



REIMAGINE JUSTICE FOR CHILDREN

TECHNICAL BRIEF

CHILDREN IN CIVIL PROCEEDINGS



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INTRODUCTION

“ [T]he family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance ...”

– *UN Convention on the Rights of the Child, preamble*

The family is the natural environment for the growth and well-being of children.¹ Despite this, millions of children worldwide grow up deprived of parental care and separated from their parent(s) and families.² Divorce and separation, domestic violence, parental abuse and neglect, poverty and lack of access to social protection and services are among the causes that can lead children to grow up deprived of parental care.³

An estimated 281 million people (approximately 3.6 per cent of the world’s population) currently live outside their country of origin.⁴ The increase in movement of people across borders, resulting in more and more families and couples made up of people from different states, increases the risk of cross-border family disputes, separation, and incidences of parental abduction, child protection issues (parental responsibility) and cross-border maintenance obligations, among others. At the same time, humanitarian crises resulting in displacement also place children at risk of separation from their families and in need of care and protection.

The *UN Convention on the Rights of the Child* (CRC) recognises family life in its preamble. Every child – as far as possible – has the right to know and be cared for by his or her parents or, where

applicable, members of the extended family or community as provided by local custom.⁵ Every child also has the right not to be separated from his or her parents against their will, except when competent authorities, subject to judicial review, determine that separation is necessary for the best interests of the child.⁶ When separated, children have the right to maintain contact with both parents, except if it is contrary to a child’s best interests.⁷ In line with the right to leave and enter countries for family reunification (Article 10) and the obligation on states to take specific measures to combat the illicit transfer and non-return of children from abroad (Article 11), provide protections of the child’s right to secure family attachment and relationships.

CIVIL ASPECTS OF CHILD PROTECTION

Children may come into contact with the justice system in civil proceedings, including when parents have disputes over their children, in matters concerning access, custody, guardianship and adoption or because an intervention is needed for their care and protection. They may also come into contact with judicial proceedings in cross-border matters and increasingly due to surrogacy and international surrogacy arrangements (ISAs). While reliable data on the number of children and families who come into contact with the judicial system in civil proceedings is unknown,⁸ in some regions, the number of children in these situations is said to be on the rise due to an increase in divorce and separation.⁹ This technical brief covers the civil aspects of child protection, but not all aspects of civil proceedings in general.

PARENTAL DISPUTES OVER CHILDREN

The starting point is that both parents have an equally-shared parental responsibility, irrespective of whether the child lives with both parents. That means that both parents are to be involved in making major (non-routine) decisions about and that impact their child(ren). In reality, conflicts can arise between parents. For instance, decisions as to the child's place of residence or the contact they may have may also be subject to dispute in cases where parents and children have a different residence status and might be separated. If parents agree on the child's place of residence, but their decision is putting the child at risk of harm, a decision to protect the child (care proceedings) must be taken (to supersede the parent's decision). Parents may also dispute a child's education, medical treatment and religious upbringing. In the absence of agreement between parents, a judge must make a decision and ensure it would not be contrary to the interests of the child.

ACCESS AND CUSTODY

When parents are separating or getting divorced, "the children are unequivocally affected by decisions of the courts."¹⁰ Decisions need to be made in terms of how a child is to maintain his or her relationship with each parent following separation, including by determining whether "custody" is to be joint or sole, with which parent the child(ren) will have their primary residence and the access or contact they will have. In many states, issues of maintenance for the child, access and custody are determined by a judge or through court-directed mediation.¹¹ Often, children are not provided with opportunities to be heard – either before a judge or court-directed mediation – and their best interests are not assessed.

Child legal representation in civil proceedings

Conflicts of interests and tensions can arise between a child and his or her parent(s) or guardian in civil proceedings, especially in cases of separation and divorce. However, a child may be too young to give instructions to a lawyer. As such it is common in a number of states for a guardian to be appointed to represent the interests of the child during litigation. A **guardian *ad litem*** is someone appointed by the court to represent and safeguard the child's best interests in proceedings. A guardian can be a social worker, legal officer, child protection officer or even a relative. The existence, process and duties of a guardian will vary from state to state. The prompt appointment of a guardian is a key procedural safeguard to ensure respect for the best interests of the child, especially for those who are unaccompanied or separated.¹²

CARE PROCEEDINGS

While family separation must be avoided, there may be situations where the removal of a child from his or her parents is necessary to prevent harm to the child. It may be necessary in cases involving parental violence or that involve abuse or neglect of the child by the parents.

While informal care arrangements may not go through the courts in some contexts, care proceedings may also be connected to other proceedings, including immigration and asylum for unaccompanied or separated migrant and asylum-seeking children, or in cases of family reunification across borders. Prevention of family separation and family-based care must be prioritised over residential care.

CROSS-BORDER PROCEEDINGS

Children may come into contact with civil proceedings in cross-border situations. This includes all situations where civil proceedings involve children or legal guardians connected with several states (by their nationality or their residence). For example, a child may have one or both of their legal guardians living in another country or a child may be without parents in a country that is not of his/her nationality or that

is not of his/her habitual residence. This also includes all care proceedings involving several states, like intercountry adoption (ICA), or placement in alternative care like *Kafala*, kinship or guardianship across borders.

For children who cannot be raised by their birth parent(s) or are placed in another form of suitable family-based care in their state of origin, domestic adoption and ICA may be considered based on the principle of subsidiarity.

WHY ACTION IS NEEDED?

The outcome of civil proceedings can have a profound impact on the life of a child, especially when a decision concerns with whom a child will live, what contact they can have with their parents or siblings and which country they will live in.¹³ These outcomes can have a significant impact on a child's identity, development and future life chances.

Access to justice is critical to establishing strong child protection systems that can prevent and respond to neglect, abuse, exploitation, violence and family separation.¹⁴ However, poor decision-making and/or the lack of any formal and informal gatekeeping mechanisms across some states results in children being separated from families and assigned care provision that is inappropriate or not in their best interests,¹⁵ including being placed up for ICA.

Gatekeeping¹⁶

Gatekeeping is a key issue for any state, including those that are high-, low- or middle-income, stable or fragile.¹⁷ It is a recognised and systematic procedure that ensures children and families are referred to the most appropriate services or care arrangements, with the aim of limiting the number of inappropriate placements. Gatekeeping is an essential tool in diverting children from unnecessary initial entry into alternative care and reducing the number of children entering residential care institutions. Gatekeeping is usually carried out by social welfare professionals or trained staff at institutions, but is often aided by members of the community and local service providers.

NOT ALL STATES RECOGNISE COMMON PARENTAL RESPONSIBILITY OR PARENTAGE

While the CRC recognises that both parents (or legal guardians) have common and primary responsibility for the upbringing and development of the child,¹⁸ discrimination in law and practice exists. In many states, marital status remains a determinant of parental rights. For instance, not all national legal systems recognise joint parental responsibilities of fathers when parents are not married. Accordingly, some parents of children born outside of wedlock may not be considered legal parents, and not given the right to raise their child(ren). In some contexts, single or unwed mothers can not register the birth of their child without a male/father. Consequently, children born out of wedlock may not enjoy the same rights as children born within a legal marriage.¹⁹

Inequality between men and women also exists in some states when parents are separating or getting divorced. Some states only have a sole custody regime, and joint custody may not exist. In cases of divorce, some states only allow a woman to have custody until a certain age.²⁰ Studies have shown the importance of the role that fathers play in a child's development, even at early stages in life.²¹

Parental alienation

The UN Special Rapporteur has noted the “widespread adoption of ‘parental alienation’ in justice systems.”²² While the CRC does not define this concept, it is broadly understood “to refer to deliberate or unintentional acts that cause unwarranted rejection by the child towards one parent.”

In some customary and informal justice (CIJ) systems, customary rules are applied to determine custody disputes.²³ This is especially so

in countries that operate on the basis of Shari’a law or those where the allocation of parental rights is determined by cultural and religious traditions and norms.²⁴ The discriminatory application of norms regarding guardianship in CIJ may perpetuate the practice of child marriages and discriminate against children born outside of marriage, who have been orphaned or who have lost their father.²⁵

NO UNIVERSAL STANDARD FOR CIVIL PROCEEDINGS, AND CHILDREN ARE RARELY HEARD

Despite the consequences, there is no universal standard to regulate children in civil proceedings²⁶ and studies show that children are rarely heard in either contested or uncontested matters.²⁷ Depending on the matter and the state, the hearing of the child can be either mandatory, optional or not regulated at all. In cases of separation and divorce, some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views.²⁸

In cases where a child is separated from his or her parents and placed in alternative – preferably family-based – care, the CRC Committee has noted that the child’s right to be heard is not always taken into account.²⁹ When children are heard in civil proceedings, most states lack “rules and guidelines explicitly prescribing how professionals should conduct hearings”.³⁰ This is particularly problematic when proceedings concerning a child’s custody are linked with domestic violence and the perpetrator may happen to be a parent(s).

At the same time, children involved in formal civil proceedings may not be parties to the case and their legal representatives, where available, may not be able to intervene directly

in the proceedings. When they can be heard, judicial proceedings are often complex and not child-sensitive, making it difficult for children to meaningfully participate and voice their opinions. In cross-border cases, children have limited possibilities to be represented by a legal professional or counsel.³¹

Customary justice

It is important to recognise that most judicial problems are resolved outside of the formal justice system. At the same time, there is little information available on child participation in civil and family proceedings in CIJ systems. What is known is that in CIJ systems, children are rarely given an opportunity to participate – let alone be heard – in matters where their interests are affected.³² Instead, a parent or other family member will speak on the child's behalf.³³

Legal ambiguity and complexity in cross-border situations often have negative impacts on children's care and protection.³⁴ Despite the adoption of the so-called Hague Children's Conventions, which provide protections for children in cross-border situations, not all states are party to them. Although substantive civil and family law are the responsibility of states, enhancing cooperation and harmonising rules on cross-border civil and family law is important. The lack of effective procedures for the enforcement of judgments in cross-border cases is detrimental to the best interests of the child.

CHILDREN DISPLACED ABROAD NEED PROTECTION

Children without parental care – including children in alternative forms of care – displaced abroad are at heightened risk of violence, exploitation, abuse and need protection.³⁵ When children are

unaccompanied and separated, care and custodial arrangements, including guardianship, is one issue amongst many that arises. Article 19 of the CRC calls on States parties to take necessary measures to prevent all forms of violence against children, including abuse and neglect, as well as to protect and support child victims.

PARENTAL ABDUCTION GREATLY IMPACTS CHILDREN

Parental child abduction occurs when one parent – without the consent of the other – unilaterally decides and takes the child (wrongful removal) or keeps the child after a visit (wrongful retention) in breach of custody and/or access rights of the other parent. Parental abduction can take place within a state, however, the impact and the complexity increases in cross-border cases.

When children are abducted by a parent, they sometimes lose contact with the parent “left behind,” preventing the child and parent from having a relationship. Most of these cases concern mothers, many of whom are fleeing violence or seeking to protect their children from abuse.³⁶ It also affects their right to an identity that recognises the child's right to maintain family relations in Articles 7 and 8 of the CRC. Addressing parental abduction through a custody claim in a foreign court can be costly, time-consuming and counter productive.³⁷

In practice, returns can take a long time because of court proceedings.³⁸ This greatly impacts the child who does not get to see the left-behind parent and places him or her in limbo about where he or she will grow up and with whom he or she will live. The more time passes, the more difficult it is to return and reintegrate.³⁹ Alternative dispute resolution (ADR), including mediation may not be available in some

states, despite its efficacy for family conflict resolution.⁴⁰ While efforts have been made across a number of states, in some, parental abduction is not criminalised. At the same time, not all states are party to the 1980 Abduction Convention⁴¹ and bilateral agreements to govern same may not exist.

ILLEGAL ADOPTIONS ARE WELL DOCUMENTED

An illegal adoption is one that, although it has in fact been legalised, is characterised by illicit or illegal activities at a previous point in the process, such as abduction, sale and trafficking, falsification of documents, and wrongful obtention of consent.⁴² While there is no reliable data on the number of children who have been or are being adopted as a result of being sold, trafficked or subjected to other illegal acts and illicit practices,⁴³ the practice is well documented.⁴⁴

Illegal ICAs are “fuelled by a demand from prospective adoptive parents in higher income countries for children from lower income countries” and often lead to illegal acts.⁴⁵ They must be understood as a crime and may also violate the prohibition of the abduction, sale or traffic of children and enforced disappearances. Nonetheless, illegal adoptions are reflective of larger “deficiencies in child protection systems that are exploited by criminal networks, often with the involvement of state officials or as the result of permissive state policies.”⁴⁶

Among the victims are adoptable and adopted children, biological families, as well as prospective adoptive parents and adoptive parents. Illegal ICAs take place “through a wide variety of illegal acts or illicit practices, such as abduction and

sale of and trafficking in children, enforced disappearance and wrongful removal of children in the context of enforced disappearance, as well as adoptions involving fraud in the declaration of adoptability, falsification of official documents or coercion, lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption.”⁴⁷

In response to illegal adoptions, a number of sending and receiving⁴⁸ states have suspended ICAs. ICA, when pursued in conformity with the standards and principles of the 1993 Adoption Convention, is among the range of stable and permanent care options for children who cannot be cared for in a family setting in their country of origin.⁴⁹

Children's rights and surrogacy

Surrogacy, especially through international arrangements, is increasingly used as a method of family formation around the world. Although there are no precise global figures on how many children have been born through surrogacy, the development of assisted reproductive technology (ART), changes in social norms and the trend for having children later are leading to more children being born through surrogacy.

To date, no internationally agreed-upon definition of the different forms of surrogacy exists. In some instances, surrogacy occurs in ways that protect, respect and uphold the human rights of children born through surrogacy. However, current, international human rights law does not provide safeguards specifically focusing on domestic surrogacy and ISAs, which places children born through surrogacy at risk. Moreover, very few states have domestic legal and policy frameworks that provide safeguards for the rights of children in ISAs and, in some instances, domestic surrogacy.⁵⁰

INTERNATIONAL STANDARDS

“ [T]he child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

– *UN Convention on the Rights of the Child, preamble*

The family

Families come in diverse forms and assume diverse functions across states and within them.⁵¹ Some children live with their married parents, unmarried parents, with one parent, grandparents or members of their extended family. There is no internationally accepted definition of the term “family”. The *UN Committee on the Rights of the Child* (CRC Committee) has clarified that “family,” as mentioned in the preamble to the CRC, is understood as “a variety of arrangements that can provide for young children’s care, nurturance and development, including the nuclear family, the extended family and other traditional and modern community-based arrangements, provided these are consistent with children’s rights and best interests.”⁵² The term has been interpreted to include “biological, adoptive, foster parents or members of the extended family or community as provided for by local custom.”⁵³

PARENTAL RESPONSIBILITIES

A parent is a person with parental responsibility according to national law. The CRC uses the term “parental responsibility” as opposed to terms like “custody”. This “aims to symbolise that children are rights-holders.”⁵⁴

Article 18 of the CRC underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child. It recognises that both parents (or legal guardians) have common and primary responsibility.⁵⁵ Regional instruments such as the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) explicitly affirms that “in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance” (Article 7).

In the exercise of their rights, the CRC recognises that parents are to provide appropriate direction and guidance to children. Parents or legal guardians are also responsible for ensuring that living conditions are adequate to the child’s physical, mental, spiritual, moral and social development, within their abilities and financial capacities.⁵⁶ This applies also to “members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child”.⁵⁷

Article 5 of the CRC

States parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

In all matters, including civil and family proceedings, states are to recognise children as rights-holders separately from their parents.⁵⁸ Article 5 seeks to strike a balance between the rights of the child, the responsibilities and duties of parents and state obligations, in light of the importance of the family as set out in the preamble.⁵⁹ It does not, however, leave room for or justify violent, cruel or other degrading forms of discipline.⁶⁰

As noted by the CRC Committee in its 2023 statement, the concept of a child's evolving capacity is "central to the recognition of children's status as rights-holders independent of their parents, and contributes to protecting the child from arbitrary family control."⁶¹ As children "grow, develop, mature and expand their social circle beyond their family, they are entitled to an increasing level of responsibility, agency and autonomy in the exercise of those rights."⁶²

The CRC Committee has emphasised that parents' responsibilities, rights and duties to provide appropriate direction and guidance are not absolute and must be exercised in a manner that respects and ensures children's rights. In cases where parents fail to provide adequate protection, children are entitled to receive protection from the state.⁶³

Birth registration⁶⁴

Birth registration is a fundamental human right, and helps ensure that children's other rights are upheld. Birth registration is the process of recording a child's birth. It is a permanent and official record of a child's existence and provides legal recognition of that child's identity.

At a minimum, it establishes a government record of where a child is born and to whom. Birth registration is required to obtain a birth certificate – a child's first legal proof of identity. While birth registration is almost universal in high-income countries, two in ten children under five years of age globally are not

registered in low- and middle-income countries. There are a range of reasons why children do not get registered, including limited access to registration services or the lack of fully functioning civil registration systems.

In many parts of the world, women do not have the same rights or ability to register their child's birth as men. There are still 24 countries where women do not have the same rights as men to legally pass their nationality to their own children. Birth registration can also help protect migrant and refugee children from family separation, trafficking and illegal adoption. Discrimination in national laws and policies needs to be reviewed and revised to eliminate the negative impacts on children. Civil Registration, Vital Statistics and Identity (CRVSID) is a comprehensive system that integrates civil registration (e.g., birth and death registration), vital statistics and identity management to ensure that every individual has a legal identity from birth to death.

NON-DISCRIMINATION

Children enjoy all of the rights as set out in the CRC without exception and on the basis of non-discrimination. Article 2 of the CRC prohibits discrimination of any kind, irrespective of the child's – or his or her parent's or legal guardian's – background and legal or other status. The CRC Committee has stressed that "neither the 'protection of the family' nor references to culture or religion, can be a justification for laws, policies or practices" to allow any form of discrimination, including in relation to custody.⁶⁵

BEST INTERESTS OF THE CHILD

Article 3 of the CRC recognises that the best interests of the child shall be the primary consideration in all actions concerning children, including those taken by courts in civil and family proceedings.

In the context of parental separation and divorce, for example, the right of children to have their best interests as a primary consideration applies to all decisions, acts and measures affecting them, directly or indirectly, at the time of separation from their parents and thereafter. In the context of care proceedings, the best interests of the child is often phrased negatively (e.g., “unless” or “except” in the best interests of the child),⁶⁶ giving room for the best interests of the child to serve as the key factor in determining whether it is possible for a child to be cared for by his or her parents. The CRC establishes that the best interests of the child are no less than the paramount consideration.⁶⁷ The best interests of the child must be preserved at each and every stage of the adoption process – including from the initial decision that a child is ‘adoptable’, right through to follow-up support measures with children and their adoptive families.

BEST INTERESTS ASSESSMENT AND DETERMINATION

The CRC Committee in *General Comment No. 14* underlines that the best interests of the child is a three-fold concept⁶⁸:

1. **A substantive right:** The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for states, is directly applicable (self-executing) and can be invoked before a court.

2. **A fundamental, interpretive legal principle:** If a legal provision is open to more than one interpretation, that which most effectively serves the child’s best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.
3. **A rule of procedure:** Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child requires procedural guarantees. Furthermore, the justification of a decision must show that this right has been explicitly taken into account. States parties shall thus explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations, be they broad issues of policy or individual cases.

The CRC Committee describes the best interests of the child as a “dynamic concept that requires an assessment appropriate to the specific context.”⁶⁹ Best interests assessments (BIAs) involve “evaluating and balancing” elements to make a decision in a specific situation for a specific child.”⁷⁰ The specific and unique circumstances of each child and his or her characteristics are to be assessed. It is important to note that this flexibility also leaves room for abuses.



The best interests determinations (BIDs) build on assessments by a multi-disciplinary team of well-trained professionals with appropriate judicial involvement.⁷¹ BID is a formal procedure where the relation between the rights of the child, the rights, duties and responsibilities of the parents and the obligations of the state are negotiated and balanced in a specific case so that a comprehensive decision can be made that best protects the rights of the child. BID procedures are important in determining the most suitable care arrangement based on the best interests of the child as well as the contact and visitation rights of parents and other family members.

The CRC Committee in [General Comment No. 14](#) on the right of the child to have his or her best interests taken as a primary consideration provides guidance on how to understand, interpret and apply the principle, setting out the following guiding criteria in order to undertake a BIA in order to inform a BID. The CRC Committee, however, stresses that the best interests of the child “is flexible and adaptable” and should be “adjusted and defined” to address the specific situation of the child, taking into account their personal context, situation and needs.⁷²



CHILD'S VIEWS

A child's right to participate in decisions that affect them is central to making effective and appropriate decisions. The CRC Committee has emphasised that children have the right to be heard in civil proceedings⁷³ and that soliciting and hearing children's views is a requirement when assessing and determining the child's best interests.⁷⁴

Child participation is both a guiding principle and a substantive right under the CRC. Article 12 provides that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting him or her, and provides the child with the opportunity to be heard in any proceedings affecting the child. This applies equally to CIJ proceedings where the child's interests are implicated.⁷⁵ The child must always be offered the opportunity to express his or her views, but is not obliged to do so.

The evolving capacities of the child (Article 5) must be taken into consideration when the child's best interests and right to be heard are at stake.⁷⁶ Children's capability to express their own views should be determined on a case-by-case basis with an individual assessment of each child.

Where sufficient efforts are made to facilitate participation, even very young children have non-verbal ways to make their views known where they are adequately supported by skilled professionals and under certain conditions.⁷⁷ Accordingly, age limits set in national law should not be absolute and should leave room for younger children to have the opportunity to be heard by a judge. The CRC Committee has provided that, when determining the weight to accord to a child's views, it must be considered that the “levels of understanding” of a child should not solely be dependent on age, but also on “information, experience, environment, social and cultural expectations and levels of support.”⁷⁸

RIGHT TO RECEIVE INFORMATION

The right to receive adequate information is a right of children involved in judicial proceedings (see Articles 12 and 13). Access to information is a precondition for children to exercise their rights and to participate in a meaningful way in the decisions and proceedings concerning them. The rights of the child to seek, receive and impart information⁷⁹ are also part of procedural safeguards for children's involvement in judicial proceedings. The state has the obligation to provide information in a manner that is adapted to the child's age and maturity. Information should also be provided in a language the child understands.⁸⁰

It is important to acknowledge that parents, legal guardians or representatives are likely to act as intermediaries between the child and judicial authorities throughout the course of judicial proceedings.⁸¹ Therefore, it is important to ensure that parents also have information. However, the fact that parents receive information should not mean that children should not also be directly provided with information.

CHILD'S IDENTITY

Article 8 of the CRC sets out the right of the child to preserve his or her identity. This right must be respected and taken into consideration in the BIA. When considering the placement of a child in alternative care, the BIA should take into account the religious and cultural identity of a child, including the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Article 20(3)). According to the CRC Committee, "[t]his implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country."⁸²

PRESERVATION OF THE FAMILY ENVIRONMENT AND MAINTAINING RELATIONS

Under Article 9(1), children have the right not to be separated from their parents against their will, except when necessary for their best interests.⁸³ The removal of children from the care of their family should be seen as a measure of last resort and should, whenever possible, be temporary. Removal decisions should be regularly reviewed and the child's return to parental care – once the causes of removal have been resolved or have disappeared – should have the best interests of the child as a primary consideration and be based on a comprehensive assessment.

The right to contact also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.⁸⁴ Notably, the CRC affords these rights to situations of cross-border separation (Article 10).⁸⁵ While a number of states have national laws and measures to protect and guarantee this right, enforcement of contact rights could be improved in practice, including in relation to unmarried fathers. An illustrative example is the finding of the European Court of Human Rights that a presumption against contact for an unmarried father violates this right.⁸⁶

The CRC Committee has emphasised that "preventing family separation and preserving family unity are important components of the child protection system," and are based on the right provided for in Article 9.⁸⁷ States have an obligation to assist parents in fulfilling their childcare and child-rearing responsibilities. States must ensure children enjoy the protection and care necessary for their well-being, taking into account the rights and duties of the parents.⁸⁸ This includes support to parents through social and financial assistance, childcare facilities and services and other support programmes (Articles

18 and 27), and developing social support programmes for children and their caregivers to prevent and respond to all forms of violence, exploitation and neglect of children.⁸⁹ Children should benefit from social security, including social insurance.⁹⁰

CRC Committee *General Comment No. 14* on preventing family separation⁹¹

Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the state should provide support to the parents in assuming their parental responsibilities and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

CARE, PROTECTION AND SAFETY OF THE CHILD

While family separation must be avoided, Article 20 of the CRC provides that a child who is temporarily or permanently deprived of his or her family environment, or those who cannot be allowed to remain in that environment shall be entitled to special protection and assistance of the state. When assessing and determining the best interests of the child, such protection as is necessary for a child's well-being should be taken into consideration (Article 3(2)). This should also include an assessment of the safety of the child, but also against future risk of harm.

THE HAGUE CHILDREN'S CONVENTIONS

“[D]ifferences between countries' legal systems often leave gaps in the legal framework, resulting in uncertainty as to which authority has jurisdiction, which law is applicable, how decisions are recognised and enforced and what cooperation mechanisms are available to overcome challenges of cross-border judicial or administrative procedures.”

– *Conference on Private International Law*

Private international law (PIL) aims to address the cross-border aspects of civil issues relating to relationships between private persons. The [*Hague Conference on Private International Law \(HCCH\)*](#)⁹² is a global intergovernmental organisation currently made up of 292 members (191 States and the European Union).⁹³ The mandate of the HCCH is to progressively harmonise PIL rules at the global level through the preparation, negotiation and adoption of Hague Conventions. It develops and services multilateral legal instruments, which become legally binding in states that are party to it. The Permanent Bureau serves as the Secretariat of the HCCH. HCCH Members designate “National Organs” to guide, monitor and promote the work of the organisation.⁹⁴ It has no mandate, however, to assist in individual cases. The principle of mutual recognition and direct cooperation between national courts are the main tools for facilitating cross-border access to justice.⁹⁵

When it comes to children, the relevant conventions address a diverse range of issues, including in relation to parental responsibilities across borders, the international recovery of child support and other forms of family maintenance, child protection measures across borders (e.g., placement in foster care, *Kafala*, residential in institutions or

protection measures for displaced children), ICA and international child abduction. Collectively, the so-called “Hague Children’s Conventions” provide “workable systems and practical procedures,” implementing children’s rights as set out in the CRC in cases across borders.⁹⁶



All of the conventions feature the use of Central Authorities – main focal points designated by states to receive and transmit requests – and the promotion of amicable resolution of disputes. Contracting Parties to HCCH Conventions contribute through their Central Authorities, designated under specific HCCH Conventions.

2007 CHILD SUPPORT CONVENTION

The Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) and the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (Protocol) seek to establish a modern, efficient and accessible international system for the cross-border recovery of child support and spousal maintenance, replacing the United

Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956. As of April 2025, there were 55 Contracting Parties.⁹⁷ Article 2 of the 2007 Child Support Convention provides that the Convention applies generally to child support arising out of parent-child relationships towards children under the age of 21 and to spousal support.⁹⁸ However, Contracting Parties can restrict the Convention’s applicability in relation to child support to children (i.e., those under 18). Article 30 provides a mechanism for the recognition and enforcement of maintenance arrangements. For the first time in history, states parties agreed that a child or a spouse can, for free, request family maintenance in their country of residence against someone in another state party without traveling, starting a new legal procedure or needing to physically collect money abroad.

United States’ Uniform Interstate Family Support Act

The 2007 Child Support Convention came into force in the **United States** in 2017. As family law is traditionally a state matter, the Convention was implemented through the *Uniform Interstate Family Support Act* (UIFSA). The Hague Child Support Convention: [Judicial Guide](#) has been developed to address requests under the Convention. The UIFSA amendments integrate the appropriate provisions of the Convention into state law and applies between states.

A non-exhaustive [implementation checklist](#) was developed with a list of questions that may arise prior to or upon implementation of the 2007 Child Support Convention. For more information, a practical handbook for [caseworkers](#) and one for [competent authorities](#) as well as a [practitioners’ tool concerning cross-border recognition and enforcement](#) of agreements reached in the course of family matters involving children (including child support) have also been developed by HCCH.

European Union Maintenance Regulation

European Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations aims to remove the danger of parallel proceedings between Member States, and to ensure that maintenance claimants can obtain an order in one state that would be directly enforceable in another Member State, without the need for additional formalities.

1996 CHILD PROTECTION CONVENTION

Which children benefit?

The 1996 Convention specifically protects children who are:

- the subject of international parental disputes over custody or access or contact;
- the subject of international abduction;
- placed abroad in alternative care arrangements that do not come within the definition of adoption;
- the subject of cross-border trafficking and other forms of exploitation, including sexual abuse;
- refugees or unaccompanied and separated; or
- relocated internationally with their families.

The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (1996 Child Protection Convention) is the principal global instrument governing cross-border protection of children (i.e., under 18 years of age) under civil law. It establishes:

- which state has jurisdiction to take measures to protect a child or his or her property;

- which law is applicable for exercising jurisdiction;
- which law applies to parental responsibility;
- that the protection measures are recognised and enforced in all Contracting States; and
- cooperation between signatory countries through Central Authorities designated by each Contracting State.

Measures included in the 1996 Child Protection Convention relate to parental responsibility, custody rights, guardianship, placement of the child, placement of the child in alternative care, the supervision of that care and how the child's property is managed. While the 1980 Abduction Convention provides the remedy for wrongful removal and retention, the 1996 Child Protection Convention allows for the establishment and (advance) recognition and enforcement of relocation orders and the conditions attached to them.

It complements global and regional instruments relating to the protection of children, including those dealing with unaccompanied and separated migrant and asylum-seeking children.⁹⁹ While it excludes "decisions on the right of asylum and immigration," measures regarding the protection and or representation of a child applying for residence or asylum fall within its scope.¹⁰⁰

The 1996 Child Protection Convention incorporates child protection within the scope of parental responsibility. Article 3 of the 1996 Hague Convention provides a non-exhaustive list of measures of protection. These include:

- the attribution and exercise of parental responsibility;
- rights of custody and access;
- the appointment of a guardian or legal representative in relation to the person or the property of the child;

- foster and institutional care placements;
- the provision of care by *Kafala* or any other analogous institution; and
- the supervision by a public authority of the care of a child by any person having charge of the child.

It also sets out universal laws regarding parental responsibility and measures of child protection. It seeks to avoid conflicts between legal systems in decisions concerning child protection by providing cross-border rules on cooperation and jurisdiction to help determine which authorities are competent to take necessary measures for child protection.

However, for children whose usual habitual residence cannot be established, the state with jurisdiction is usually where they are present, but wherever possible decisions should be taken jointly by the states involved. The same applies for children who are displaced across borders or who are refugees or internationally displaced because of disturbances occurring in their country.

Brussels IIa and IIb Regulations

Since 2005 in the European Union (EU), the [Brussels IIa Regulation](#) has determined the court responsible to decide on the custody and access rights of children, the recognition and enforcement of judgments between EU countries and how to settle cases of child abduction. The Brussels IIb Regulation replaced the Brussels IIa Regulation as of 1 August 2022, and applies only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after that date. [Notifications](#) and [online forms](#) are also available. The Brussels IIb Regulation determines the courts of which Member States have jurisdiction to decide on matters of parental responsibility or matrimonial matters, where there is an international element.

With regard to unaccompanied and separated migrant and asylum-seeking children, the 1996 Child Protection Convention complements other global and regional instruments relating to the protection of children. Decisions with respect to asylum and immigration are excluded from the scope of the Convention (Article 4). However, measures regarding the protection and or representation of children who apply for asylum or for immigration status fall within the scope. In 2023, HCCH published a [document](#) on the application of the 1996 Child Protection Convention to unaccompanied and separated children (UASC), largely the result of the situation with regards to children from Ukraine.¹⁰¹

APPLICABLE LAW

The state exercising jurisdiction does so under its own national law. It may exceptionally take into consideration the law of another state that is closely connected to the situation where it is in the best interests of the child. It is important to note that a state can only refuse to apply the law designated by the 1996 Child Protection Convention for reasons of public policy if in the best interests of the child.

RECOGNITION AND ENFORCEMENT

Enforcement and recognition is one of the features of the 1996 Child Protection Convention. It provides that measures taken in a Contracting State under the Convention to protect a child or their property must be recognised in all other Contracting States. When protection measures are declared enforceable in another state, that state must enforce them as if it had taken them itself, and do so in accordance with its own law.

1980 CHILD ABDUCTION CONVENTION

Civil remedies are available to parents in cases of international abduction. The [*Hague Convention on the Civil Aspects of International Child Abduction*](#) (1980 Abduction Convention) is the main international agreement covering international parental child abduction. [As of April 2025](#), 103 states have ratified the 1980 Abduction Convention. The CRC Committee has welcomed and recommended ratification of this “key international human rights instrument” as a general measure of the CRC’s implementation.¹⁰²

The aim of the 1980 Abduction Convention is to protect children from the harmful effects of their wrongful removal or retention across international boundaries, ensure their prompt return to the state of their habitual residence and protect rights of access.¹⁰³ It applies to any child under or up to the age of 16 with “habitual residence” in a Contracting State immediately prior to the violation of custody or rights of access.

What is habitual residence?

The concept of ‘habitual residence’ is the primary basis for jurisdiction in all modern HCCH Conventions, including the 1980 Child Abduction Convention, but it is not explicitly defined. Habitual residence is an autonomous, factual concept to be interpreted based on each Convention’s objectives and on a case-by-case basis.

In determining the concept of habitual residence, some jurisdictions follow a child-centred approach, while others focus primarily on the shared settled intention of the parents/caregivers. However, it appears that most jurisdictions pursue a hybrid approach, either putting more weight on the parents’ intentions or focusing more on the child, depending on the facts of the case and the age/maturity of the child involved.¹⁰⁴

The 1980 Child Abduction Convention provides a process through which a parent can seek to have their child returned to the country of the child’s habitual residence following a wrongful removal or retention. The Convention sets out when the removal or retention of a child across borders is considered wrongful and provides that, in such cases, the child should be returned to their state of habitual residence. The Convention provides for exceptions to such a return in Articles 12, 13 and 20. In this way, it protects family relationships that are already protected through parental responsibilities acquired in the state of the child’s habitual residence. A [model form](#) has been developed by HCCH, which states can use in order for parents to request return.

Although the 1980 Abduction Convention predates the CRC, it gives effect to the right of the child to maintain personal relations and direct contact with both parents on a regular basis unless contrary to their best interests when the child is separated from one or both parents (CRC, Article 9(3)), including where the child’s parents reside in different states (Article 10(2)). It further gives effect to Article 11 of the CRC, which requires states to take measures to combat the illicit transfer and non-return of children abroad.

Return proceedings

Return proceedings refers to proceedings pursuant to the 1980 Abduction Convention for the return of a child or children that takes place before the judicial or administrative authority of the Contracting Party to which the child has been removed or where the child is being retained (“requested state”). Depending on the jurisdiction, return proceedings may be filed by the left-behind parent, an attorney representing the left-behind parent, the Central Authority in the requested state and/or a public institution such as a public prosecutor.

Prompt return is meant to allow courts of the habitual residence of the child to make the necessary and appropriate decisions about custody, residence, access of contact and, if appropriate, lawful relocation as soon as the child is returned.¹⁰⁵ Return proceedings under the Child Abduction Convention are intended to be expeditious, and decisions should be rendered within six weeks from the date of commencement of return proceedings (Article 11). It should be noted, however, that a decision on return is not a custody or access determination.¹⁰⁶ Custody and access is reserved for the authorities of the state of habitual residence.

Alternative frameworks are needed to deal with child abduction where states are not party to the Convention.¹⁰⁷ The conclusion of bilateral agreements with states that are not party to the Abduction Convention is a practice encouraged by the CRC Committee.¹⁰⁸

Trends suggest that the number of taking mothers is on the rise, and that taking mothers are mostly joint primary carers.¹⁰⁹ In 2021, 75 per cent of the persons wrongfully removing or retaining children were mothers, followed by fathers (23 per cent), with a smaller incidence (2 per cent) of wrongful removal or retention by grandparents, institutions or other relatives, such as step-parents or siblings.¹¹⁰ Less than half of all return applications were decided in a court, 59 per cent resulting in a judicial return order.¹¹¹ Where applications for return have ended in judicial refusal, the most common ground was a grave risk that the return would expose the child to physical or psychological harm (Article 13(b)) and/or that the child is not (or is no longer) habitually resident in the Requesting State. The child's objection to the return – and therefore the child's views – as set out in Article 13, was also relied upon as a ground for refusal in 22 per cent of all cases.¹¹²

Guide to good practices related to the 1980 Abduction Convention

HCCH has developed a number of guides to good practice:

- [Central Authority practice](#) (Part I)
- [Implementing measures](#) (Part II)
- [Preventive measures](#) (Part III)
- [Enforcement](#) (Part IV)
- [Mediation](#) (Part V)
- [Prompt return \(exception in Article 13\(1\)\(b\)\)](#) (Part VI)
- [Transfrontier contact \(general principles and guide\)](#)

1993 ADOPTION CONVENTION

The *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Adoption Convention) covers only adoptions that create a permanent parent-child relationship.¹¹³ Intercountry adoption (ICA) is intended as a protection measure when in-country care for a child who cannot remain with his or her family is not available. According to the Convention, a **simple adoption** is one in which the parent-child relationship that existed before the adoption is not terminated but a new legal parent-child relationship between the child and his or her adoptive parents is established, and the adoptive parents acquire parental responsibility for the child¹¹⁴ (see Art. 26(1) a) and b)). A **full adoption** is one in which the pre-existing parent-child relationship is terminated.¹¹⁵ This involves legal severance with a child's birth family (see Art. 26(1) a) and b)).

Habitual residence in the context of intercountry adoption

HCCH has developed a [note](#) on the concept of habitual residence within the scope of the 1993 Adoption Convention.

The Convention “was developed to respond to the serious and complex human and legal problems” associated with ICA. With 106 Contracting Parties as of April 2025,¹¹⁶ it aims at protecting children and their families from illegal, irregular, premature or ill-prepared adoptions abroad. Contracting States are not obliged to carry ICA. However, if they do, any adoption between Contracting States must be carried out in line with the 1993 Adoption Convention.

The 1993 Adoption Convention gives effect to Articles 3 and 21 of the CRC by setting out minimum substantive safeguards to ensure that the best interests of the child are the paramount consideration in adoption and that ICA takes place in a manner that respects all rights that children hold.¹¹⁷ In that way, the best interests of the child must be a determining factor and take precedence over all other interests and considerations. This includes ensuring that adoptions are authorised only by competent authorities, guided by informed consent of all concerned, that ICA enjoys the same safeguards and standards that apply in national adoptions and that ICA does not result in improper financial gain for those involved in it.¹¹⁸ Adoptions made in accordance with the 1993 Adoption Convention are recognised by “operation of law” in the other Contracting States, eliminating the need for re-adoption in the receiving country.¹¹⁹

PRINCIPLE OF SUBSIDIARITY

When considering ICA, the CRC Committee in its General Comment No. 6 emphasised that “states must have full respect for the preconditions provided under article 21 of the Convention as well as other relevant international instruments,” including the 1993 Adoption Convention and the 1994 Recommendation Concerning the Application to Refugee and other Internationally Displaced Children.¹²⁰ In that way, the 1993

Adoption Convention further develops the principle of subsidiarity as set out in Article 21 of the CRC, establishing that ICA may only be considered as an alternative means of care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.

ICA should only be considered once all family tracing and reunification efforts have been exhausted and stable in-country solutions, including kinship care and national adoptions have been considered (in accordance with the principle of subsidiarity).

This caution aims to avoid a situation in which the child is unwarrantedly placed with, or taken in by, prospective adoptive parents, and where the process of bonding and integration begins but then must be terminated because legal obstacles or irregularities emerge. Such a situation has the potential to pose serious harm to the well-being of the child and the family of origin.

ICA in emergencies is prohibited

ICA in emergency situations such as armed conflict is prohibited. Until the fate of a child’s parents or other close relatives can be verified, each separated child should be considered as still having living relatives or legal guardians and therefore not in need of adoption.¹²¹ Adoption should not occur during or immediately after emergencies.¹²²

Adoption is “not a humanitarian or charitable act” but rather “one of a series of child protection measures.”¹²³ However, experience in **Haiti** following the January 2010 earthquake, demonstrates the limits to the consensus in practice. In this case, adoption of children abroad was often used as the justification for their evacuation, and usually without having completed the process or confirmed their adoptability.

When applying the subsidiarity principle, states should have regard for the [*UN Guidelines for the Alternative Care of Children \(2009\)*](#). This involves supporting efforts to keep children in, or return them to, the care of their family or, if that fails, to find appropriate and permanent – preferably family-based care – solutions. If an ICA is deemed to be in the best interests of the child, it should only take place when it can be carried out in conformity with the standards, safeguards and principles of the 1993 Hague Convention. However, as noted by the HCCH, many states “do not have the necessary resources to implement an efficient child protection system, which hampers the proper application” of the subsidiarity principle.¹²⁴ Therefore, it is critical that states strengthen gatekeeping mechanisms.

Recommended Model Forms for the birth family, the child and prospective adoptive parents have also been developed to simplify and facilitate compliance with the 1993 Adoption Convention. An agreement that the adoption may proceed and an Article 23 certificate of conformity of the ICA with the 1993 Adoption Convention (including for the conversion of a simple adoption to a full adoption) are also available as part of the recommended model forms. The HCCH has emphasised that Model Forms are recommended and not compulsory. Contracting Parties may continue using their forms, in particular where they are more detailed and allow for a more complete assessment of the situation.”¹²⁵

ICA roundup

The 1993 Adoption Convention aims to protect children and their families from illegal, irregular, premature or ill-prepared adoptions abroad, giving effect to Articles 3 and 21 of the CRC, which provide that the best interests of the child should be the (not a) paramount consideration in adoption. Adoptions should always be made in the best interests of the child, with full respect for the

rights of the child. This includes, for example (not an exhaustive list):

- ensuring the proper application of the principle of subsidiarity;
- ensuring that the consent of the mother is only given after the birth of the child;
- ensuring that the child is adoptable;
- ensuring prospective adoptive parents are eligible and suitable to adopt; and
- preserving information about the child and child’s parents.

ILLCIT PRACTICES

Illegal intercountry adoption is the result of dysfunctional child protection systems. The promotion of the ratification of the 1993 Adoption Convention is an important way to prevent illegal ICA. It is also driven by the demand created by prospective adoptive parents.

“ [T]he demand for children by industrialised nations and the availability of many homeless children in developing nations has, in addition to regular and legal intercountry adoptions, led to practices of international child trafficking either for purposes of adoption abroad, or under the cloak of adoption, for other – usually illegal – purposes.”¹²⁶

Notably, the 1993 Adoption Convention prohibits private adoptions between birth families and prospective adoptive parents or independent adoptions undertaken without the support of Central Adoption Authorities or an Accredited Adoption Body (AAB). Decisions should always be made by the competent authorities (or the AAB if competence is delegated) and should

follow the established procedures. These provisions are meant first and foremost to protect children, but also have the positive effect of safeguarding the rights of their birth parents and providing assurance to prospective adoptive parents that their child has not been the subject of illegal practices.

Every child victim of illegal ICA has the right to reparations. Reparations for “older adoptees” who were adopted pre-CRC and pre-1993 Adoption Convention should be provided in law and in recognition of the ongoing nature of the violation. However, the 1993 Adoption Convention does not provide specific standards regarding remedies and reparations for illegal adoptions. With regard to adoption, Article 3(1) (ii) of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography expressly provides that states parties shall criminalise and appropriately punish “improperly inducing consent, as an intermediary, for the adoption of a child.”

At the same time, the 2006 *UN International Convention for the Protection of All Persons from Enforced Disappearance* (CED) provides that states parties shall prevent and punish under their criminal law the forced/wrongful removal of children as well as the falsification, concealment or destruction of documents attesting to the true identity of these children (Article 25(1)). The CED requires states to have legal procedures in place to review and, if appropriate, annul any adoption or placement where there is an indication of enforced disappearance (Article 25(4)). However, there have so far been few cases where best interests considerations have led to an adoptee’s return following the discovery of an illegal ICA.¹²⁷ States are to assist victims in ensuring they receive the information they need to know about their origins, and also search for and locate missing children.

“Victims of illegal intercountry adoptions have the right to know the truth.”

– *Joint Statement on illegal intercountry adoptions*¹²⁸

WHAT NEEDS TO BE DONE?

A number of actions need to take place to better protect and safeguard the rights and best interests of children in civil proceedings.



LEGAL REFORM

JOINT PARENTAL RESPONSIBILITIES ARE ESTABLISHED IN LAW

The CRC Committee has urged states to enforce “measures to ensure that mothers and fathers share the legal responsibility for their children equally in accordance with Article 18(1) of the Convention.”¹²⁹ States should ensure that parental responsibilities are established equally in law. This means ensuring equality of children born within and outside of legal marriage. In **Greece**, the Civil Code provides that parental care is a duty and a right of both parents to exercise jointly.¹³⁰ In **Zambia**, the 2022 Children’s Code sets out parental responsibilities and the duties of both parents to protect and provide for the child, whether married to each other or not.¹³¹

In 2024, **Japan** revised its Civil Code to allow divorced parents the option of joint custody. Under the previous law, child custody was granted to only one parent, usually the mother.¹³² In **Norway**, the Children Act provides for parents to “jointly decide that the child shall reside either with both of them (joint custody) or with one of them (sole custody).”¹³³ In **Italy**, the Civil Code governs parental responsibilities in situations of parental separation, providing that both parents must jointly make important decisions regarding the care and upbringing of the child in the exercise of joint parental responsibility.¹³⁴ At the same time, Italian law introduces a joint custody regime following parental separation unless a court considers that joint custody is contrary to the best interests of the child.¹³⁵

Where parents are separated, laws should also enshrine the right to contact. In **Guyana**, the Custody, Guardianship and Maintenance Act provides that every child has the right to maintain personal relations and direct contact on a regular

basis where the child is not living with one of his or her parents.¹³⁶ In **Kenya**, the Children Act, 2022 provides the right to maintain personal relations and direct contact regularly, unless it is found not to be in the child’s best interests.¹³⁷

Constitutionalising rights

Several states echo the preamble of the CRC in their constitutions. The constitutions of **Rwanda**¹³⁸ and **Kenya** are among those that emphasise that the family is the natural foundation of society. Good practice includes constitutionally recognising the rights of children to parental care. The Constitution of **South Africa** recognises that children have the right to family or parental or other appropriate care when removed from the family environment.¹³⁹

REMOVE AGE LIMITS FOR BEING HEARD

Inclusive processes for children that enable them to express their views “increase the chances that the decisions taken will be based on a full and accurate assessment of the issues, resources and coping mechanisms within the child’s family and community.” Developing clear and accessible tools to inform children and young people of their rights in the context of care decisions and placements should be a priority, together with meaningful mechanisms for their participation throughout the process, from assessment of needs to review and determination, including in relation to care options and placement decisions.

The CRC Committee emphasised that “Article 12 imposes no age limit on the right of the child to express her or his views, and discourages states parties from introducing age limits either in law or in practice that would restrict the child’s right to be heard.”¹⁴⁰ States should remove minimum age limits for children to be heard in civil proceedings.

CRC Committee on the right to be heard in civil proceedings¹⁴¹

The CRC Committee provides the following guidance:

- All legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes.
- It must be ensured, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review and visits with parents and family.
- States parties must inform the child, if possible, about the effects of adoption, *Kafala* or other placement, and to ensure by legislation that the views of the child are heard.

In 12 European Union Member States, children subject to judicial proceedings concerning divorce and custody, placement in care and adoption are entitled to express their views, if they so wish, and be heard without any requirements and age restrictions.¹⁴² In **Ukraine**, children can express their opinions directly or through a representative in civil proceedings and receive assistance in doing so. The law prioritises the child's capacity to participate instead of imposing strict age limits.

The CRC Committee has emphasised that "all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes."

DECISIONS ARE MADE IN THE BEST INTERESTS OF THE CHILD

Many jurisdictions have included in their laws a provision that the judge must give consideration to the "best interests of the child". The CRC Committee recalled that BIAs and BIDs are

"indispensable", including in the context of potential separation of a child from his or her parents.¹⁴³ Accordingly, it recommends that formal processes with strict procedural safeguards are employed in order to assess the child's best interest. BIDs should also include long-term considerations and not only short-term needs.

ESTABLISH CRITERIA FOR BEST INTERESTS DETERMINATIONS

National laws that provide objective criteria to be considered for the purpose of BID in care proceedings guide the interpretation of the principle and reduce the level of discretion of courts and other relevant professionals. Financial, human and other resources should be provided to enable this. In **India**, the Act Relating to Children 2018 mandates that the Child Welfare Authority or the Child Court must adopt the best interest determination process when making arrangements for the alternative care of a child, when separating a child from their parents or guardians and when deciding which parent, following a divorce, will take responsibility for the child's care.¹⁴⁴ **Austria, Bulgaria, Finland, Romania, the Slovak Republic and Spain** provide criteria to be taken into consideration for a best interests determination, including for the context of child welfare, care and protection.¹⁴⁵

In the **United Kingdom**, judges must take into account a range of factors on a so-called "welfare checklist".¹⁴⁶ In **Ireland**, the Children and Family Relationships Act 2015 introduced criteria in determining the child's best interest in family law cases. Factors identified include the importance of the child's relationship with their parent(s), the child's views, as well as the child's religious, spiritual, cultural and linguistic upbringing and needs, as well as their physical, psychological and emotional needs.¹⁴⁷

The CRC Committee has emphasised that “states should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child’s or children’s best interests.”¹⁴⁸

In **Spain**, the Law on the Legal Protection of Minors establishes that any measure in the best interests of the child must be carried out with a number of procedural safeguards. This includes the right to be informed, heard and participate in proceedings, the involvement of qualified professionals who are trained, the consideration of a multidisciplinary report and the provision of a lawyer to defend the child’s interest where the child’s interests may conflict with his or her parents/legal guardian, among others.

Judicial procedures for determining the best interests of the child often involve a multi-step approach, considering legal factors, the child’s needs and the involvement of multidisciplinary professionals.

ENSURE THAT LAW IS ACCOMPANIED BY TRAINING

It is important to ensure that decision makers understand how to make complex assessments. In **Bulgaria**, a “Roadshow” took place over a period of five years in which training was provided to judges and social workers throughout the country on the criteria to be considered for a BID.¹⁴⁹ In **Austria**, an [interdisciplinary guidance document](#) based on the Civil Code¹⁵⁰ is available for child welfare professionals and other service providers who are conducting BIAs and BIDs. Judges in **Canada** (Ontario) receive training on child development, child welfare issues and how to involve children in custody, access and family law cases.¹⁵¹ In **Australia**, the National

Judicial College of Australia provides specialised training on child development, the effects of parental separation and the psychological needs of children.¹⁵² In **Kenya**, training is provided to judges as well as social and parasocial workers to prioritise family-based care alternatives.

STRENGTHEN GATEKEEPING MECHANISMS

A **gatekeeping** system is recognised as “an essential component of a functioning child care and child protection system.”¹⁵³ The 1993 Hague Convention [Good Practice Guide](#) notes that “the mechanisms through which a child enters the child care and protection system, and the procedures and policies that are used to guide that child’s journey through the system and into a permanent family placement, may provide the foundations for good practice.”¹⁵⁴ Efforts to support families to prevent unnecessary separation of children from their families should be the first point of action. Where a child cannot remain with his or her biological parent(s), alternative family-based care options – especially kinship care – should be prioritised.

Case management and gatekeeping should complement the judicial process. They are not one-off events; rather, they are part of a sustained process of referral, assessment, analysis, planning, implementation and review that determines decision-making about the care of children.¹⁵⁵

Good practice includes establishing a comprehensive legal and normative framework associated with gatekeeping that reinforces the principles of suitability, necessity and the best interests of the child. This helps ensure that children are not unnecessarily separated from their parents, that when they are separated, the care provided is suitable and in their best interests and that the principle of subsidiary is followed with respect to ICA.

Necessity and suitability

Necessity involves ensuring that alternative care – preferably family-based – is only used when a child cannot be cared for by his or her own parents or, informally, with extended family members after all possible means of keeping them together have been explored. This first requires work to prevent situations in which a child might need alternative care.

Suitability involves ensuring that, when alternative care is necessary, it is provided in a setting that respects all children’s rights standards and can meet a child’s individual needs and best interests.

While gatekeeping systems vary across states, good practice involves establishing a dedicated gatekeeping mechanism with clear roles and responsibilities. In **Moldova**, multisectoral Gatekeeping Commissions have been established at the district level. In **Brazil**, there is a dedicated mechanism for gatekeeping made up of Tutelage Councils, the Court of the Child and Adolescent, the public defender and the public prosecutor. Often coordinated by a social worker, these mechanisms contribute to assessment and decision-making on cases, often coordinated by a social worker, with ultimate decision-making authority at the judicial or administrative levels.¹⁵⁶

Some states have developed tools and protocols for gatekeeping. In **Kenya**, Gatekeeping Guidelines were developed in 2021 to articulate what gatekeeping is, its role in child protection and care and roles and responsibilities of key actors. The Guidelines build off of existing guidelines and further articulate the concept of gatekeeping as a means of preventing unnecessary separation of children and families (i.e., principle of necessity) as well as informing decisions related to the type of care (i.e., appropriateness of placement option). Finally, the Guidelines detail the formation of sub-national gatekeeping mechanisms and their accompanying operating protocols and procedures.

MULTIDISCIPLINARY CASE MANAGEMENT AND INDIVIDUALISED SUPPORT

In many countries, judges are obligated to take assessments, conducted by multidisciplinary teams, into account to ensure that decisions are made in the child’s best interests. Participation in proceedings should be child-friendly and supported through a multidisciplinary approach. In **South Africa**, social workers play a pivotal role in family court cases by conducting assessments, providing reports to the court and offering legal support to children and families throughout legal proceedings.¹⁵⁷ The approach is multidisciplinary, involving collaboration among social workers, psychologists and other professionals to address complex and individualised needs. In the **Philippines**, implementing rules and regulations for family courts¹⁵⁸ were developed in 2022, outlining the roles and responsibilities of various stakeholders, including the establishment of Social Services and Counselling Divisions and the appointment of Social Work Advisers.¹⁵⁹ In **Mexico**, judges have the authority and responsibility to request and consider assessments in family and child protection cases.

The Family Justice Centre in **Belgium** (Limburg) addresses family violence, undertakes multidisciplinary risk assessments and refers families to appropriate services.¹⁶⁰ In **Trinidad and Tobago**, “the Family Court is a ‘one-stop shop’ that offers a range of services within one building,” including family mediation and counselling.¹⁶¹ Referrals can also be made for other services.

The **Barnahus** and comparable interagency and multidisciplinary models promoting child-sensitive justice are recognised as good practice models that deliver child-centred services under the same roof. While initially designed for child victims of violence or those at risk, the Barnahus model and comparable models are important in the context of civil and family proceedings, especially where children are in need of care and protection.

NON-DISCRIMINATORY ACCESS TO JUSTICE

CHILD-FRIENDLY COURTS AND PROCEEDINGS

In **South Africa**, children’s courts have been established and are used in cases involving children who need care and protection, to resolve custody, guardianship and contact disputes and to determine the placement of children in foster care or adoption, among other options.

At the Family Court in **Trinidad and Tobago**, child-friendly, supervised waiting spaces are available for children “when parents or guardians are conducting business at the Court, including attending a court hearing, filing an application or attending a session with the Social Services Unit.”¹⁶² The waiting rooms are equipped with books, toys and educational materials. Children’s courts have also been developed in a number of states.

In the **United Kingdom** (England and Wales), *Guidelines for judges meeting children who are subject to family proceedings* have been developed.

ENSURE THAT CHILDREN ARE REPRESENTED AND HAVE ACCESS TO LEGAL AID

In cases where there are conflicting interests between parents and children, a guardian *ad litem* or another independent representative should be appointed to represent the views and interests of the child. The right to be represented independently from parents should be guaranteed in law, especially in cases where parents, members of the family or other caregivers are alleged offenders. Children’s right to be represented and access legal aid should not depend on the ability to pay or economic circumstances. In 2024, the Supreme

Court National Legal Services Authority in **India** launched the [child-friendly legal services for children scheme](#).

The CRC Committee notes that children need appropriate legal representation when their best interests are to be assessed.¹⁶³ The legal representative should be provided in addition to a guardian. A number of states provide various forms of representation, including direct legal representation. In **Australia**, the Family Law Act provides for what is known as an independent children’s lawyer to represent and promote the best interests of a child in family law proceedings.¹⁶⁴ A set of [Guidelines for Independent Children’s Lawyers](#) was published by National Legal Aid and endorsed by the federal circuit and family court.

Signs of Safety model

The “Signs of Safety” model is used in a number of states, such as **Canada, Ireland, Japan** and **New Zealand**, among others. The model places the child’s views at the centre of a child protection measure taken by social services. The child must understand the reason for the social worker’s involvement, and must have the opportunity to meet with their social worker and share their views and opinions. Social workers have a responsibility to enable the child to give his or her views, taking into account the child’s age, ability and any other barriers or challenges to communication they face.

ASSISTANCE IS PROVIDED THROUGHOUT JUDICIAL PROCEEDINGS

Children should be provided with child-friendly and age-appropriate information to understand civil proceedings. In **Canada** (Ontario), for instance, a Family Court Support Worker provides information to child victims of family violence

about proceedings, helps prepare them for court and accompanies the child to court proceedings, where appropriate.¹⁶⁵

LEGAL REASONING

Any decision taken in the best interests of the child should be “motivated, justified and explained.”¹⁶⁶ Children should be provided information in an age-appropriate manner in order to understand decisions that may affect them. In **Estonia**, the 2016 Child Protection Act provides that “if the best interests of a child differ from the child’s opinion or if a decision that does not coincide with the child’s opinion is made on other grounds, the reasons for not taking the child’s opinion into account must be explained to the child.”¹⁶⁷ Child participation is a process of active involvement where the child should be able to know the effects and consequences of his or her actions in the proceedings. Some states have developed innovative ways to deliver judgments in a child-friendly manner. In a case concerning a relocation dispute in the **United Kingdom**, a judgment was delivered in the form of a personal letter to a 14-year-old boy, outlining the court’s reasoning as to why it was decided that he would live with his mother, and not his father.¹⁶⁸ The judge used simple and compassionate language, explaining the decision-making process and emphasising that the child’s feelings and wishes were taken seriously.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The voluntary settlement of disputes between parents is an important goal. In **St. Kitts and Nevis**, the Guardianship, Custody and Access to Children Act recognises that parents and guardians “should be encouraged to agree to their own arrangements for the child’s care, development and upbringing.”¹⁶⁹ The Children and Parents Code in **Sweden** provides for assistance from the Social Welfare Committee to reach an agreement in custody proceedings

in the form of cooperation discussions.¹⁷⁰ In **Japan**, family court conciliation is a cost-free alternative to private mediation, which is also an (at-cost) option for parents.¹⁷¹ In **Canada** (British Columbia), collaborative family lawyers are trained to support parents to find collaborative solutions and reach an agreement without resorting to formal court proceedings.¹⁷² In **Brazil**, the use of consensual methods for resolving disputes was motivated by a backlog of the courts in civil and family proceedings.¹⁷³

Family mediation is one of the most widely promoted methods of ADR in family law.¹⁷⁴ Family mediation has proven to be quicker, cheaper and more child-friendly to resolve disputes than court proceedings and may help to prevent future parental child abductions.¹⁷⁵ The provision of mediation services should be made available both within and outside of the context of judicial proceedings. In **Canada**, Family Justice Centres were established, providing services for individuals going through separation or divorce, including short-term counselling, mediation, emergency community referrals and other free services. The centres are staffed with Family Justice Counsellors who offer mediation services. In the **United Kingdom** (England and Wales), a [guide](#) for judges, magistrates and legal advisors was developed with respect to family mediation.¹⁷⁶

ADDRESSING CROSS-BORDER CASES

SUPPORT THE HAGUE CHILDREN’S CONVENTIONS

Good practice includes ratification of all of the four HCCH Conventions as well as Membership to the HCCH. **Cabo Verde** acceded to the 1996 Child Protection Convention, which entered into force in 2023.¹⁷⁷ In cases where adoption is not allowed – such as in Muslim countries – states should ratify

the 1996 Hague Convention, which covers *Kafala*. While Cabo Verde is not yet a member of the HCCH, it is party to the four HCCH Children's Conventions. Annual adoptions from China, which had long been the most important country of origin, steadily and significantly declined once the Convention came into force there (2006), falling from 14,500 to just 1,000 by 2019, and China has since prohibited all ICA.¹⁷⁸ As of April 2025, the 1996 Child Protection Convention has only 57 contracting parties and the 2007 Child Support Convention has only 55 Contracting States and the European Union. While the number of Contracting States in Latin America has increased in the past years, only two states in Africa are party at the moment.

To ensure that adoptions are conducted ethically, transparently and in the best interests of the child, central authorities should be designated and given sufficient powers, qualified personnel and adequate material resources to carry out their functions effectively.¹⁷⁹

In the **Philippines**, the Philippine Judicial Academy held a webinar series for judges, members of the legal profession and other relevant stakeholders on key aspects of the 1980 Abduction Convention and the 1996 Adoption Convention and how they may be used to advance Philippine legal practice.¹⁸⁰

ENHANCE RECOGNITION, ENFORCEMENT AND COOPERATION

Provisions in law for mutual recognition and enforcement of orders relating to custody, contact or access are part of good practices and serve to deter child abduction. Judicial and administrative cooperation between states is critical to ensure the recognition and enforcement of decisions and judgments adopted in disputes with cross-border aspects involving children. Direct judicial communications between judges

in the affected jurisdictions are encouraged to help establish, recognise, enforce, replicate and modify, where necessary, relocation orders. Direct judicial communications can be useful for resolving practical issues, (e.g., surrounding return) and may result in immediate decisions or settlements between the parents before the court in the requested state. The HCCH has developed [guidance on direct judicial communications](#). States that have not yet designated judges to the International Hague Network of Judges (IHJN), whether parties to the 1980 Child Abduction Convention or the 1996 Child Protection Convention, are recommended to do so.¹⁸¹

The International Hague Network of Judges

Judicial cooperation seeks to build bridges between the different legal systems in order to ensure legal certainty and effective access to justice in civil matters. This implies the identification of the competent jurisdiction, the clear designation of the applicable law and speedy and effective recognition and enforcement procedures. First proposed in 1998, the IHJN facilitates communications and cooperation between judges at the international level with a view to ensuring the effective operation of the Convention. Judges are invited to refer to the [list of members of the IHJN](#), available on the HCCH website.

REDUCE JUDICIAL DELAYS AND PROMOTE ADR

The need to comply with the six-week deadline for the effective resolution of the dispute in the Requested State necessitates faster procedures and measures in cases of international child abduction. Several jurisdictions have developed special guidelines and or procedures that provide for strict time frames, both at first-instance and appeal levels. These have resulted in the considerable shortening of time frames to decide

1980 Child Abduction Convention cases. For instance, in 2016, the Supreme Court of **Argentina** developed a [Protocol of Action](#) for the operation of the 1980 Abduction Convention. Based on the [LatAm Model Law](#), **Argentina** (Province of Cordoba), **El Salvador** and **Uruguay** have made procedural reforms to ensure that decisions are made within the Convention's time frames.¹⁸²

It is further recommended that amicable solutions be sought in child abduction cases. In the **Netherlands**, the International Child Abduction Implementation Act considerably sped up return proceedings.¹⁸³ In recognition that mediated agreements are more often complied with and can improve relationships, the District Court of The Hague established a programme on cross-border mediation, providing specialised training for professional cross-border mediation. Mediation, however, should never result in a delay in processing return applications. A so-called "six weeks scheme" or "pressure cooker method" was also developed, leading to a greater number of successful mediations and proceedings taking no more than six weeks.

A number of states have designated [Central Contact Points](#) for international family mediation.

What is the Malta Process?

Launched in 2004, the Malta Process seeks to promote co-operation with countries with legal systems based on or influenced by Shari'a law for the resolution of complex, cross-border family conflict. It further seeks to encourage the implementation of the Hague Children's Conventions in countries with legal systems based on or influenced by Shari'a law. Through this process, judges and other experts convene to exchange views on the resolution of cross-border family disputes, focusing on those cases with a connection to Shari'a law. The [Malta Mediation Principles](#) developed in 2010 in the context of the Malta Process provide guidance and best practices for the establishment of effective mediation structures.

CONCLUDE BILATERAL AGREEMENTS CONCERNING ABDUCTION

A number of states have concluded bilateral agreements on child abductions. **Australia**, **Canada**, **France**, **Sweden** and the **United States** have entered into separate bilateral agreements with **Egypt**, which established a framework to resolve cross-border disputes. While underscoring the importance of concluding bilateral agreements, this cannot replace "the added advantages of operating within a multilateral framework."¹⁸⁴ States that have not already done so should ratify the four Hague Children's Conventions. With respect to the operation of bilateral agreement, states should provide information for parents. In **Australia**, for example, the Australian Central Authority has developed [information for parents](#), outlining the process of an application, the financial assistance they may be eligible to receive (based on a means test), as well as the range of social services, including advice and Mental Health and Psychosocial Support for Children in the Justice System (MHPSS).¹⁸⁵

COMBAT UNNECESSARY INTERCOUNTRY ADOPTION AND ENSURE ADOPTION RESPECTS THE BEST INTERESTS AND FUNDAMENTAL RIGHTS OF THE CHILD

A number of states have aligned their legislation with the 1993 Intercountry Adoption Convention. For example, **Fiji** – which ratified the convention in 2012 – established a comprehensive legal framework for domestic and ICA in 2020.¹⁸⁶ **South Africa** is one example of a state that expressly prioritises the subsidiarity principle.¹⁸⁷ Under the Children's Act, ICA may be considered only if "a suitable adoptive parent for the child is not available in the Republic."¹⁸⁸

The best interests of the child should be a paramount consideration in both law and practice. At the same time, consent must be

clearly obtained from parent(s), legal custodian or guardian of the child (or the person or authority).¹⁸⁹ Some states require consent of the child. For instance, the National Civil Code 2017 of **India** provides that adoptions must be conducted in a manner that prioritises the best interests of the child and requires the written consent of the child above the age of 10 to proceed with adoption.¹⁹⁰

The HCCH notes the importance of ensuring that national implementing legislation and procedures are consistent with Article 2 of the Convention. The concept of ICA (and thereby also the concept of domestic adoption) must be correctly defined in that legislation in accordance with Article 2, and habitual residence must be identified as the only relevant connecting factor.

Toolkit to prevent and address illicit practices

The HCCH has developed a [toolkit](#) to assist states in preventing and addressing illicit practices in ICA. It can also be helpful for current and previous cases. It includes fact sheets on illicit practices, a [checklist](#) to assist decision making by Central Authorities, [model procedure](#) to respond to illicit practices and [guidelines](#) on enhancing cooperation and coordination. The HCCH notes that tools are drafted in “general terms in order to encourage states to adapt them to their specific realities by establishing their own procedures, measures and safeguards, and to widely disseminate them.”¹⁹¹ States are still required to introduce “their own measures, policies, guarantees and procedures to safeguard against, and address, illicit practices in intercountry adoption.”

In 2019, the UN General Assembly called on states to “take all measures necessary to prevent and combat illegal adoptions that are not in the best interests of the child.”¹⁹² A number of states

have criminalised illegal adoption. The Penal Code in **Spain** explicitly criminalises illegal adoption. In **Brazil**, illegal adoption, child trafficking and falsification of documents in adoption processes are criminalised.¹⁹³ **South Africa** also criminalises illegal adoption, with specific penalties for trafficking children for adoption. In a number of states, including **Canada**,¹⁹⁴ **Ecuador**¹⁹⁵ and **Honduras**,¹⁹⁶ illegal adoption is treated as a human trafficking offence. In the **Philippines**, child trafficking, including for legal adoptions, is a criminal offence.¹⁹⁷ In the **United States**, illegal adoptions can be prosecuted as child trafficking and under fraud laws. States should also establish appropriate sanctions that reflect the gravity of the offence.¹⁹⁸

States should also “take all necessary measures to ensure that all cases of illegal intercountry adoptions are investigated in a complete, impartial, diligent and effective manner, even in the absence of a formal complaint.”¹⁹⁹ Temporary suspensions or moratoria on ICA when there is an actual or potential risk of severe violations of children’s rights within the adoption process have been used by some states. Suspensions are intended to provide a period during which the necessary conditions can be established to ensure that adoption, if and when resumed, is conducted ethically and in the best interests of the child. In the case of ICA, this should be in line with the safeguards and principles of the 1993 Hague Convention 1993. In 2021, the Dutch Government suspended ICA to the **Netherlands** following a government [report](#) that revealed systemic abuses in adoption practices. In 2024, **Norway** decided not to temporarily suspend ICA pending the forthcoming findings of an investigative committee on ICA. Instead, risk-reducing measures and strengthened controls were introduced.²⁰⁰ **Kenya** also initially imposed a temporary moratorium on domestic adoption as well as ICA in 2014. Following reforms, including the Children’s Act of 2022, the adoption of a

10-year national care reform strategy and the re-accreditation of adoption agencies, domestic adoptions have resumed in-country, though ICA remains suspended.

Sanctions have been used in response by some states. In the **United States**, the Department of the Treasury's Office of Foreign Assets Control sanctioned four foreign nationals "for

their involvement in an adoption scam that saw many [foreign-born] children victimised by the participants in the scheme."²⁰¹

Victims of ICA should also receive remedies.

For instance, **Australia** made a reparation fund available for victims of illegal adoptions and search-and-reunion assistance was provided following the recommendation of the truth commission.

CONCLUSION

The civil aspects of child protection are critical to safeguarding the rights and well-being of children globally, particularly in the context of family disputes, cross-border issues and care proceedings. The CRC and the Hague Children's Conventions provide a robust international framework to ensure that children's best interests are prioritised, their voices are heard and their rights to family life and protection are upheld. However, challenges such as inconsistent legal standards, discriminatory practices, limited child participation and gaps in cross-border cooperation persist. These issues are compounded by systemic deficiencies, including weak gatekeeping mechanisms, judicial delays and illicit practices like illegal adoptions.

To address these challenges, states must undertake comprehensive legal and policy reforms to enshrine joint parental responsibilities, eliminate discriminatory practices, and ensure child-friendly and gender-sensitive judicial

processes. Strengthening gatekeeping systems, promoting alternative dispute resolution, and ratifying and implementing the Hague Children's Conventions are essential steps toward harmonising protection for children across borders. Additionally, prioritising family-based care, multidisciplinary case management, and access to legal representation and support persons will empower children to meaningfully participate in decisions affecting their lives.

By aligning national laws and practices with international standards, investing in capacity-building and fostering global cooperation, states can create robust child protection systems that prevent unnecessary family separation, combat exploitation and uphold the rights of every child. Collective action is imperative to ensure that all children, regardless of their circumstances, grow up in safe, nurturing and supportive family environments and that children in civil proceedings are considered in justice advocacy and reform.

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GLOSSARY

Adoption: formal, permanent transfer of parental rights to a family other than a child's own and the formal assumption by that family of all parental responsibilities for the child.

Civil aspects of children protection: civil proceedings, including when parents have disputes over their children, matters concerning access and custody, guardianship and adoption or because an intervention is needed for their care and protection. They may also include judicial proceedings in cross-border matters.

Cross-border proceedings: all situations where civil proceedings are involving children or legal guardians connected with several states (by their nationality or their residence). This includes when children have one or both of their legal guardians living in another country or when a child is without parents in a country that is not of his/her nationality or that is not of his/her habitual residence. It also includes all care proceedings involving several states, like ICA, or placement in alternative care like *Kafala*, kinship or guardianship across borders.

Family: a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.²⁰² The term has been interpreted to include biological, adoptive, foster parents or members of the extended family or community as provided for by local custom.²⁰³

Gatekeeping: the process of referring children and families to appropriate services or care arrangements with the aim of limiting the number of inappropriate placements.²⁰⁴

Kafala: a family-based care option for children outside of parental care, rooted in Islamic tradition.²⁰⁵ It is defined as the commitment by an individual or family (*kafil*) to voluntarily take responsibility for the daily care, education, safety and protection of a child (*makful*), in the same way a parent would do for their biological child. In practice, *Kafala* varies greatly from one country to another.

Parent: a person with parental responsibility according to national law.

Parental alienation: deliberate or unintentional acts that cause unwarranted rejection by the child towards one of the parents, usually the father.²⁰⁶

Principle of subsidiarity: establishes that ICA may only be considered as an alternative means of care if the child cannot be placed in a foster or an adoptive family, or cannot in any suitable manner be cared for in the child's country of origin.

Residential care: care provided in any non-family-based group setting. It includes care organised around the individual child in small group settings (small group homes), which is non-institutional in nature, and institutional care provided in settings such as orphanages, children's homes, children's villages, shelters, transit centres and dormitories.²⁰⁷

Return proceedings: Return proceedings refers to proceedings pursuant to the 1980 Abduction Convention for the return of a child or children that took place before the judicial or administrative authority of the Contracting Party to which the child has been removed or where the child is being retained ("requested state"). Depending on the jurisdiction, return proceedings may be filed by the left-behind parent, an attorney representing the left-behind parent, the Central Authority in the requested state and/or a public institution such as a public prosecutor.

Separated children: children who are separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.²⁰⁸

Unaccompanied children: children who are separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.²⁰⁹

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