

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	New Zealand
<i>For follow-up purposes</i>	
Name of contact person:	
Name of Authority / Office:	
Telephone number:	
E-mail address:	
Date:	

PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

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

- No
 Yes

Please specify:

[Please insert text here](#)

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;

[Covid-19 saw the increased use of technology. We have found that as courts became more familiar with the technology there has been an increase in requests for the participation of the LBP in court hearings or witnesses sought.](#)

[The requirement for original documents to be transmitted to the requested State has significantly reduced. While documents were transmitted electronically prior to the pandemic, the original documents are no longer required to follow by courier or post which may reduce delay in the progress of cases.](#)

- b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);

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;
 In New Zealand there are a variety of options for amicable resolution and mediation. With the greater reliance and growing familiarity with remote mediation models during covid-19 the availability and methods to participate in mediation or amicable resolution remotely has increased

- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
 With the uncertainty caused by covid-19, there is a greater appreciation of the importance to maintain or secure contact pending the determination of Hague Convention proceedings.

- e) Obtaining evidence by electronic means;

- f) Ensuring the safe return of the child;
 The global uncertainty of the covid-19 pandemic saw a greater focus on the situation for the child and TP on return. We have found there was a greater reliance on the grave risk and intolerable situation exception due to the situation the child and TP will return to.
 This has lead to an increase in requests for specific evidence about the situation for the child/ren on return so that the court can make an informed assessment that the circumstances on return will support a safe return for this child and TP.
 This can lead to delay in determining matters primarily due to undertaking a more in depth inquiry into matters of substance which requires significant evidence to be provided and potentially may undermine the integrity of the Convention.

- g) Cooperation between Central Authorities and other authorities;
 Cooperation between Central Authorities remains a vital component or key to the operation of the Convention. This was highlighted during covid-19 where mitigating measures or restrictions to travel were constantly changing and co-operation between Central Authorities was vital to secure a safe return of children.

- h) Providing information and guidance for parties involved in child abduction cases;
 The Ministry of Justice, Family Court of New Zealand publishes information on its website about the 1980 Convention, who to contact if you would like to know more, as well as information about how to prevent an abduction or child from departing New Zealand.
 The New Zealand CA also works with other agencies to provide information about the Hague Convention and role of the New Zealand CA.
 The New Zealand CA will discuss with TP and LBP their particular situation and circumstances, and will seek information about resources and support services that can be accessed in the event a return is to occur.

- 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
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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.

LRR v COL	Court of Appeal	Superior Court	<p>In LRR v COL the Court held that return of the child to his habitual residence, Australia, would give rise to a grave risk of the child being placed in an intolerable situation. The mother and child would be in a precarious and stressful financial and housing situation. The mother held justifiable fears for her safety in Australia: the father had been convicted of assaulting the mother and of breaching family violence orders and bail conditions. Orders made by the Australian courts had been ineffective to protect her in the past, as the father had not complied with those orders. The Court was satisfied that the risk that return of the mother and the child to Australia would cause a relapse in terms of her mental health and substance abuse was very high. Return to Australia would place not only the mother's mental well-being at risk, but also her sobriety.</p>
Roberts v Cresswell	Court of Appeal	Superior Court	<p>In Roberts v Cresswell the court said they cannot rule out the possibility of stress and challenges for the children on return. The most material risk appears to be the risk to the mother's mental health that has flow-on consequences for the children. But looking at the situation in the round, the risk of outcomes that are so disadvantageous that they can be described as intolerable for the children is in our view far from grave. There will be transitional challenges for the children, but they can be expected to quickly readapt to life in France: that is after all where the parents made their home, where the children were born, and where the children were initially raised. There will be significant challenges for the mother in returning to France. But the risk that these challenges will result in an intolerable situation for the children did not materialise before she came to New Zealand, and the risk that that will occur on her return falls well short of the description "grave".</p>
Simpson v Hamilton	Court of Appeal	Superior Court	<p>In Simpson v Hamilton the appellate court ruled that it could replace the judgement of the lower court without restraint. Although the Court held that none of the pleaded exceptions to an order for the return of the child had been made out, two years had passed</p>

			<p>since the original Family Court decision, the child was now 12 and had spent one third of her life in New Zealand where she was well settled and happy at her school, there was therefore “a significant change of circumstances” that gave the court discretion to ignore the clear words of section 105 Care of Children Act. This was despite the mother’s actions in fleeing from Germany and then actively trying “to defeat the father’s right to be involved in Anna’s life”. The court was also influenced by a fresh psychologist’s report received for the child which had emphasised that the child had suffered from post-traumatic stress disorder as a result of her father and associates who forcibly uplifted the child from her school classroom in front of her teacher and classmates while the class was still operating. A warrant was obtained from the Family Court to remove the child and return her to her mother’s care, which happened the same evening. The psychologist found that 18 months later the child was still extremely distressed and anxious and remained scared of her father. The psychologist concluded that the child would be adversely psychologically impacted if an order was made for her to be returned to Germany, despite her objections.</p>
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4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

Please insert text here

Issues of compliance

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

- No
- Yes

Please specify the challenges encountered:

There have been instances where requested States have been slow to respond to communications which has caused delay and uncertainty in what are already uncertain times.

With the increased focus on the situation for the child and TP on return, and desire to provide some level of certainty, requests for assistance to obtain information in circumstance beyond the power and function of the Central Authority have increased. The desire to obtain this information needs to be tempered to the extent appropriate under the legal framework of the requested State.

Difference in the interpretation of what constitutes a protective measure and the extent to which measures may be imposed to facilitate a safe return is a growing concern. Some States have adopted a very broad interpretation of what constitutes a protective measure and others a very narrow interpretation.

The difference in interpretation has the potential to undermine the primary purpose of the Convention and that the law of the contracting States relating to such rights be respected.

This raises the question whether some of the conditions imposed are in effect creating self executing orders where the conditions imposed cannot be properly met and undermine the principles of the Convention.

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

- No
 Yes

Please specify:

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:

Please insert text here

Enforcement

- No
 Yes

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.”

Procedure not yet revised

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

Please insert text here

Mediation / ADR

No
 Yes
 Procedure not yet revised

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

Please insert text here

Court proceedings and promptness

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

No
 Yes

Please specify:

The New Zealand domestic law incorporating the Hague Convention provides for expedited proceedings. The New Zealand Central Authority has mechanisms in place to ensure the prompt handling of a case and expedited determination.

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:

It was New Zealand's experience that due to the increasing complexity of cases during the covid-19 pandemic, timeframes to determine cases increased, but are now returning to pre-covid timeframes.

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:

New Zealand CA supports communications among Network Judges and between Network Judges and Central Authorities
Judicial communication is used infrequently but can be useful in clarifying concerns of a general nature.

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”.

If the information sought may more appropriately be obtained through other channels to meet the rules of evidence then information will be communicated about the proper process so that the information is provided on a proper evidentiary basis that can be used as evidence during the court proceedings.

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

- No
 Yes

Please specify:

New Zealand has designated two judges to the IHNJ and encourage States to consider the designation of judges to join the IHNJ.

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:

Please insert text here

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:

On receipt of an application the NZ Central Authority considers the documentation and, if the requirements are met to make an application, the NZ Central Authority will engage counsel to assist the LBP. NZ Central Authority retains a panel of lawyers who have expertise in this area of law to prosecute the case on behalf of the LBP.

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:

For outgoing cases: there can be delay in communications regarding requests for information about the practice in the requested State. Particularity if the country profile is not available or is not up to date.

In some States there can be unexplained delay in obtaining the contact details of counsel or attorney who the LBP can engage.

For incoming cases: if cases are not complete or additional information is sought there can be lengthy delay in receipt of the information requested.

In some cases there has been delay in transmitting the application and supporting document by the requesting central authority without explanation. If the delay is significant updating evidence may be required creating unnecessary obstacles to case progression.

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:

In New Zealand Family Law practitioners are charged with a responsibility to attempt amicable resolution. In some cases formal mediation occurs. In others it may be an exchange of proposals or round table meetings.

At any time during the proceedings parties may be referred to mediation and/or alternative amicable resolution services to identify the issues and attempt to resolve matters.

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:

New Zealand has the advantage of being a small island nation. The particular expertise or affiliation of mediators is considered when identifying the mediation model most suited to the particular case.

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:

If additional information or evidence is required a request for information will be sent to the requesting Central Authority outlining the type of information sought. It is for the requesting State to determine how or by whom the information is provided. That is, should the LBP, the Central Authority or another agency provide information about the services and supports available in the requesting State.

If there are concerns about risk to a child on return, the Central Authority will liaise with the New Zealand International Child Protection Unit to obtain information about child protection services in the requesting State and support services that may be available to a returning child and TP.

The New Zealand CA will inform the Central Authority of the requesting state of any concerns so that the competent authorities can be made aware of those concerns and need for protection and enable them to take the required precautions.

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

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.

- Yes
Please specify:
It is not within the role of the Central Authorities under article 7 of the 1980 Convention to monitor the effectiveness of measures following the return of a child to their jurisdiction.
We recognise the Convention is based on mutual respect and trust. As such we respect the requesting State has robust systems and processes in place to keep its citizens safe.

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:
The New Zealand CA has participated in conferences facilitated by the HCCH Asia Pacific Regional Office which has been very helpful in establishing good relationships between member States.
The New Zealand CA shares its experience with States and has constructive discussions on matters of mutual interest particularly with States within the Asia Pacific region.
The New Zealand CA has regular contact with other Central Authorities to discuss matters of mutual interest.

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:
The New Zealand CA and courts have internal procedures and guidelines in place to ensure the prompt handling of cases. The guidelines and protocols are reviewed and updated.

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

- No
 Yes
Please specify:
The NZ Central Authority is responsible for monitoring individual cases from receipt of the case until determination. That is ,until the child has safely departed New Zealand.

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).

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

- No
- Yes

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

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
A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)	<input checked="" 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 checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide

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

¹³ See C&R Nos 18-20 of the 2017 SC.

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.”

	<input checked="" 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 checked="" type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify: Please insert text here
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input checked="" type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify: Please insert text here

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:
N/A

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:
Under New Zealand domestic law a child must be given reasonable opportunities to be heard (either directly or indirectly) in any judicial and administrative proceedings affecting them, as provided for by our domestic legislation, section 6(2)(a) of COCA, sections 5(d) and 11(2) and (3) of the OT Act and Article 12.2 of UNCROC

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:

In New Zealand there is a Practice Note issued by the Principal Family Court Judge that sets out a suggested brief in Hague Convention cases for a lawyer appointed by the Court to represent the child and for a court appointed psychologist if a report is directed.

The suggested brief for a psychologist having regard to the child's objection to return:

- (a) What is the basis of that objection?
- (b) Does it appear as if the objection is reality based and/or affected by undue influence and/or able to be addressed by explanation or intervention?
- (c) Does the child have sufficient maturity and understanding to recognise the implication of the objection?
- (d) Having regard to the child's age, cognitive ability, maturity and the options available, how might the child respond if the Court makes an order for return despite the objection?

In circumstances where grave risk is advanced as the sole defence (without being coupled with an objection, for example, because of some kind of adverse psychological impact of the return to the country of habitual residence, depression or psychological decline possibility for the child) then the brief might be:

Having regard to the defence that the child might be exposed to grave risk of physical or psychological harm or would otherwise be placed in an intolerable situation (and having regard to the factual basis asserted by the parent in support of that objection):

- (a) What, if any, would be the psychological impact on the child of an order for return
- (b) In what ways could the psychological effect be ameliorated?

In general, a suggested brief for lawyer for the child might be as follows:

- (a) Taking into account the defences raised by the respondent, what are the child's views?
- (b) From the child's perspective are there any other defences which should be pleaded?
- (c) From the child's perspective, are there any interim orders and/or directions that the Court should make pending the hearing?

For example:

- (i) directions in relation to contact with the left behind parent;
- (ii) alternative placement if there is a flight risk or alternatively direction that child not be removed from current physical residential address pending hearing.

- (d) To represent the child at the hearing.

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:

It is our internal process to include an affidavit of the applicable law setting out the domestic law attributing rights of custody to the left behind parent and support services that are available to a returning TP.

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:

- 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:

Reliance upon the concept of the best interests of the child is not an uncommon argument in child abduction proceedings.

o In the 2019 Court of Appeal case of Simpson v Hamilton the court decided on the basis of a recent updated psychologist report that the significant risks to the child's mental health and future development could not now be justified by any prospective benefit in terms of the Hague Convention. This was despite the mother removing the child from Germany without the consent of the father.

o In the 2020 Court of Appeal case of LRR v COL the court utilised the best interest of the child concept, as well as the mother's frail mental health to decline the father's application to have the child returned to Australia. There was also evidence of recent Australian convictions of the father for assaulting the mother and for breaching family violence orders and bail conditions.

o In the 2023 High Court case of Anderson v Lewis the judge considered that for the reasons set out in the decision, the 11-year-old's firm objection to be

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."

returned to the United States should be viewed as decisive. The child was settled in his school where he was doing well and was in what he states is a safe and secure home environment over the last 20 months. The best interest of the child accordingly prevailed in this case over the requirements of the Care of Children Act 2004.

o A different outcome however resulted in the 2023 Court of Appeal decision in *Roberts v Creswell* where the children were ordered to return to France. Whilst accepting that the mother would face practical difficulties relocating back to France, the court expected that the mother would be able to seek further protective measures from the French Family Court, if these were required in the best interests of the children.

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**)

The New Zealand CA notes that during covid-19 the 1996 Convention provided a level of reassurance to member States to secure a safe return of children by making orders under Art 7 and 11 for urgent protective measures.

The New Zealand CA is concerned that the interpretation of what constitutes a protective measure under the 1996 Convention imposed to facilitate a safe return can have a very broad interpretation.

The difference in interpretation has the potential to undermine the primary purpose of the Convention and that the law of the contracting States relating to such rights be respected.

(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

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.)

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:

[Please insert text here](#)

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:

[Please insert text here](#)

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:

[It is not within the role of the Central Authorities under article 7 of the 1980 Convention to monitor the effectiveness of measures following the return of a child to their jurisdiction.](#)

We acknowledge in some cases it may be of interest to know the long term situation for the the child/ren concerned. But the child/ren have been returned to the State of habitual residence which has been found to be the most appropriate State to consider matters concerning the welfare and best interests of the child/ren concerned.

International family relocation¹⁸

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

Yes

Please describe such procedures, if possible:

If a child has been abducted to New Zealand then the non-NZ parent can make an application to the court for a return of the child to the country specified in the order. If an order for return of the child is made then the court is able to impose appropriate conditions covering the manner in which the child is to be returned, including an order that the costs of returning the child be paid by the person who removed the child to New Zealand. The order for return of the child can be enforced by the issuing of a warrant for the child's return.

The specific conditions relating to the manner of return of the particular child are imposed by the court.

No

Please describe how the authorities deal with international family relocation cases, if possible:

Please insert text here

Publicity and debate concerning the 1980 Convention

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

No

Yes

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

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:

Please insert text here

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

PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

Training and education

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

Please provide details:

Biennial conferences are held for counsel, members of the judiciary and government agencies including child protection services and Police. The conferences provide an opportunity to discuss issues and developments, to provide consistency in approach nationally and when making a request for return.

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.
 - The Country Profile is a very useful reference tool used by the Central Authority and counsel. It would be helpful if the information for each signatory State could be updated annually, as the information can quickly become incomplete.
 - b. INCADAT (the international child abduction database, available at www.incadat.com).
 - the INCADAT database continues to be a very useful tool for case management, but it also continues not to be comprehensive and reported cases can be sourced from other sites.
 - c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;²⁰
 - The judges' biannual newsletter on international child protection is published on the HCCH website and is free to access. Very interesting articles can be accessed..
 - d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net);
 - the "child abduction section" of the HCCH website continues to be a practical resource for Central Authorities and other stakeholders.
 - 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;
 - New Zealand supports the provision of assistance and training for the 1980 and 1996 Conventions within existing resources to ensure consistent interpretation of the concepts of the Conventions.

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
 - New Zealand supports the wider ratification of, or accession to, the 1980 (and 1996) Conventions, but lacks existing resources to undertake such work.
- 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.
 - New Zealand continues to support communications between Central Authorities and intervening to facilitate contact in individual cases where obstacles arise.
- 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.
 - New Zealand continues to support such communications.
- 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.
 - the Central Authority in New Zealand promptly responds to specific questions raised by other central authorities, judges or stakeholders regarding the operation or interpretation of the 1980 (and 1996) Conventions, particularly as they relate to New Zealand issues.

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
The "Guide to Good Practice in Mediation" is an important tool for all Convention States to promote amicable dispute resolution in Hague abduction cases.

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".

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

Please insert text here

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;
- ensure that regular meetings are held to review the practical operation of the Convention by contracting States and that the results of those audits are publicly available.

b. to assist States in meeting their Convention obligations; and
- that contracting States assist new member States by facilitating and encouraging visiting experts to assist States in meeting the Convention obligations.

c. to evaluate whether serious violations of Convention obligations have occurred?
- Any serious violations of Convention obligations would be reported to the relevant country's Central Authority.

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

PART III – NON-CONVENTION STATES

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

Please explain:

[Please insert text here](#)

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

Please indicate:

[Please insert text here](#)

The “Malta Process”²⁴

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

Please explain:

[Please insert text here](#)

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

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

Views on priorities and recommendations for the SC

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

Please specify and list in order of priority if possible:
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:
Please insert text here