

- No  
 Yes

Please specify:

ICACU has no recent experience of competent authorities asking for cooperation but would process any requests if received and if in scope.

Please read this response in conjunction with ICACU's reply to Q13. While ICACU will accept any request that is within scope it would reiterate that there is sometimes a reluctance on the part of local authorities in England and Wales to take on work relating to child abduction when their experience is more suited to issues of child protection.

### Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:

Practitioners obtain as much information as possible to enable a decision on whether the fears are genuine or not. Expert evidence and undertakings to be effective in the habitual residence of the child can be used for secure and safe return. Information on the enforceability of undertakings is sought. There have been cases where a domestic violence or abuse victim has been able to defend a return successfully.

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<sup>17</sup> See C&R No 40 of the 2017 SC: "The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection." (Emphasis added.)

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:

Practitioners can seek undertakings or a mirror order. Matters covered can be protective measures, residence, funds.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

- No  
 Yes

Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:

Please insert text here

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

- No  
 Yes

Please specify:

Please insert text here

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

- No  
 Yes

Please specify:

Practitioners - yes.

Judiciary

Article 11 of the 1996 Hague is frequently referred to by judges, in particular when making a return order under the 1980 Hague Convention, as being relevant to the issue of protective measures including undertakings on the basis that they are enforceable under Article 23 of the 1996 Hague. These provisions are relied on and are viewed as a very useful adjunct when making a return order.

- N/A

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

- No  
 Yes

Please specify:

Please insert text here

**International family relocation<sup>18</sup>**

49. Has your State adopted specific procedures for international family relocation?

- Yes  
Please describe such procedures, if possible:  
Please insert text here
- No  
Please describe how the authorities deal with international family relocation cases, if possible:  
Applications for leave to remove the child from the UK can be made in specified circumstances under section 13 Children Act 1989. These circumstances are not directly related to international parental child abduction.

**Publicity and debate concerning the 1980 Convention**

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

- No  
 Yes  
Please indicate the outcome of this debate or discussion, if any:  
No impact on practical operation, Parliamentary discussion on handling of individual constituents' cases.

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

Please explain:  
Information is published on gov.uk about the Central Authority role – this includes guidance and also the application form.  
Information is published on the reunite International website; some aspects of reunite's work are publicly funded.

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<sup>18</sup> See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: “The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention.”

## PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

### Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

Regular training is provided specifically to judges dealing with cases under the 1980 Hague in England and Wales, The IHNJ judges for England and Wales have also provided judicial training for other Hague jurisdictions, including in 2022 Jamaica, Barbados and Trinidad and Tobago.

### The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

- a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

ICACU finds it helpful to refer other Central Authorities to our Country Profile when they have questions about how England and Wales operates. ICACU also finds it helpful to refer to other States' Profiles (where available).

Judiciary - The section dealing with protective measures could be expanded to provide more detailed information about measures available to protect/assist/support a returning parent and child.

Practitioners - adequate.

- b. INCADAT (the international child abduction database, available at [www.incadat.com](http://www.incadat.com)).

ICACU considers this a useful tool to which to refer practitioners.

Judiciary - England and Wales has an Incadat Judge who is responsible for uploading cases to the website. Incadat also provides invaluable access to decisions in other Contracting States.

- c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;<sup>20</sup>

Judiciary - The Newsletter is read by judges who undertake cases under the 1980 Hague. The Hague Network Judges for England and Wales contribute articles regularly: see under MacDonald A. in Vol XXII Summer- Fall 2018, Vol XXIII Winter - Spring 2018-19 (three items) and Vol XXIV Summer-Fall 2019.

Practitioners - useful reference

- d. The specialised "Child Abduction Section" of the HCCH website ([www.hcch.net](http://www.hcch.net));

ICACU find this another useful resource and it is helpful that all the information is in one place.

Judiciary - All the information available on the specialised section of the HCCH website is useful and is used frequently by judges and others, including practitioners, in England and Wales.

- e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may

<sup>20</sup> Available on the HCCH website at under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

The UK continues to see the value in this.

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);<sup>21</sup>

The Hague Network Judges for England and Wales would be willing to assist the PB if required to promote the wider ratification of or accession to the 1980 and 1996 Conventions.

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

ICACU considers this extremely useful.

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

The PB provides essential support in respect of the INHJ. This includes convening meetings in person and remotely. The latter are particularly important having regard to the frequency with which in person meetings can be arranged because of cost and other factors.

The Secure Platform is not used as much as it could be but we are confident that, with further time, it will be used much more frequently.

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

ICACU considers this useful.

## **Guides to Good Practice under the 1980 Convention**

- 54. For any of the Guides to Good Practice<sup>22</sup> which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

- a. Part I on Central Authority Practice.  
Not used by ICACU
- b. Part II on Implementing Measures.  
Please insert text here
- c. Part III on Preventive Measures.

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<sup>21</sup> Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

<sup>22</sup> All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at [www.hcch.net](http://www.hcch.net) under "Child Abduction Section" then "Guides to Good Practice".

Please insert text here

d. Part IV on Enforcement.

Please insert text here

e. Part V on Mediation

Please insert text here

f. Part VI on Article 13(1)(b)

Judiciary - The Guides to Good Practice are used and referred by judges dealing with cases of alleged child abduction under the 1980 Hague, in particular the Guide on Article 13(1)(b).

g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice

Please insert text here

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

No action taken; available on Hague website

56. Do you have any other comments about any Part of the Guide to Good Practice?

Not used by ICACU

57. In what ways have you used the *Practitioner’s Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*<sup>23</sup> to assist in improving the practical operation of the 1980 Convention in your State?

Practitioners - Links on website and Good Practice Guide

## Other

58. What other measures or mechanisms would you recommend:

a. to improve the monitoring of the operation of the 1980 Convention;

Please insert text here

b. to assist States in meeting their Convention obligations; and

Judiciary - The following issues about the operation of the 1980 Hague would merit further discussion at the Special Commission:

(a) The question of the inter-relationship between the 1980 Hague and the international and regional human rights instruments relevant to the issue of child abduction, in particular the UN Convention on the Rights of the Child, the European Convention on Human Rights and the Inter-American Convention on Human Rights (in the light of the decision by the UN Committee on the Rights of the Child in June 2022 that Chile had violated the rights of a six-year-old boy with autism when its Supreme Court decided to return the child to Spain without assessing his best interests: Chile CRC/C/90/D/121/2020).

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<sup>23</sup> The *Practitioner’s Tool* is available at the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Guides to Good Practice”.

- (b) The question of the operation of Art 13(b) in the context of concerns expressed by NGOs and advocacy groups regarding the impact of Art 13(b) in cases of alleged domestic abuse and coercive and controlling behaviour, and the possibility of a data gathering exercise to evidence the outcomes for children who have been returned following a rejection of the Art 13(b) defence.
- (c) The need to ensure that judges making decisions under the 1980 Hague Convention have easy access to clear and reliable information regarding the availability and enforceability of protective measures upon return (in the light of the decision of the US Supreme Court in *Golan v Saada* (20-1034 *Golan v. Saada* (06/15/2022) that a court is not categorically required to examine all possible ameliorative measures before denying a Hague Convention petition for return of a child to a foreign country once the court has found that return would expose the child to a grave risk of harm).
- (d) Possible mechanisms for increasing the availability of information on protective measures in the requesting jurisdiction for use by judges determining applications under the 1980 Hague Convention as there is currently very limited such information in the country profiles.
- (e) The interrelationship between the 1980 Hague Convention and the asylum laws of Contracting States in the light of the decision of the UKSC in *G v G* (see their reasoning at question 3) and the decision of the Court of Appeal of Ontario in *AMRI v KER* [2011] ONCA 417 (<https://www.incadat.com/en/case/1067>) (to the effect that Hague Convention proceedings meet the obligation of non-refoulement by fairly examining the question of whether the risk of persecution persists, with the child's refugee status creating a rebuttable presumption of risk of harm for the purposes of Art 13(b)).
- (f) The possibility of draft guidance to assist in the application of the 'child objection' exception under Art 13 of the 1980 Hague Convention

c. to evaluate whether serious violations of Convention obligations have occurred?  
Please insert text here



## PART III – NON-CONVENTION STATES

59. Are there any States that you would particularly like to see become a Contracting Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States?

Please explain:

Please insert text here

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

Please insert text here

### The “Malta Process”<sup>24</sup>

61. Do you have any suggestions of activities and projects that could be discussed in the context of the “Malta Process” and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

Please insert text here

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<sup>24</sup> The “Malta Process” is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

## **PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS**

### **Views on priorities and recommendations for the SC**

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:

ICACU - No. Practitioners - Enforcement of return orders made in other jurisdictions - (in England and Wales the High Court Tipstaff can enforce a collection order made by the court, while other jurisdictions often have no mechanism); Enforcement of undertakings - how to ensure that where there is a breach of undertakings given to the court in England and Wales (to enable a safe return) any breach means the undertakings are enforced in the country to which the child has been returned. Public funding to be available in jurisdictions abroad in the same way as in England and Wales, that is to say non means and non merits tested legal aid for the left behind parent. Enforcement of access orders.

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:

No

### **Bilateral meetings**

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:

ICACU finds the bilaterals immensely useful and would estimate (as at March 2023) perhaps requesting meetings with three or four other Central Authorities. This is subject to change nearer the meeting.

### **Any other matters**

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

Please insert text here