

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE 1980 CONVENTION

Wherever your replies 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	Switzerland
<i>For follow-up purposes</i>	
Name of contact person:	Joëlle Schickel
Name of Authority / Office:	Federal Office of Justice, Central Authority for International Child Abduction
Telephone number:	++41 58 463 88 64
E-mail address:	kindesschutz@bj.admin.ch

PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 Since the 2011 / 2012 Special Commission, 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 in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No
 Yes, please specify:

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

The Swiss Supreme's Court case law in the last years has been consistent with priori case law, for example on the interpretation of Art. 13/2 or 13/1b (for example Decision 5A_936/2016 of 30 January 2017 of the Swiss Supreme Court on the grave risk of harm exception (13 1b), in french, for a summary see point 5.5 below).

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

Article 296 paragraph 2 Swiss Civil Code, which entered into force on 1 July 2014, states the principle of joint parental responsibility irrespective of the marital status of the parents.

New article 301a Swiss Civil Code, also enforced 1 July 2014: Parental care explicitly includes the right to determine the child's residence unless a modifying regulation. A relocation abroad requires the consent of the other parent or of a court resp. authority.

2. Issues of compliance

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 and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague 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* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior to* the 2011 / 2012 Special Commission, please provide such information here.

³ 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 States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

No

Yes, please specify:

We have difficulties communicating satisfyingly with a number of States, which leads to difficulties in cooperating successfully. A swift, efficient and constructive communication is the basis of a good cooperation. There is frequently a great delay between the request for assistance to the other Central Authority and the response; the quality and the amount of information received (too late) are often insufficient to ensure the dutiful treatment of the cases.

In some cases the cooperation with the Central Authority is very good, but the courts either often take years (!) to decide cases, and/or treat Hague return cases as custody cases.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

No

Yes, please specify:

Remark: it is difficult to assess in a specific case if a court is on purpose trying to avoid the application of the 1980 Convention or is just not properly trained on its application.

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

3. The role and functions of Central Authorities designated under the 1980 Convention⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

No

Yes, please specify:

- Contact address on hcch-site was not up-to-date

- Fax not working, phone calls to main number not answered resp. no recall upon request

- No up-dates and answers even upon repeated requests in longsome proceedings

(s. answer to question n° 2.1)

3.2 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 States Parties with whom you have co-operated?

No

Yes, please specify:

- no or very late location of missed minors (in Switzerland and in States Parties)

- little/no assistance in the organisation of the return from States Parties to Switzerland

- little/no assistance in securing contacts between applicants and child during proceedings from States Parties

- little/no information on the proceedings or on the legal system.

3.3 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:

Difficulties in obtaining an article 15 declaration (when no authority has been explicitly given by law the task of delivering such a declaration).

Legal aid and representation

⁴ See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

3.4 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 you have dealt with?

- No
 Yes, please specify:

-

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁵

- No
 Yes, please specify:

[See 2.1.](#)

Also, prohibitive costs for return proceedings in a requested State while requirements for legal aid and/or representation being very difficult to comply with even for applicants drawing social benefits in Switzerland.

In some countries where the State prosecutor represents the left-behind parent, there is little to no communication with our Central Authority and/or the left-behind parent, leading to cases where the requesting parent's position was not well defended, or in cases where the organisation of the return was very difficult.

Locating the child

3.6 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:

[No location of a child respectively only after years of search; not all Central Authorities seem to have appropriate means to this end, it is also not always very clear what exactly can be done and is being done.](#)

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

- No
 Yes, please share any good practice on this matter:

[Swiss Federal and Cantonal Police; communal registration service; Swiss central migration information system.](#)

Information exchange, training and networking of Central Authorities

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁶

- No

⁵ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague 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* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the [Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

⁶ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

Yes, please specify:
Bilateral information and experience exchange, directly and on occasion of bilateral/international meetings.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

Bilateral with France, Italy, Germany, Spain, Portugal, Russia, USA, Dominican Republic. Participation in several regional conferences.

Statistics⁷

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

The data for the Lowe Study were put in incastat.

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

No

Yes, please specify:

Handling of new applications within three working days at the latest; substitute(s) for every absent collaborator of the Swiss Central Authority to ensure that there is no delay.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

- Uncooperative parents
- no location of the child
- Requirement to provide many and expensive certified translations in outgoing cases and even for application form.

4. Court proceedings & promptness

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

Yes

No, please indicate if such arrangements are being contemplated:

-

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

No

Yes, please explain:

Summary proceedings with limitation of evidence proceedings; only two instances; return decisions have to include enforcement regulations; swift enforcement, sometimes even before return orders become final; every other year up-date-meetings with judges/enforcement authorities/children's representatives/mediators.

4.3 If your response to the previous question 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 explain:

-

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*, note 5).

⁸ See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

Yes, please explain:

-

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

- non cooperation of parties/parents and/or child (e.g. going into hiding)
- difficult organisation of return (e.g. need of security measures for child and/or returning parent; expired travel documents; need of visa)

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

No, please explain:

-

Yes, please explain:

- Generally swift order of non-removal clause and seize of travel documents of abducting parent and child (only if the court sees a risk)
- Generally swift nomination of a legal representative for the child (mandatory)
- the court competent for the return proceedings can take any measure deemed necessary, which in the past has also included placing the child in an institution because of a grave harm danger, or organising provisional access rights.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

Yes

No, please explain:

-

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

Yes

No, please explain:

-

4.8 Please comment upon any cases (whether your State was the requesting or 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?

Federal Court judge was calling a US-judge in order to ensure that the primary caring taking mother could return with her baby-child without being rejected at the US-arrival airport and being enabled to remain together with her child in the USA in order to participate and be heard in the already pending custody proceedings

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

- Maintaining a network of experts and institutions in Switzerland that are in a position to provide advice, to carry out also pre-judicial conciliation or mediation, to represent individual children, and that are capable of acting expeditiously
- Accordingly provide direct cooperation and assistance to courts and enforcement authorities

⁹ See **Art. 7(2) h** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

- Organisation of information-meetings every other year with judges, network experts (children's representatives/mediators) and representants of child protection and enforcement authorities
- Assistance, if required also financial support, for the organisation of immediate pre-judicial mediation or conciliation proceedings, as well as mediation during the stage of enforcement of a return decision
- Regular meetings for information and experience exchange with Federal Police (location, enforcement actions)

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

Provide the Central Authority and/or directly the local child protection authority with information as soon as possible; transmit a request to evaluate and, if required, provide protection measures for the returning parent and/or the child (upon request of the primary carer respectively his/her attorney; upon request of the child's representative; upon request of the already involved Swiss child protection authority; upon direction of Swiss court). Since Switzerland has appointed network judges our courts have been informed of this new possibility to communicate. It happens regularly (but not often) that a Swiss court ordering the return directs the Central Authority to communicate information to the authorities of the requesting country.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

Information about Swiss rules on protection of minors and adults; establishing a social report; offer or direct order of child protection measures such as e.g. nominating a family consultant or custodian for the child, placement, superprovisionary regulation of access (limited, monitored or refuse of access) and/or custody rights etc. Conditions and requirements are different for each individual case.

Use of the 1996 Convention to ensure a safe return

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

- No
 Yes, please explain:

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, 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.

LAW

The Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults (hereafter, FA-ACA) entered into force on 1st July 2009. One of the main changes was the concentration of jurisdiction: the Court of Appeal of the canton (there are 26 cantons in Switzerland) where a child is resident at the moment when the application for return is lodged is the sole court competent to deal with applications for

return, including protective measures (Art. 7 FA-ACA). There is only one tier of appeal, to the Swiss Supreme Court (Tribunal fédéral; Bundesgericht), which must be lodged within ten days.

The most important novelty introduced by the the FA-ACA which may have implications for the treatment of domestic/family violence issues under the Convention ist Article 5, which illustrates a situation of "grave harm or intolerable situation" according to Art. 13(1)b:

Art. 5 Return and best interests of the child

Under Article 13 paragraph 1 letter b of the 1980 Hague Convention, the return of a child places him or her in an intolerable situation in particular where:

- a. placement with the parent who filed the application is manifestly not in the child's best interests;
- b. the abducting parent is not, given all the circumstances, in a position to take care of the child in the State where the child was habitually resident immediately before the abduction or this cannot reasonably be required from this parent; and
- c. placement in foster care is manifestly not in the child's best interests.

Both the Government's report to the FA-ACA (in French here: <https://www.admin.ch/opc/fr/federal-gazette/2007/2433.pdf>) and subsequent case law (s. below the references made in our answers to questions 12-13) underline that Art. 5 FA-ACA is just an illustration of Art. 13. It is not intended to replace Art. 13 nor to limit the discretion of a court to sustain a return defence based on Art. 13. If the conditions of Art. 5 FA-ACA are not fulfilled in a specific case, the court nevertheless has to examine if the exception of Art. 13 applies.

Moreover, the FA-ACA also provides that the court shall appoint a legal representative for the child and that either the Central Authority or the Court shall initiate a mediation or conciliation procedure in order to facilitate an amicable resolution of the conflict in the interest of the child.

Finally, the enforcement of a return order can be suspended or ceased in case of serious risk for the child that has not been evident at the time of decision taking (art. 13 of the Federal implementation act (Amending the decision)).

CASE EXAMPLE

The decision of the Swiss Supreme Court 5A_936/2016 of 30 January 2017 is at the moment the latest and most complete decision explaining the mechanism of implementation of Art. 13 (1) b of the 1980 Convention, where allegations of domestic violence were made. You will find the decision, with all references to previous case law, on the website of the Swiss Supreme Court, in French: <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm>. Below, a summary of the decision and a few important points made by this decision for cases with domestic/family violence allegations:

Considering that there was no grave risk that the children's return to the UK would expose them to physical or psychological harm or otherwise place them in an intolerable situation, that the refusal of the mother to go back to the UK with two of her three children was unfounded and that it would be in her power to decide to go back with them, the Swiss Supreme Court decided that the children had to go back to the UK, even though there were allegations of domestic violence and the father has just a restricted access right and would not be capable of taking care of the children. (Update: a month after the decision, the mother decided to go back to the UK with her children; the Swiss enforcement authority is helping her organise the return.)

In order to satisfy the conditions of Art. 13 (1) b, the "intolerable situation" must apply to the child: an intolerable situation for the abducting parent is not enough, as long as this does not cause an intolerable situation for the child.

In principle, the stability regained after having been confronted with repeated episodes of family violence could suffice to meet the requirements of Art. 13 (1) b, but in the case at hand it appears that in reality the cause of the endangerment is the unfounded refusal of the mother to go back to the UK with her children and the following reorganisation of the custody and access rights, rather than the return order itself. The Supreme Court considered that the mother could reasonably be expected to go back to the UK, at least until a final decision on the custody rights.

The Supreme Court underlines that, since the return is not ordered to a precise place in the State of the habitual residence, the mother and children absolutely do not have to go

back to their previous place of residence or anywhere near the father, but they could chose a geographically distant place within the boudaries of the UK.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

Yes, depending on individual case. E.g.: no information to applicant about date, time and place of return, returning parent and child are picked up at the arrival airport by a representant of a local authority, organisation of a direct transfer to a women's shelter etc.

Post-return information

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

Right after the return we proceed to close our file and there is regretfully no more partner authority entitled to provide us with information. Protection orders of the court are only temporary valid for the time of return proceedings. Only if measures have been separately established by an authority for protection of minors and adults, it may ask for information/recognition according to HC 1996.

If there have been serious concerns about the safety of the child and/or the primary carer, we would appreciate a follow-up in order to evaluate the outcome and the conditions, requirements and possibilities of a secure return for future cases

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No
 Yes, please explain:

-

6. Voluntary agreements and mediation

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

When contacting the taking parent in incoming cases, if indicated, the central authority sets a short deadline for the voluntary return of the child or to start a mediation procedure. The requesting parent is at any time free to file a return petition with the competent court.

Our Central Authority is (particularly in incoming cases) very committed to initiate a mediation or conciliation procedure on a voluntary basis between the conflict parties. We are running a network with experts and in special cases we even offer financial support in case of indigence.

Article 8 para. 1 of the Federal Act of 21 December 2007 on International Child Abduction and the Hague Conventions on the Protection of Children and Adults determines that the Swiss First Instance Court shall initiate conciliation or mediation procedures with a view to obtaining the voluntary return of the child or to achieving an amicable resolution if the Central Authority has not already done so.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

The implementing Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults of 21 December 2007 does already foresee that the Swiss CA has to encourage and support mediation and conciliation proceedings, the courts shall initiate such procedures with a view to obtaining the voluntary return of the child or to achieving an amicable resolution (art. 4 and 8).

We have provided courts and the mediators of our network the Guide to Good Practice, which serves as guideline in practice.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

No, please explain:

Although there has been no formal appointment of a Central Contact Point, the Central Authority already acts in this function and gives any party requesting it information on mediation procedures, in Hague and in non-Hague abduction cases. Our Central Authority and the courts are cooperating with a specialised network of Swiss mediators including the Swiss Foundation of International Social Service.

Yes, please explain:

7. Preventive measures

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

No

Yes, please describe:

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

Yes

No, please explain:

This issue was already discussed at the last Special Commission and the agreement was to not continue work on a model consent to travel form (C&R 92). We do not see any reason to reopen the discussion at this stage.

In Switzerland, there is no obligation to use any kind of "travel form" for children travelling with one of their parents, and the development of such a model form could lead to the impression that such a form is mandatory, leading to insecurities and problems.

8. The Guide to Good Practice under the 1980 Convention

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

Generally speaking, the past recommendations of Special Commissions and the good practices in the various guides were taken into account when drafting our national implementation law (See our Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults of 21 December 2007

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

¹⁵ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

<https://www.admin.ch/opc/en/classified-compilation/20091488/index.html?>

- b. Part II on Implementing Measures. Please explain:
same
- c. Part III on Preventive Measures. Please explain:
same
- d. Part IV on Enforcement. Please explain:
same

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

We sent the internet-link to the courts and experts of our network

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

It might be interesting to evaluate whether any of the older guides would need an update.

9. **Publicity and debate concerning the 1980 Convention**

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

No

Yes, please indicate the outcome of this debate or discussion, if any:

Return orders are frequently published and commented in newspapers, rarely in TV. The published stories are about both incoming and outgoing cases.

It was because of mainly one case which was given a lot of (negative) publicity that the Parliament decided to enact the Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults of 21 December 2007; (<https://www.admin.ch/opc/en/classified-compilation/20091488/index.html>), with the goal of making the return proceedings in Switzerland quicker and more child-centered.

One case in 2013 was very present in the media and led to some discussion in parliament, but no decision was made to amend or review the 2009 Act.

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

Our website:

<https://www.bj.admin.ch/bj/en/home/gesellschaft/kindesentfuehrung.html>

Interviews to the medias

Presentations at Universities, to experts etc.

Publication of a brochure (both online and in paper).

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION
--

10. **Transfrontier access / contact**¹⁶

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

No

Yes, please explain:

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;
Same problems as in Switzerland if the caring parent is not cooperative at all.
- b. the effective exercise of rights of access; and
Same problems as in Switzerland if the caring parent is not cooperative at all
- c. the restriction or termination of access rights.

Please provide case examples where possible.

When the guardian parent stubbornly does not want to allow the access rights, there is little the authorities can do in order to ensure the enforcement of the access rights.

Generally speaking, the support offered by Central Authorities in cases of access cases varies greatly.

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

Competence for the regulation and enforcement of transfrontier rights of contact/access is at the authority for protection of minors and adults resp. court at the minor's Swiss residence. Our CA can mainly assist to locate the child, to find an experienced legal representative or mediator, and to link the applicant with the competent Swiss authority/court.

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

See 1.3.

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State 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:

¹⁷ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁸ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

Any State interested in becoming a party. All States which participate in the Malta Process.

*The "Malta Process"*¹⁹

12.2 In relation to the "Malta Process":

a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?²⁰

no.

b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

No

Yes, please explain:

c. What is your view as to the future of the "Malta Process"?

Before continuing with the Malta Process a careful analysis of the results obtained so far are needed as well as an assessment of which type of activities bring the best results, in order to focus the resources on these type of activities (for example, regional conferences as opposed to one big Malta conference). It would also be interesting to get a review report of the Working group on mediation under the Malta Process, in order to assess the results of the work so far and give a clear direction for the future.

<p>PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU</p>
--

13. Training and education

13.1 Can you give 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?

Organisation of information-meetings every other year with judges/enforcement authorities/children's representatives/mediators effects a better understanding of the application of HC 1980 and an improvement of the cooperation between courts and involved experts/institutions.

14. The tools, services and support provided by the Permanent Bureau

¹⁹ The "Malta Process" is a dialogue between certain States 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 Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

²⁰ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

In general

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

- a. The Country Profile available under the Child Abduction Section.
Good general information, especially when having cases with new State Parties.
- b. INCADAT (the international child abduction database, available at < www.incadat.com >).
Great source of information, however resources internally to provide with summaries of the decisions are often lacking.
- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;²¹
Good source of information.
- d. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);
Good overview on general topics and new developments.
- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²
Except for the Lowe Statistic presented at each Special Commission, it is unclear how the statistics of INCASTAT are being used and are of use for the States parties.
- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;
A Convention is only as good as its implementation - all States Parties have an interest in providing technical assistance to new States Parties and should if possible be actively involved and offering help, resources permitting.
- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴
This task is also to be done by all State Parties in their regular bilateral dealings with non-Hague countries.
- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;
This is essential for a good cooperation.
- i. 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
This is a great initiative and resource as long as the contact details are accurate and the members reactive and committed.

Other

14.2 What other measures or mechanisms would you recommend:

²¹ Available on the Hague Conference website at < www.hcch.net > 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.

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

- a. To improve the monitoring of the operation of the Conventions;
Have regular meetings (Special Commissions or smaller working groups on certain topics)
- b. To assist States in meeting their Convention obligations; and
Technical assistance measures (from the Hague Conference or from other States Parties)
- c. To evaluate whether serious violations of Convention obligations have occurred?
Short of establishing a supra-national surveillance organ this is difficult to achieve. Cooperation and communication among States Parties is vital to ensure a good implementation of the Convention.

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS

15. Views on priorities and recommendations for the Special Commission

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

For the 1980 Convention (for the 1996 Convention, please see our questions to the specific questionnaire): mainly the follow-up to the last Special commission:

- progress on the "mediated agreements" Expert Group
- progress on the 13/1b Working Group and discussion of the first draft of the GGP
- hear about and discuss the PB's view on "considering ways to enhance further the effectiveness of Special Commission meetings" (see C&R 87/d)
- discuss and approve an updated Request for return (and request for access) model form, which can greatly improve the cooperation between States. We recently updated all our forms (based on the model form) which can be found online in several languages: <https://www.bj.admin.ch/bj/fr/home/gesellschaft/kindeentuehrung/verfahren.html>
- discussion of the merits and limits of using information technology (see C&R 11) in view of data protection etc
- review and discussion of the CA training visits program (C&R 29) and how to improve
- discuss Art. 15 (C&R 63) based on a prel. doc by the PB
- update on C&R 71 (pilot project for effective secured electronic communications)

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

We have the following general comment on the Special Commission:

We recommend a similar approach as the last Adoption Special Commission where the discussions built on past Special Commission in order not to rediscuss the same issues and not have C&Rs that are 10 pages long. Maybe for the States coming for the first time a special one-day training could be organised just before the Special Commission? They also need to be made aware of the past discussions and decisions of Special Commissions before.

Another idea is for newer States Parties to inform the PB of their specific needs in advance so that they could be directed to other States and discuss these topics on the side of the Special Commission (for ex. one State would like to hear from another how concentration of jurisdiction was done, or how a mediation program was implemented).

Even though at the last Special Commission the proposal of a protocol to the Convention made by Switzerland was not met with the necessary approval, we think that the issues raised are still of concern and will probably not be improved significantly through soft law measures. We therefore encourage an open discussion on how to address these problems and also how to encourage States to fulfill their obligations under the Convention.

