

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.

Name of State or territorial unit:¹	Brazil
<i>For follow-up purposes</i>	
Name of contact person:	
Name of Authority / Office:	
Telephone number:	
E-mail address:	
Date:	

PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

1. 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:

In 2018 there was the edition of Resolution 257, but more recently, in 2022, there was the edition of Resolution 449, of the National Council of Justice, foreseeing procedural rules for actions based on the 1980 Hague Convention.

In addition, there is a draft law under discussion that aims to regulate administrative and judicial procedures for the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Decree No. 3,413/2000) and the 1989 Inter-American Convention on International Child Abduction (Decree No. 1,212/94). The proposal was presented to the Minister of Justice and Public Security by the President of the Federal Justice Council-CJF and is the result of deliberations by the Study Group on the Civil Aspects of International Child Abduction (GESIC), which was established within the scope of the Federal Justice Council to, among other responsibilities, propose improvements to the regulations concerning international child protection.

2. Following the Covid-19 pandemic,³ 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.

a) Methods for accepting and processing return and access applications and their accompanying documentation;

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

² 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").

³ 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.

The use of electronic proceedings in the Central Authority and Brazilian federal courts, as well as remote hearings have facilitated the continuation of actions based on the Convention, in addition to the acceptance of electronic documents.

- b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);
The Central Authority and Federal Courts in Brazil had already been employing electronic judicial process even before the pandemic, and the biggest novelty with the social distancing measures was the use of hearings and meetings in a remote environment, including with people located outside the country.
- c) Promoting mediation and other forms of amicable resolution;
Since Resolution 125 of the National Council of Justice (issued in 2010), the Brazilian Judiciary has been using appropriate methods of conflict resolution such as mediation, conciliation, negotiation, among others, with the pandemic such methods continued to be used but in the remote way. In 2022, the Mediation School of the Federal Regional Court of the Second Region held the first training course of Mediators specifically related to Mediation in cases of International Child Abduction.
- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
The use of technological tools to enable the contact of the abandoned parent and the child also occurred in the period.
- e) Obtaining evidence by electronic means;
The holding of hearings with the hearing of witnesses by virtual means has been admitted.
- f) Ensuring the safe return of the child;
- g) Cooperation between Central Authorities and other authorities;
All the contacts between Central Authorities is made by electronic tools, as e-mails and virtual meetings.
- h) Providing information and guidance for parties involved in child abduction cases;
Information passed by e-mail has been the main means of contact between the Liaison Judges, the parties and their lawyers and between central authorities.
- i) Other, please specify.
Please insert text here

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 authorities⁴ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Please insert text here	Please insert text here	Please insert text here	The child was repatriated to Canada on the date indicated, August 11, 2021, through a judicial process under the Hague Convention. However, the mother was prevented from accompanying the return, which is guaranteed by the Convention, and

⁴ 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.

			has since been denied access to her child. The other parent does not allow video or phone calls with the child and only sends photos when it suits them. Given this situation and concerned about the well-being of her child, who is in a country she is unfamiliar with, where English is spoken and with people who do not speak Portuguese, the mother requests the opening of a PCJI (Central Authority's International Judicial Cooperation) with a request for access/visitation to the child.
Please insert text here	Please insert text here	Please insert text here	We had another emblematic case in where the child returned to France through a court injunction. After the return, the Superior Court of Justice (STJ) reviewed this decision and denied the return of the child. The decision became final. Due to France's refusal to comply with the STJ's court decision and return the child, Brazilian judicial authorities imposed monetary penalties on the AGO, the agency responsible for bringing legal action in cases of international child abduction under the 1980 Hague Convention.
Please insert text here	Please insert text here	Please insert text here	Another case that generated intense discussion was the closing by a central authority based on the interpretation that the child's continued stay after the expiration of the travel authorization does not warrant the application of the 1980 Convention. Despite the BCA's insistence on the possibility of applying the 1980 Convention even in these circumstances, the corresponding central authority closed the procedure on its own initiative.

4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

In 2022, the National Council of Justice issued Resolution 449, which positively marked the guidelines for the procedure of the actions.

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:

Unfortunately, the Brazilian Central Authority has been facing several difficulties in its bilateral cooperation with certain States Parties of the 1980 Hague Convention since 2017. These difficulties primarily revolve around communication, including:

- a) Some countries interpreting the period of validity of travel authorization strictly, and considering that the retention of a minor in the country after the expiry of the period does not constitute illicit subtraction.
- b) The lack of information regarding the status of outgoing cases. Despite the Brazilian Central Authority sending recurring requests for updates, there has been no response in a timely manner.
- c) Delayed responses to requests for information related to the social background of the child, as requested under Article 13, Paragraph 3 of the 1980 Hague Convention.
- d) Delayed responses to judicial subpoenas issued by Brazilian Federal judges for information held by the Central Authorities of the country of habitual residence of the children, relating to the social backgrounds of the child as requested under Article 13, Paragraph 3 of the 1980 Hague Convention.

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:

We face difficulties in returning children when the taking parent is threatened with an arrest warrant for custody breach.

In addition, Some States parties, instead of submitting requests of return/access under the 1980 Hague Convention seem to prefer to send rogatory letters, based on bilateral treaties, in order to have their custody orders enforced directly in Brazil. On other occasion, one State Party sent the rogatory letter in paralel with the request of international judicial cooperation under the 1980 Hague Convention, making use of 2 different Brazilian Central Authorities and 2 different judicial procedures, that are dealt by different judicial instances. This may raise difficulties on the adequate application of the 1980 Hague Convention and, when the foreign order is internalized by the "exequatur" to the Brazilian legal system, it may lead to the understanding that the Brazilian judicial authorities have become competent for ruling on the merits of rights of custody, what is contrary to the article 16 of the 1980 Hague Convention. We are able to identify at least one European Central Authority that has not sent at least two Brazilian outgoing cases to court, arguing that the case would be closed directly by the Requested Central Authority on the grounds of article 12 (settlement of the child to the new environment, due the fact that the 1 year time framed had elapsed) and article 13 I (b) (which, accordingly to that Requested Central Authority included the separation of siblings). All our attempts to have this administrative decision reverse - in order to have those cases sent to court were not taken into consideration. It is also important do mention that if a State Party does not provide legal assistance to a LBP and if the LBP does not have the financial means to hire an attorney in the requested state, a Hague application would not be taken to court. Thus, this situation would characterize evasion of the Convention of 1980.

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)⁵ in order to identify possible sources of delay and implement the adjustments needed to

⁵ 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."

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

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:

Brazilian legislation does not contemplate a faster procedure that could be applied in proceedings involving the application of the 1980 Convention. Furthermore, there is the possibility of the same process being submitted to four instances of the Brazilian Judiciary - Federal Judge, Federal Regional Court, Superior Court of Justice and Supreme Federal Court. The specialization of judges and courts has been adopted in Brazil and there are already signs of progress on the issue of the length of proceedings.

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:

Please insert text here

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:
The edition of Resolution 257 in 2018 and, more recently the edition of Resolution 449 in 2022, both from the National Council of Justice, are demonstrations of the concern of the Judiciary Branch's top organs in allowing greater agility in the proceedings based on the 1980 Hague Convention. There is also the perspective of approval of a bill that may provide for a more abbreviated procedure with fewer appeals, so as to allow compliance with the six-week deadline for resolution of the case.

10. Do the courts in your State make use of direct judicial communications⁶ to ensure prompt proceedings?

No
 Yes

Please specify:
Where there is any doubt about the measure to be adopted for the child's return, usually there is contact between the federal judge of the process and a liaison judge who, in turn, contacts the liaison judge of the state of the child's habitual residence for further information about how to proceed in order to effect the return.

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

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?

There was a concrete case of the return of the child to Argentina in which the Argentine liaison judge questioned the manner of compliance with the decision of the Brazilian judge. It was a case that occurred during the year 2020 - at the beginning of the COVID-19 pandemic - in which the Brazilian judge ordered the return of the child, who was only 4 years old, without the presence of the father, and only the father's lawyer. There was communication between the Argentine and Brazilian liaison judges to prevent the return from occurring in this manner. The judge of the case changed the manner of compliance with his order, to await the presence of the Argentine father. The communication to this end was successful.

⁶ 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”.

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:

Regarding problems within Brazil related to the adequate performance of the duties of the Brazilian Central Authority, it is important to mention that, specially due to the vast territorial extension of our country, it has been challenging to discover the whereabouts of a child on a timely manner. This task is performed, in Brazil, by the Brazilian branch of Interpol, an unit at the Federal Department of Police that, unfortunately, counts with limited material and human resources. The Brazilian Central Authority is facing an important challenge regarding the development of the adequate environment and procedures to include transnational family mediator during the administrative phase of the cases. This BCA welcomes the share of experience and good practices from other States-Parties in this field. As mentioned above, the Brazilian Central Authority face, at some cases, difficulties on obtaining information related to the social background of the child from other State-Parties.

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:

As Central Authority, our performance is limited. Although Central Authority is the first contact of the left behind parent, if have no agreement between parents, the return is decided by judges, without direct participation of Central Authority.

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:

Please insert text here

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?**⁷

⁷ 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 under “Child Abduction Section” then “Special Commission meetings”.

- No
 Yes

Please specify:

The State-Parties that have presented a reservation to the provision of legal aid and advice are a continuous challenge, because generally the left behind parent has financial and even linguistic difficulties in hiring a foreign attorney.

Also, some countries have applied a strict interpretation regarding the period of validity of the travel authorization, understanding that the retention of the minor in the country after the expiry of the period does not constitute illicit subtraction.

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:

The main challenge is the vastness of the Brazilian territory, so the abductor may try to hide in places quite distant from urban centers. Another point is the possibility of a sudden change of location when the abductor has news that procedures for the child's return have been initiated.

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:

When we communicate with the TP about the request for international cooperation, we inform them of the benefits that mediation can bring. Additionally, we explain the complexities of the judicial case, as they arise.

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 skills⁸)?

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:

The Brazil CA is currently studying the best format of mediation for cases from Brazil. Furthermore, the TRF of the 2nd Region has trained a group of employees to mediate disputes involving abductions. The BCA has kept in touch with the individuals in charge of

⁸ 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 under "Child Abduction Section" then "Guides to Good Practice".

this program, ensuring that conflicts related to the abduction of minors are subject to a mediation process before being brought to court.

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?⁹

- No
Please explain:
Please insert text here
- Yes
Please explain:
Possibly, see question 20.

Ensuring the safe return of children¹⁰

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:
Usually the federal judge in the cases requests help from the liaison judge to obtain such information regarding the safe return of the child from the liaison judge of the requesting state.

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, but with the help of the Federal Police, social workers, and decisions made by the judge. e insert text here, depending on the measures that will be taken.

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?¹¹

- No
- Yes
Please specify:
Yes, recently, the Brazil CA participated in an event with CAs from the United States, Canada, Australia, and the United Kingdom, which are countries that adopt the common law system, to share experiences about the proceedings under the 1980 Hague Convention.

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

⁹ 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.

¹⁰ See Art. 7(2)(h) of the 1980 Convention.

¹¹ 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 (see path indicated in note 8).

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:
[Please insert text here](#)

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

- No
 Yes

Please specify:

SEI system. SEI (Sistema Eletrônico de Informações) is an electronic information management system used by the Ministry of Justice in Brazil. It is a tool that allows for the electronic management of documents and processes, making it easier to store, organize, and share information. The SEI system is used by several departments within the Ministry of Justice, including the Department of Human Rights, the National Department of Penitentiary Policy, and the Department of Asset Recovery and International Legal Cooperation, among others.

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)?¹²

- No
 Yes

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

Currently, we do not have a dedicated data collection system in place. Our data collection efforts are sparse and lack central control. As previously mentioned, the SEI system solely manages case procedures and is inadequate for effectively managing and presenting data related to cases.

Transfrontier access / contact¹³

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:

As the Brazilian State is not a party to the 1996 Hague Convention, in specific cases there are some initiatives to obtain information on how agreement within Brazilian jurisdiction can be enforced in another State party to the 1980 Convention. In three specific cases this was done (Spain, United States and England)

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

¹² 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.

¹³ See C&R Nos 18-20 of the 2017 SC.

- Yes
Please specify:
While we typically receive few applications for access rights, we sometimes encounter indicators of violence against children in other countries. When such cases arise, we report the facts to the CA. However, since we lack jurisdiction outside of our own country, we can only advise parents to file a complaint with the local police where the child is located.

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?¹⁴

- No
- Yes
Please specify:
Please insert text here

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 another Contracting Party (as requesting State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input checked="" type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <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 <input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input checked="" 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 <input type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify: Please insert text here
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <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 <input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input checked="" type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify:

¹⁴ 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.”

	Please insert text here
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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:
 Not applicable

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:

Law 13.431 regulates the taking of the special testimony of the child. For this reason, it is advisable to use a room with special architecture and conduct protocols for the professionals who will interview the child, such as the use of an electronic point to communicate in real time with the judge who conducts the hearing. This way, the child remains in the special room with the psychologist-interviewer, while in another place the parties, their lawyers and the judge, who is following the interview, remain. The maturity of the child is an essential factor for its manifestation to be considered, but is had no absolute value. For this reason, an interdisciplinary team is involved in the elaboration of a technical report in some cases to support the judge with respect to the child's speech.

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:
 There is guidance from the National Council of Justice on the special testimony of the child in light of Law No. 13.431/2017.

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:
[Please insert text here](#)

38. Considering C&R No 7 of the 2017 SC,¹⁵ 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:
[Please insert text here](#)

- 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:

It is considered that the best interests of the child should be the fundamental principle guiding the concrete solution of the case of international child abduction. The most contemporary conception of the principle considers that the earliest possible return of the child to his/ her habitual residence is an adequate measure so that the child's issues with his/her parents (custody, visitation regime, maintenance) are settled by the judge of his/her habitual residence.

Use of the 1996 Convention¹⁶

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):

¹⁵ 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."

¹⁶ 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"](#).

(a) providing a jurisdictional basis for urgent protective measures associated with return orders **(Arts 7 and 11)**

Lei 8069/1990 establishes the statute for children and adolescents, and provides other measures.

(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**)

Please insert text here

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?¹⁷

No

Yes

Please specify:

Please insert text here

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:

In the majority of incoming cases to Brazil the taking parent presents allegations on violence against other members of the family other than the child. Unfortunately, most of those cases, although the TP does not present adequate support evidence, are being ruled by the Brazilian Courts, in favor of the taking parent, dismissing the return proceedings. We can ascertain that, in some of those cases, there is a misuse of the grave risk exception by taking parents. In almost all cases - where the allegation of domestic violence has been presented or not - Brazilian Courts insist on producing evidence not only on the risks of returning the child, but also regarding the potential settlement of the child to the new environment. In cases when the TP alleges that she/he is not in a position to return with the child, the BCA tries to engage the LBP and/or diplomatic authorities to accompany the child back to the country of habitual residence.

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?

¹⁷ 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.)

Please explain and provide case examples where possible:

This BCA believes that the more information the Brazilian Courts may receive on the protection measures that are available and that can be put in place in favor of the child or the TP once the return order is enforced, the better they will be able to rely on the Convention and its mechanism of prompt return.

It is very common to have, in the Brazilian return decision, safeguards in favor of the TP. In some instances, those safeguards are conditions to the enforcement of the return order - and there is at least one case on our records in which the number and complexity of the conditions imposed by the Brazilian judge for the return was so high that it became impossible to enforce the return decision.

The main challenge with these safeguards (imposed by the Judicial authority of the Requested State) seems to be the lack of direct enforcement they have at the Requesting State.

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:

Unfortunately, the BCA does not usually receive any information about the cases after the return of the child, but we would fully support such a recommendation for follow-up information to be provided after the return of a child.

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:

Please insert text here

- 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:

We consider it important that, after the child's return order has been served, it should be possible to monitor the child's situation in the State of habitual residence in a similar way to what occurs in cases of intercountry adoption. Such measure may occur

through child protection institutions, duly accredited with the Central Authority of the Requesting State..

International family relocation¹⁸

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:
Please insert text here

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:
There is a debate in the Brazilian Parliament on the issue of domestic violence against women, with a view to including it in the legislation. In addition, there is a draft law under discussion that aims to regulate administrative and judicial procedures for the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Decree No. 3,413/2000) and the 1989 Inter-American Convention on International Child Abduction (Decree No. 1,212/94). The proposal was presented to the Minister of Justice and Public Security by the President of the Federal Justice Council-CJF and is the result of deliberations by the Study Group on the Civil Aspects of International Child Abduction (GESIC), which was established within the scope of the Federal Justice Council to, among other responsibilities, propose improvements to the regulations concerning international child protection.

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

Please explain:

Through the Manual for the Application of Norms of the 1980 Convention (in the second edition made by the Federal Justice Council) and also through events open to the public. Through websites, press interviews, seminars and debates with the participation of administrative and judicial authorities. It should be mentioned that in the judicial sphere permanent groups for the study of the Hague Convention of 1980 were established. The issue of child abduction was also introduced in regular programs of many universities. The Brazilian Central Authority has been trying to promote the 1980 Convention by participating in lectures, seminars, press interviews, academic papers and debates around the country. In March 2023, we hosted a seminar with central authorities from countries that adopt common law, aimed at exchanging experiences and knowledge-sharing.

¹⁸ 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:

Courses held at the Judiciary School of the 3rd Region of Federal Justice, the Judiciary School of the 4th Region, the Judiciary School of the 5th Region and the Mediation Course held at the Federal Regional Court of the 2nd Region.

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.

It is a very relevant tool to get information about the other country.

- b. INCADAT (the international child abduction database, available at www.incadat.com).

Please insert text here

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

It is a very relevant tool to get information about the other country.

- d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net);

Frequently accessed by the BCA.ase insert text here

- 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 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 BCA is in a position to cooperate to the HCCH efforts to provide technical assistance and training to other States-Parties, specially the newly acceding and States that are interested on acceding to the Hague Convention.

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

The BCA is in a position to cooperate with the HCCH efforts to provide technical assistance and training to other States-Parties, specially the newly acceding and States that are interested on acceding to the Hague Convention.

²⁰ 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.

²¹ 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.

- 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.

We are satisfied with the HCCH work in this regard.

- 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 electronic contact platform between the Judges of the Network works very well, but is little used.

- 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.

Please insert text here

Guides to Good Practice under the 1980 Convention

- 54. For any of the Guides to Good Practice²² 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.

- assistance for returning parent, with information and support; - assistance in ensuring respect for undertakings; - help of Interpol to locate the child; - provision of information to applicant parents; - letter of voluntary return is sent to taking parent offering help in settling an amicable agreement; - acknowledgement form to incoming cases; - education

- b. Part II on Implementing Measures.

Please insert text here

- c. Part III on Preventive Measures.

Please insert text here

- d. Part IV on Enforcement.

- Co-operation with Interpol to locate the child, in case they disappear after the return order is issued; - Retention of passports is always asked to the Court when the case is filed; - The BCA works to inform judges about the importance of an expedite decision in the higher courts when a return order is pending an appeal decision. - Help to expedite the issuance of travel documents, when necessary; - Co-operation between different bodies to ensure the safety of the child; - When possible, the BCA helps providing a psychologist to assist at the time of the return.

- e. Part V on Mediation

Please insert text here

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

Please insert text here

²² All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

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?

Information on the Guide of Good Practices is generally included on legal petitions of the Office of the Attorney General, directed to the Judges. The BCA is analysing the possibility of translating Parts I-IV of the Guide to Good Practices - Child Abduction Convention to portuguese, in order to make its language available to all Brazilian practioners, academia and individuals.

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

Not at the present moment.

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*²³ to assist in improving the practical operation of the 1980 Convention in your State?

Please insert text here

Other

58. What other measures or mechanisms would you recommend:

- a. to improve the monitoring of the operation of the 1980 Convention;
Encouraging a closer co-operation between Central Authorities in exchanging information regarding the cases and ensuring safeguards and undertakings will be complied with.
- b. to assist States in meeting their Convention obligations; and
Providing information on the social background of the child at the State of habitual residence; Encouraging a closer co-operation between Central Authorities in exchanging information regarding the cases in a timely manner
- c. to evaluate whether serious violations of Convention obligations have occurred?
Please insert text here

²³ The *Practitioner’s Tool* is available at the HCCH website at www.hcch.net under “Child Abduction Section” then “Guides to Good Practice”.

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”²⁴

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](#)

²⁴ 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 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:

1. Differences related to the enforcement of foreign court decisions.
2. Disputes over the application of the 1980 Convention after the travel authorization period has expired.
3. Difficulty in obtaining information and guidance in cases involving suspected violence against a minor.
4. Difficulties related to countries that do not provide free legal assistance.
5. Difficulties with countries whose central authority closes the procedure without a judicial decision.

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

Please specify:

Please insert text here

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:

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