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| <b>Title</b>              | <b>2000 Protection of Adults Convention: Follow up on the 2022 Special Commission meeting – Direct judicial communications</b>   |
| <b>Document</b>           | <b>Prel. Doc. No 6B of January 2023</b>  |
| <b>Author</b>             | PB   |
| <b>Agenda Item</b>        | Item III.1.c.  |
| <b>Mandate(s)</b>         | C&D No 23 of CGAP 2022; C&D No 31 of CGAP 2020; C&R No 34 of CGAP 2019   |
| <b>Objective</b>          | To report on the discussions that took place at the First Meeting of the Special Commission (SC) on the practical operation of the 2000 Protection of Adults Convention (9-11 November 2022) on the topic of direct judicial communications and the possible extension of the International Hague Network of Judges to the 2000 Convention |
| <b>Action to be Taken</b> | For Decision <input type="checkbox"/><br>For Approval <input checked="" type="checkbox"/><br>For Discussion <input type="checkbox"/><br>For Action / Completion <input type="checkbox"/><br>For Information <input type="checkbox"/>   |
| <b>Annexes</b>            | Annex I: Relevant Conclusions and Recommendations (C&R) adopted by the Special Commission (SC) to review the practical operation of the 2000 Protection of Adults Convention   |
| <b>Related Documents</b>  | <a href="#">Prel. Doc. No 8 of July 2022 – Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention</a>  |

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# 2000 Protection of Adults Convention: Follow up on the 2022 Special Commission meeting – Direct judicial communications

## I. Introduction

- 1 During the First Meeting of the Special Commission (SC) on the practical operation of the *Convention of 13 January 2000 on the International Protection of Adults* (the 2000 Protection of Adults Convention or the 2000 Convention), which was held in The Hague from 9 to 11 November 2022, the feasibility of direct judicial communications, the development of a network of judges under the 2000 Convention and the extension of the International Hague Network of Judges (IHNJ) to the 2000 Convention were discussed. Prel. Doc. No 8 of July 2022<sup>1</sup> was prepared by the Permanent Bureau (PB), in consultation with the Working Group (WG) mainly tasked with the development of a Practical Handbook under the 2000 Convention, in order to facilitate discussions at the SC meeting on this matter. The Conclusions and Recommendations (C&R) that were adopted by the SC in this regard can be found in Annex I of this document.
- 2 This document aims to provide a summary of the discussions that took place at the SC meeting and their outcome, as well as to outline some practical considerations to be kept in mind as discussions on this matter continue at the 2023 meeting of the Council on General Affairs and Policy (CGAP).

## II. Discussions at the SC meeting and their outcome

- 3 During discussions at the SC meeting, it was noted that cooperation and communication are cornerstones of the 2000 Protection of Adults Convention and crucial to its operation, especially with regard to the coordination of jurisdiction issues. While Central Authorities are responsible for cooperation between Contracting Parties, direct judicial communications between competent authorities are also important for the efficient handling of cases under the Convention.
- 4 The PB noted that some competent authorities may not be able to contact foreign competent authorities through Central Authorities of other States, due to independence and impartiality concerns. The added value of direct judicial communications between competent authorities was, therefore, highlighted. Such direct judicial communications may also take place between a competent authority from a Contracting Party and a competent authority from a non-Contracting Party.<sup>2</sup>
- 5 The SC discussed the advantages of establishing a network of judges under the 2000 Protection of Adults Convention. Advantages include the opportunity to exchange good practices, facilitate communication, encourage the participation of States in matters pertaining to the 2000 Convention, build confidence and trust between Contracting Parties, as well as promote knowledge and expertise regarding the implementation of the 2000 Convention.
- 6 The PB recalled the already existing IHNJ and reminded delegates that the role of the IHNJ had been extended once before. The IHNJ, which was initially created under the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention), has been progressively extended to cover other family matters, including the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (1996 Child Protection Convention). In this regard, it was noted that a flexible framework for direct judicial communications already exists. The SC also discussed the possibility of extending the

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<sup>1</sup> “Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention”, available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Protection of Adults” then “Special Commission meetings”.

<sup>2</sup> See Art. 10(3) of the 2000 Protection of Adults Convention.

*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 (Emerging Guidance and General Principles on Direct Judicial Communications).*<sup>3</sup>

- 7 It was also recalled that the possible extension of the IHNJ to the 2000 Convention was first discussed during an IHNJ meeting in January 2022. During that meeting, some members of the IHNJ expressed concern over their lack of experience in the area of the international protection of adults but acknowledged that the primary role of an IHNJ judge is to act as a liaison. At the January 2022 meeting, IHNJ members were reassured that it was only a matter of time before judges developed expertise in the area.
- 8 At the meeting of the SC, the PB reiterated this reassurance to delegations. Nevertheless, some delegates raised a concern regarding the scope of the role of a judge designated to the IHNJ for the purpose of communications relating to the 2000 Convention. They reflected on whether such judges would be expected to act merely as liaisons or whether they needed to possess substantive expertise. It was agreed that, in light of the small number of cases in this area, the role of a liaison judge would be more than sufficient and that any level of expertise in the area was welcome but not mandatory. In addition, as a possible solution to a lack of experience or expertise in the area, the possibility of appointing an additional judge to the IHNJ, who would act as an expert in the area of protection of adults, was also mentioned.
- 9 Many delegates expressed their support for the proposal of the PB, contained in Prel. Doc. No 8 of July 2022, to extend the Emerging Guidance and General Principles on Direct Judicial Communications to the 2000 Convention and to extend the IHNJ to include members of the judiciary designated for the purpose of communications relating to the 2000 Convention. Delegates agreed that a network of judges under the 2000 Convention would greatly facilitate communication as well as cooperation. They further emphasised the potential and value of having a network of judges under the 2000 Convention, particularly for the purpose of promoting the Convention and encouraging its application. Some delegates pointed out that a network of judges would be an appropriate contact point for communications, in particular under Chapter II of the 2000 Convention, on Jurisdiction.

### **III. Practical considerations pertaining to extending the scope of the IHNJ to the 2000 Convention**

- 10 Based on the discussions during the meeting of the IHNJ in January 2022 as well as during the meeting of the SC, it would appear to be more efficient and effective to extend the existing IHNJ to matters relating to the 2000 Convention, rather than forming a new, distinct network solely for the purpose of the 2000 Convention. In doing so, these new members of the IHNJ would benefit from the structures and processes of the existing, well-established network.<sup>4</sup>
- 11 Practical issues, such as the presentation of the list of IHNJ members appearing on the HCCH website, would need to be considered and addressed. For instance, the PB could amend the list to identify the Conventions for which each IHNJ member is responsible by indicating, in parentheses, the year of the relevant Conventions below or beside the name of the judge. Once CGAP considers that sufficient members of the IHNJ, representing different legal traditions, have been designated for the purpose of the 2000 Convention, the Emerging Guidance and General Principles on Direct

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<sup>3</sup> See the [Emerging Guidance and General Principles on Direct Judicial Communications](https://www.hcch.net) available on the HCCH website at [www.hcch.net](https://www.hcch.net) under the Child Abduction Section then “Judicial Communications”.

<sup>4</sup> [Prel. Doc. No 8 of July 2022](#), *supra* note 1, para. 42.

Judicial Communications could be amended to reflect some technical specificities of the 2000 Convention, such as the issue of coordination of jurisdiction.

- 12 The PB could consult authorities which have already designated a judge to the IHNJ on whether the designated IHNJ judge should also be appointed for liaison purposes under the 2000 Convention, if an additional judge should be appointed in this regard who perhaps has more experience in the international protection of adults, or both.<sup>5</sup>

#### IV. Proposal to CGAP

- 13 Following a recommendation from the SC to this effect, the PB invites CGAP to consider the following Conclusions and Decisions:

Following the recommendations of the Special Commission, CGAP

- a. mandates extending the scope of the IHNJ to matters relating to the 2000 Protection of Adults Convention;
- b. encourages Contracting Parties<sup>6</sup> to designate one or more members of the judiciary for the purpose of judicial communications under the 2000 Convention. Designated members of the judiciary should be sitting judges, or members of the judiciary bound by the same standards of independence and impartiality as a sitting judge, with authority and, ideally, with experience in the area of protection of adults. Contracting Parties could designate existing members of the IHNJ to that effect and / or new members;
- c. mandates the PB to maintain a list of members of the IHNJ, indicating the HCCH Convention(s)<sup>7</sup> for which each member is responsible; and
- d. mandates the extension, with the necessary adaptations, of the Emerging Guidance and General Principles on Direct Judicial Communications to the 2000 Protection of Adults Convention. Such adaptations could be carried out by a Working Group mainly constituted of members of the IHNJ, at a time when CGAP considers that a sufficient number of members of the IHNJ, representing different legal traditions, have been designated for the purpose of the 2000 Convention.

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<sup>5</sup> *Ibid.*, para 46.

<sup>6</sup> In the context of the IHNJ, States are invited to designate judges to the IHNJ whether they are Contracting Parties or not to the 1980 and 1996 Conventions. Designations of liaison judges by non-Contracting Parties could be useful for the purpose of Art. 10(3). See also, *supra*, para. 4.

<sup>7</sup> 1980, 1996 and 2000 Conventions.

## **ANNEX**

# Annex I: Relevant C&R adopted by the SC on the practical operation of the 2000 Protection of Adults Convention

## Part III – Jurisdiction Issues

### Section 5 - Coordination of jurisdiction issues & direct judicial communications (Arts 5-11)

#### C&Rs 15 - 17

- 15 To facilitate communications relating to jurisdiction issues, the SC strongly encouraged competent authorities to make use of the Model Form regarding “Measures of protection concerning the adult” and the Model Form regarding “Information relating to measures of protection concerning the adult”.
- 16 The SC recalled C&R No 14 of the December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults which underlines the potential of direct judicial communications in this area.
- 17 The SC recalled the General Principles for Judicial Communications within the context of the International Hague Network of Judges (IHNJ) and noted that, for the purposes of the 2000 Convention, these principles would be equally applicable to both judicial and administrative authorities:

“In Contracting Parties where direct judicial communications are practised, the following are commonly accepted overarching principles (Principles 6.1-6.3):

- Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.
- When communicating, each judge seised should maintain his or her independence in reaching his or her own decision on the matter at issue.
- Communications must not compromise the independence of the judge seised in reaching his or her own decision on the matter at issue.

In Contracting Parties where direct judicial communications are practised, the following are commonly accepted procedural safeguards (Principle 6.4):

- Except in special circumstances, parties are to be notified of the nature of the proposed communication.
- A record is to be kept of communications and it is to be made available to the parties.
- Any conclusions reached should be in writing.
- Parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.

In Contracting Parties where direct judicial communications are practised, the following information is usually included in the initial communication (Principle 7.5):

- The name and contact details of the initiating authority;
- The reference number of the case;
- The nature of the case (with due regard to confidentiality concerns);
- The issue on which the communication is sought;

- Whether the parties concerned have consented to the communication taking place;
- When the communication may occur (with due regard to any time differences);
- Any specific questions which the initiating authority would like answered;
- Any other pertinent matters.”

**Part VII - Tools to assist with the implementation of the 2000 Protection of Adults Convention**  
**Section 2: Direct judicial communications and a possible network of judges under the 2000 Protection of Adults Convention**

**C&Rs 56-60**

- 56 The SC recalled C&R No 14 of the December 2018 EC-HCCH Joint Conference on the Cross-Border Protection of Vulnerable Adults which underlines the potential of direct judicial communications in this area.
- 57 The SC invited Contracting Parties to consider designating one or more members of the judiciary for the purpose of judicial communications under the 2000 Convention, with a view to, in the future, organise such members of the judiciary into a network. Designated members of the judiciary should be sitting judges, or members of the judiciary bound by the same standards of independence and impartiality as a sitting judge, with authority and, ideally, with experience in the area of protection of adults.
- 58 The SC recommended that the 2023 meeting of CGAP give consideration to extending, with the necessary adaptations, the Emerging Guidance on Direct Judicial Communications to the 2000 Protection of Adults Convention.
- 59 The SC recommended that the meeting of CGAP in 2023 give consideration to extending the scope of the IHNJ to matters relating to the 2000 Protection of Adults Convention. To this end, the SC invited the PB to prepare a document outlining the practical considerations pertaining to such an extension.
- 60 The SC welcomed the work completed by the PB and the WG in finalising Prel. Doc. No 8 of July 2022 on Direct Judicial Communications and a possible network of judges under the 2000 Protection of Adults Convention.