

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 <i>For follow-up purposes</i> Name of contact person: Name of Authority / Office: Telephone number: E-mail address: Date:	International Social Service (ISS)
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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:

ISS members in Europe note that a new European regulatory framework, Brussels IIb Regulation (2019/1111) has been in force since August 2022, supplementing the 1980 Hague Convention for individual aspects of cross-border child abduction within the European Union. The Brussels IIb Regulation provides for prompt and efficient proceedings and strengthens the provision of out-of-court and amicably mediated dispute resolution as well as the participation of the child. The new EU regime is considered more flexible than its predecessor allowing the consideration of the circumstances characterising each single case in the different stages of the child abduction procedure.

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;
Please insert text here

b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);
Please insert text here

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.

- c) Promoting mediation and other forms of amicable resolution;
Please insert text here
- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
Please insert text here
- e) Obtaining evidence by electronic means;
Please insert text here
- f) Ensuring the safe return of the child;
Please insert text here
- g) Cooperation between Central Authorities and other authorities;
Please insert text here
- h) Providing information and guidance for parties involved in child abduction cases;
Please insert text here
- 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	Please insert text here
Please insert text here	Please insert text here	Please insert text here	Please insert text here
Please insert text here	Please insert text here	Please insert text here	Please insert text here

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:

ISS notes that there have been practical challenges around effective enforcement of 1980 Hague Convention decisions. It has been brought to our attention by some parents that return decisions could not be enforced due to a lack of judicial enforcement measures. Other return orders could not be enforced because of

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.

practical reasons, normally in connection with at least a perceived lack of assistance or support by authorities, particularly in the case of resistance by the child.

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:

[Please insert text here](#)

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 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:

1980 Hague Convention proceedings are commonly delayed due to inefficient legal aid systems. Navigating through the complicated procedures as well as finding appropriate and affordable representation can lead to significant delays of the overall proceedings. With these delays and the further passage of time, the more likely it becomes that children will be considered as settled in their new residence. Returns after a significant amount of time have the potential to undermine the general best interest intent of the convention. Unduly delayed court and legal proceedings are never in a child’s best interests as certainty around home and living arrangements are needed as soon as possible. Hence, ISS urges courts and authorities in practice to focus on efficiency and ensure faster proceedings overall.

Enforcement

No

Yes

Procedure not yet revised

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.”

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:
 Please insert text here

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

- No
 Yes
 Please specify:
 Please insert text here

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:
 Please insert text here

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”.

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?

Please insert text here

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:

Please insert text here

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:

The practical work of ISS intervention is complementary to the Central Authority actions and the preliminary and judicial procedures with a focus on accompanying the parents and children concerned, impartiality towards both parents and a mediation based approach and maintaining and re-establishing child-parent links is a key objective where safe and possible.

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:

A key concern noted throughout the ISS network was the significant expense of obtaining legal support for parents impacted by international parental child abduction (IPCA). For instance, in Canada, France and the United Kingdom legal aid is often underfunded, and most people cannot access it. Even for those who can access legal aid the system may not be properly equipped with lawyers that are expert in conducting cases involving the 1980 Hague Convention. Some jurisdictions such as Australia provide free legal services for left behind parents which is to be supported, but it is noteworthy they do not generally provide legal support to taking parents who may have been subject to family violence.

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

- No
 Yes

Please specify:

As mentioned above, ISS is aware that legal aid is inconsistently available internationally. For instance, in some countries left behind parents must often fund their own litigation for their return application (for example in the United States and Canada). This can be prohibitively expensive for people on low incomes.

Legal Aid systems in some jurisdictions often only support people on very low incomes and in other jurisdictions legal aid or assistance may not exist at all. The lack of access to consistent legal assistance and legal aid funding is a significant problem for equality as well as a significant obstacle to the Convention's ability to ensure the best interests of the child.

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:

Please insert text here

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:

ISS is very much in favor of this step as mediation in all phases of a family conflict is understood to be not the only but at least an important tool to support parents in de-escalation and finding equitable solutions for their situation. In some countries ISS is offering centralized information and support to parents in cross border kinship conflict situations (like France, Germany, Switzerland) and is working on projects to promote this objective as with the "ICare" project with participation of ISS Italy. This support however, should be available also to parents outside of Hague Convention return procedures, even to prevent an abduction.

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.,

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".

by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills⁸)?

Please specify:

Please insert text here

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:

Please insert text here

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:

Please insert text here

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:

Overall, ISS sees great potential for improvement in practice, when ensuring the safe return of children and parents. This point becomes particularly relevant in cases where claims of domestic/family violence are raised. While ISS is supportive of the existing legal framework of the 1980 Hague Convention in this regard, some cases and practice show that the aim of protection upon return is not always met.

There is general agreement within the ISS network that the 1980 Convention needs to strike an appropriate balance between the best interests of the children, and that wherever possible children's futures and custody arrangements should be first determined in their habitual place of residence, but also that parents and children subject to family violence should be properly protected by the 1980 Convention and not returned to hazardous situations. Above all the best interests of the children and the safety and security of children should always be paramount in any 1980 Hague Convention proceedings.

European jurisdiction suggests an assumption among member states that there are appropriate protective measures in place for the return of the child. But what is necessary is an individual reassurance of the safety measures prior to the return decision. Therefore, cooperation among the central authorities must be enhanced. The way in which this topic is handled in practise is not always meeting this need for protection sufficiently.

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".

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.

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:

ISS would strongly support this measure which would add assurance that the 1980 Hague Convention orders have been effective or need further work. In ISS experience authorities and courts have not ordered this so far because there is no procedure under which this could be understood. Furthermore, upon return families often wish to forget what happened and resume their former lives - often ignoring a possible adjustment problem for the child which may need to be addressed.

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:

Please insert text here

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:

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:

Please insert text here

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

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).

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.

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

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:

For EU-member states the above-mentioned European Brussels IIb Regulation supplements Articles 7 (II) f and 21 (III) of the 1980 Convention providing in Article 27 (2) that the court may examine at any stage of the return proceedings whether contact between the child and the left-behind parent should be guaranteed, taking into account the best interests of the child. For German courts, there is even an obligation to carry out a corresponding examination in accordance with §§ 38 (2), 15 (IntFamRVG). Further, international family mediation or mediation-based approaches can assist in this regard.

In general, ISS observes that often children are not well informed and prepared by the competent authorities or services in case of a return. A non-prepared return has important risks for the child, including a forced return and a rupture of family links. Preparing the parents and the child for the return should be a formal support measure that in some countries can be delivered by ISS.

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:

Please insert text here

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
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¹³ See C&R Nos 18-20 of the 2017 SC.

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.”

<p>A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <input 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 type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <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 <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 type="checkbox"/> 9. Provision of regular updates on the progress of the application <input checked="" type="checkbox"/> 10. Other, please specify: <p style="margin-left: 20px; color: blue;">According to reports from parents in some countries the practical handling can be problematic: orders and titles exist, but when the other parent is not cooperating the enforcement is costly and may take too long. Parents often feel that local authorities do not really support them.</p>
<p>A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input 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 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 type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify: <p style="margin-left: 20px; color: blue;">Please insert text here</p>

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:

Some jurisdictions do not routinely appoint representatives for children to represent the voice of the child such as a Guardian *ad litem* or an Independent Child Lawyer (ICL) in 1980 Hague Convention cases. It should be a routine requirement to appoint an appropriate child representative under the 1980 Hague Convention. This would be a meaningful and long overdue change to the Convention to ensure the wishes and best interests of the child are heard. In Europe also social services can support the parents and children in understanding 1980 Hague Convention proceedings.

As regards hearing the child some ISS members argue that the information families and children receive about hearing the child's views needs to be improved. According to reports, children are often neither prepared for their hearing nor does the judge really explain the intention or any limitations of a hearing to the child.

ISS notes that parents can sometimes be distressed or confused about how questioning the child is compatible with the best interests of the child. Therefore, further education and information about the importance of the child's voice and consideration of the child's best interests may be required. UNICEF and other organisations have produced brochures to prepare the child and help the parents prepare the child to the hearing.

It is important that professionals conducting the interview have an in-depth understanding of the logic inherent in the 1980 Hague Convention, in addition to their educational qualifications. It must be explained to the children as well as to the parents that the child's interests will be heard as an input but not necessarily a determining factor to any final decision. The place for an in-depth examination of the best interests and will of the child is usually the custody proceedings at the place of habitual residence (unless there is a legitimate grave risk defence to return). On the one hand, this prevents parents from trying to instrumentalise children for their own ends, on the other hand, it takes pressure off the children and, last but not least, it prevents frustration on the part of the children and they do not get the impression that they will be heard first and then their possible wish to stay will be ignored.

In some countries, ISS can also conduct child consultations by qualified child experts to hear and pass on the voice and best interests of the child in international family disputes.

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:

Please insert text here

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:

ISS support social services and social work to assist parents to reach solutions both legally but also through international family mediation which can be a practical alternative to 1980 Hague Convention proceedings, sometimes preventing costly and lengthy legal proceedings.

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:

There is a growing consensus among academics and non-government organisations that it would be preferable to have 1980 Hague Convention hearings involve a best interests of the child assessment, rather than it being presumed that it is in the best interests of the child that they are returned. This would ensure a greater focus around child rights under the 1980 Hague Convention and would help ensure that any return actually is in the best interests of the child.

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.”

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):
- (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**)
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:

The way in which Article 13 (l) b is partly understood now, it offers some defence against return in cases of personal security issues for the abducted children. There is some concern among network members that if a return is enforced the system still lacks formalised post-return support structures for children and families being returned to the country where they were abducted from. This includes services for returning taking-parents who may be subject to family violence.

Some ISS network members argue the defence against return on family violence grounds should be strengthened and courts should more carefully consider the best interests of the child with regards to proven family violence. ISS Australia knows from research and

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"](#).

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.)

casework experience how the narrow interpretation of ‘grave risk’ favoured by the courts in Australia and many other countries, combined with ‘protective measure’ that are often ineffective and unenforceable, places women and children who have experienced violence at the hands of the left behind parent at risk. Recommendations for similar amendments have been made by the Australian Government’s Law Reform Commission: <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/17-family-law-interactions-jurisdiction-and-practice-of-federal-family-courts-3/hague-convention/>

Some courts seem to take for granted the existence of support structures in member states. However, in many instances support structures and security provisions are not adequate to protect returnees, particularly women who may be subject to family violence. Some ISS network members argue that where appropriate more formal support for returning parents and children should be arranged before return orders are finalised.

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:

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:
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:

ISS is not aware of any such efforts to monitor child safety on return but our experience would indicate that such measures may not be effective. ISS could play a role to assist states in this regard.

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:

ISS is not aware of specific procedures for family relocation in most jurisdictions but there could be provisions for faster decision making and relocation support. This may help prevent parents from leaving just because they assume that a legal way to leave the country does not exist. Elements could include access to a speedy decision and a realistic chance to relocate. However, ISS supports and advocates the Washington Declaration.

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:

Please insert text here

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

Please explain:

In several states ISS is playing an important role in this field. some examples are:

ISS Australia is funded by the Australian Government to conduct legal and social work services around the 1980 Convention and has a dedicated website with significant information on this issue as well as conducting webinars and public information sessions on the 1980 Convention.

Droit d'Enfance, (ISS France) is providing a hotline for missing children (116 000) and provides information to the public and training professionals (lawyers, child protection professionals, law enforcement) about the convention via its website, hotline, pre-mediation advice and webinars.

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."

The German Government has mandated ISS Germany (ISD) with running a Central Contact Point on Cross-Border-Kinship-Conflict and Mediation (ZANK) which simultaneously is mandated as Central Contact Point for Mediation under the Malta Principles. ZAnK has developed and is using several tools to inform parents and professionals about all aspects of this situation. This includes the 1980 Convention. The most prominent tools are a website (www.zank.de), a counselling service (phone and email) printed material distributed in a campaign 2021/22 to about 2000 local social services as well as online trainings for professionals.

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:

Also in training ISS can support and did so during the last years. For example:

ISS Germany has conducted periodic online trainings which have reached around 150 professionals each. These two hour sessions cover "social work across borders" with several modules including, "Cross-border family disputes: custody and contact rights conflicts", as well as "Cross-border child abductions", and also other seminars.

ISS Australia have conducted several webinars and information sessions on the 1980 Convention and International Family Mediation as a preventative measure also reaching hundreds of professional and interested individuals.

ISS France provided an online training for lawyers on international child abduction and conducted webinars to the child protection professionals.

ISS Switzerland is also providing training on mediation and Mediation Based Approach in IPCA cases (initial and continuous training).

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.

Please insert text here

- 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

Please insert text here

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

Please 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;

Please insert text here

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.

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

Please insert text here

- 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.

Please insert text here

- 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.

Please insert text here

- 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.

Please insert text here

- 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.

Please insert text here

- e. Part V on Mediation

Please insert text here

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

Please insert text here

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.

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?

Please insert text here

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

Please insert text here

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;

Please insert text here

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

Please insert text here

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:

ISS submits that the Malta Process should be more heavily promoted! Malta Central Contact Points can be better utilised to use their expertise. As a start, a meeting of the Central Contact Points could be organised. Although the counselling under Malta very seldom leads to a return of the child it is a valuable tool to support persons from Non-Convention countries in working their way through the system. The Malta Process is often a starting point for the reestablishment of contact.

For example ISS Germany alone in 2022 has handled 34 requests from persons in 16 non-Convention countries about child abduction, parental rights in general and contact issues. But Malta Central Contact Points can serve as more than an entry point for persons from non-Hague countries - they can help persons from their own state better understand what to do in order to prevent abduction and or what to do if it has occurred. ISS Germany counselling around family conflict in Non-Hague-Convention countries has conducted 272 counselling sessions in around 40 different countries.

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:
Please insert text here

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:
Please insert text here

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:
Improving the 1980 Convention: ISS experience from a practice and on-the-ground perspective has addressed many ways in which the 1980 Convention could be improved.

Firstly there can be a more conscious recognition of the importance of the timeliness of all of the various actions and proceeding associated with the 1980 Convention so that delay does not undermine the chief intent of the convention around habitual residence and also the best interests of the child.

Article 13 (1) b of the 1980 Convention remains contentious both among states and among ISS network members. At least a review of the effectiveness of the current construction and interpretation of Article 13 (1) b in protecting women and children from genuine family violence should be undertaken, when it comes to assessing the risk in the country of origin and the protection measures in place.

The review should also note the importance of other instruments such as the Malta Process and International Family Mediation in assisting with the intent of the 1980 Hague Convention particularly in non-Hague states. ISS recommends to strengthen mediation and promote parental involvement in the mediation process as potential preventative measures.

ISS would like to generally highlight the critical importance of recognising and promoting International Family Mediation as an alternative option and complimentary measure to

1980 Hague Convention proceedings in some instances. Mediation is a way to support courts in addressing the welfare of the child after judicial decisions, when family conflicts continue after a decision with a strong impact on the child and the family.

ISS has specific expertise in supporting children and families involved in cross-border disputes through the use of expert trained family mediators and social workers. ISS is conducting international family mediation in member countries such as Australia, France and Switzerland.

ISS observes that children may not be well informed and prepared in case of a return. A non-prepared return has important risks for the child, including a forced return and a rupture of family links. Preparing the parents and the child for the return should be a formal support measure that can be delivered by ISS.

Conclusion: An Opportunity to strengthen the 1980 Convention

ISS welcomes the opportunity to comment on the operation of the 1980 Convention. While we recognise the 1980 Convention works well with certain cases we call on the HCCH and central authorities to work together to ensure that the 1980 Convention continues to support the best interests of the child.