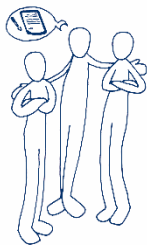

CHARTER
for
INTERNATIONAL FAMILY
MEDIATION PROCESSES
A Collaborative Process

The international group of mediators listed at the end of this Charter signed it after reaching a consensus on the core principles to be used in international family mediation processes. The Charter will be disseminated for use worldwide.



PREAMBLE

This Charter has been written specifically for mediation in cross-border family conflicts. Its *raison d'être* is to unite and engage mediation professionals across cultures and nations in identifying 10 core principles to be observed and respected when practising international family mediation. Its purpose is to serve and assist families that are involved in family disputes of an international nature, such as a conflict or separation that might lead, or has led, to a move abroad.

It was drafted with the mindful objective of protecting children who may be living separated and afar from one of their parents. These 10 principles are being practised by mediators convinced of the wealth of benefits that enrich a multicultural upbringing and environment, in order to help children maintain and develop their relationships and bonds with both their parents, as well as other family members.

Mediation is globally recognised as an effective method of conflict management and resolution. While preserving the rights of all persons involved, international family mediation empowers the participants to assume ownership and management of discussions about living arrangements and parenting, and to formulate agreements that can be rendered legally binding and enforceable. The efficacy of this process depends on a safe and neutral place for discussions in which the participants can 'tell their story' and share their experiences as well as recognise each other's efforts in pursuing their parental role. Open dialogue and free expression are the driving forces of the whole process.

The 10 principles in this Charter, which are basic and fundamental requirements for conducting international family mediation processes, are all of equal importance. Being interdependent, the principles form the base for the larger framework of mediation in which they are meant to be applied and practised. This Charter is not intended to override or supersede any national or regional standards or codes of ethics or good practice; on the contrary, it aims to enhance them while adding a set of professional and ethical requirements specifically for international family mediation across regions.¹ International family mediators are expected to uphold the principles set out in this Charter in their practice, in addition to their national codes of practice where such codes exist.

The 10 principles reflect and underpin fundamental values promoted and defended by mediation practitioners worldwide. The principles are:

1. Voluntary participation
2. Suitability of mediation
3. Decision-making by the participants
4. Access to independent legal advice for each participant
5. Confidentiality
6. Independence
7. Impartiality
8. Consideration of rights and interests of children
9. Qualifications of international family mediators
10. Cultural awareness and sensitivity of mediators

¹ The principles contained in the Charter are in line with the following regional and international instruments:
European Council: [Recommendation No. R \(98\) 1 of the Committee of Ministers to Member States on Family Mediation](#); [Recommendation Rec \(2002\)10 of the Committee of Ministers to member States on mediation in civil matters](#)
European Union: [Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters](#); [Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters](#); [European Code of Conduct for Mediators](#)
The Hague Conference: [Principles for the Establishment of Mediation Structures in the Context of the Malta Process](#)

1.

VOLUNTARY PARTICIPATION

International family mediation is a voluntary process through which participants in a cross-border family dispute try jointly to reach agreement over their conflict, and arrangements for their children and related matters. Depending on the country, before or while making an application to a court or filing for an international procedure, parties in the dispute may be encouraged, or required, to attend an information or assessment meeting with a professional family mediator in order to consider whether mediation would be suitable in their case. In some countries, attempting mediation may even be a legal requirement, but in all cases the participants should not be pressured by State authorities, a mediator or anyone else to reach agreement through mediation. Participants, as well as the mediator, may suspend or terminate the mediation process at any time if they no longer consider it suitable or if no progress can be made towards agreement.²

2.

SUITABILITY OF MEDIATION

The welfare, safety and security of all participants in a mediation are of paramount importance for a reliable and trustworthy process. International family mediation is not suitable for all situations and the process should not be used by any participant to avoid or delay legal proceedings or procedures, or to manipulate or influence another participant. Depending on how the mediation is organised, the mediator initially meets, or speaks with, each party

² In countries where a code of ethical conduct governs the practice of family mediation, mediators should refer to the existing rules or grounds for withdrawal from the process.

separately and informs them about the mediation procedure. They explore together whether mediation is suitable in their case and whether both parties are willing to take part; or whether another dispute resolution process would be more appropriate. This initial assessment includes three crucial issues:

a. Personal safety of the participants

Participants in a mediation should be sure that they will be able to meet without physical risk to themselves. Mediators should do their utmost to ensure that the participants feel secure and that the mediation process can be conducted without intimidation. If there is any indication that a child or another person is at risk of harm, other assistance may be required; this may include immediate referral to the appropriate safeguarding agency. In general, arrangements must be made to enable the participants to attend mediation, including their arrival and departure from meetings without risk or anxiety that conflict might erupt between them outside the mediation room or building. Precautions to ensure the safety of participants must also be taken when conducting mediations at a distance with communication technologies.

b. Capacity to participate in mediation

Participants must feel able to speak and act freely during the mediation process. During the assessment meeting, mediators should explore whether there are any factors that may impede the capacity of the participants to participate effectively in the process, make decisions or respect engagements. Such constraints could include power imbalances, anxiety about voicing opinions, addiction, stress and cognitive impairments, among others.

c. Respect for judicial and administrative proceedings

International family mediation processes, especially when they accompany judicial proceedings, must respect any relevant legal framework and its necessary restrictions and timeframes. Hence, the interaction with judicial and administrative proceedings running in parallel should be clarified before or at the beginning of the mediation process.

3.

DECISION-MAKING BY THE PARTICIPANTS

Mediators do not have any decision-making power in regard to matters that are in dispute between the participants and they should not influence the outcome of the process. However, they may bring to the notice of the participants, and suggest that they get specialist advice, when it appears that certain decisions taken are likely to fall outside the law or may not be in the interests of one of the participants or the children. Mediators should assist the participants to reach well-informed agreements that are realistic, acceptable to all concerned, and take into account the best interests and wellbeing of the children involved.

4.

ACCESS TO INDEPENDENT LEGAL ADVICE FOR EACH PARTICIPANT

International family mediation processes often take place within a judicial context, and mediation agreements may need to be given legal effect. Therefore, decisions and agreements reached in mediation may have to be recognised and rendered enforceable in all jurisdictions relevant to the dispute. Mediators should encourage each participant to

obtain independent and specialised legal advice to ensure informed decision-making on proposals for settlement and in order to discuss the enforceability of any agreement in relevant jurisdictions. Mediators, regardless of any legal background they might have, should not give legal advice but they can inform the participants about what the law says. They may also focus participants on the wellbeing and best interests of their children and on the consequences of their decisions.

5.

CONFIDENTIALITY

The principle that all matters discussed and all information obtained during the mediation process must remain confidential, except where required by the law, is fundamental to mediation and also applies to international family mediation. The information may not be used in any other proceedings or processes that the participants might be engaged in.

- a. Mediators must not disclose any information obtained during the mediation process without the consent of the participants (which may be given in writing) unless there is concern that a child or any other person is at risk of abuse or harm, or where such disclosure is required by law. Similarly, information that any participant reveals to the mediator in separate individual meetings must remain confidential unless that participant consents to its disclosure.
- b. Administrative and legal authorities may have to be informed about the outcome of the mediation, but they should not have access to what was said, or done, during the mediation process.
- c. Participants must be informed by the mediator that what is revealed during the mediation may not be used

in any other proceedings or processes in which they are engaged or may engage. Depending on the law of the country, participants may agree between themselves, during mediation, on what can be shared with lawyers and legal advisers, extended family, friends or their community.

- d. The mediators and participants usually sign an Agreement to Mediate, which can include and explain the issue of confidentiality and privilege, including exceptions to it.

6.

INDEPENDENCE

Mediators should not have any conflict of interest or personal interest in the outcome of the mediation. When international family mediation processes take place alongside administrative and judicial proceedings, they should be separate and distinct from such proceedings. Where a mediator is engaged by a state- or court-related mediation structure, the mediator should be independent of that structure in his/her work. Mediators should not act in any other professional capacity in the dispute they are mediating.

7.

IMPARTIALITY

International family mediation processes must be impartial. Professional mediators should give appropriate and equal attention and support to each participant, as well as to the needs of all the children of the participants. Mediators are trained to be multipartial, meaning that they manage the mediation process without taking sides or building alliances with any of the participants. They should always remain

neutral as regards the outcome of the process, but they may alert the participants when a decision appears to be against the best interests of a child or contravenes a law.

8.

CONSIDERATION OF THE RIGHTS AND INTERESTS OF CHILDREN

a. Recognition of the rights of the child

International family mediation processes uphold the United Nations Convention on the Rights of the Child, and in particular the four guiding principles underpinning all rights of the child: participation, protection, survival and development, and non-discrimination.

b. Consideration of the needs and wellbeing of the child

International family mediation processes should pay special attention to the needs and wellbeing of children involved in a conflict. Mediators should focus participants not only on their own needs but also on the interests and needs of their children. Particular attention should be given to the importance of children's resumption and maintenance of healthy relationships as well as regular physical and virtual contact with both parents and their families where such contact is in the best interests of the child and both parents consent to it.

c. The voice of the child in mediation

Article 12 of the United Nations Convention on the Rights of the Child states that children have the right to express their views on decisions and arrangements that affect their lives, and that these shall be given due weight in accordance with their age and maturity. Therefore, where deemed

appropriate by the mediator and parents, international family mediation may involve the direct participation of children. Their inclusion in mediation offers them the opportunity to talk about their situation in a child-friendly and safe environment, and to voice views and feelings, concerns and worries without being asked to take sides or make decisions. Children's participation requires specifically trained mediators or trained child specialists in addition to careful evaluation of the suitability of such intervention. The consent of both, parents and children, is required. The mode of the children's participation depends on various case-specific factors. Where child-inclusive mediation is not deemed appropriate, mediators should help the participants to take into account the views, interests and needs of the children.

9.

QUALIFICATIONS OF INTERNATIONAL FAMILY MEDIATORS

Cross-border family disputes confront mediators with many challenges. Therefore, trained, experienced, and where required accredited, family mediators need additional competencies through appropriate training to become international family mediators. These include specific knowledge and experience of the international legal framework for cross-border family disputes, cross-cultural awareness and a child's rights perspective.

10.

CULTURAL AWARENESS AND SENSITIVITY OF MEDIATORS

By its very nature, international family mediation involves wide cultural diversity, so it is important for mediators to

respect and manage cultural differences. Skilled international family mediators are conscious of the participants' cultural backgrounds, environment and beliefs. This does not imply that they should have detailed knowledge about the participants' cultures. However, mediators should be aware of their own biases and limitations, preconceptions, cultural background and conditioning, and they should make efforts to avoid the influence of these factors on the mediation process. Where necessary and appropriate, and with the consent of all participants, mediators may permit the participation of faith or community leaders and extended family members, but they should agree to be subject to the same conditions as the other participants.

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HOW TO USE *the* CHARTER

A manual for State authorities and family mediators

OBJECTIVES OF THE CHARTER

The *Charter for International Family Mediation Processes* is the result of a **Collaborative Process** that commenced in 2015, with **55** family mediators from **24** countries from **all continents** discussing their understanding of international family mediation practice to create a set of uniform standards to be respected across the world.

The Charter is intended to be **an international document of reference** for international family mediation. Its **10 core principles** are in line with existing family mediation standards. They highlight key requirements for organising and conducting international family mediation and emphasise the need for specialist mediation training. Respect for all 10 core principles is fundamental to the practice of international family mediation.

This Charter aims to increase the **visibility of qualified and reliable professional mediators**, to promote **confidence in and understanding of the mediation process**, and to increase awareness that the professionalising of, and access to, mediation is promoted by **unified professionals at the global level**.

USE OF THE CHARTER

The Charter was drafted as a summary document concentrating on the particularities and key issues of international family mediation. It serves as a simple and concise reference for all stakeholders involved in handling cross-border family disputes and as **a working tool** for various professionals organising and facilitating international family mediation. An international family conflict can also take the form of parental child abduction as well as any other wrongful cross-border removal of a child (for example, child trafficking and exploitation).

Furthermore, the Charter is meant to:

- ✧ inform **families** of the appropriate professional standards and the quality they can expect from international family mediation services
- ✧ help **mediators and authorities** to prepare and structure international family mediation processes
- ✧ guide the **conduct of mediators** during international family mediation
- ✧ serve as a basis to develop specialist **mediation training** across the world
- ✧ promote **the establishment of specialised** international family mediation **services**
- ✧ set the groundwork for **a global network** of international family mediators
- ✧ be a source for **harmonising legislation** concerning international family mediation **globally**.

RECOMMENDATIONS *concerning* PROMOTION OF *and* ACCESS TO MEDIATION

Administrative and judicial State authorities are strongly encouraged to promote the use of, and access to, international family mediation on the basis of the core principles of the Charter. They are, in particular, invited to consider the following recommendations:

I. INFORMATION ON MEDIATION

- ✧ Family members involved in cross-border family disputes concerning children should be informed about the advantages of international family mediation, particularly when these conflicts relate to international relocation and cross-border exercise of parental responsibility. Information should be given on the mediation process, how it works, and its legal implications. It should be explained that mediation may be possible before, during and after court proceedings. In addition, the principle of confidentiality of mediation and its exceptions should be explained (see Core Principle 5).
- ✧ The *ISS Guide to International Family Mediation* and the Hague Conference on Private International Law's *Guide to Good Practice on International Family Mediation* can be of assistance in informing families about these matters (the links to these are at the end of this document).

II. REFERRAL TO SPECIALIST MEDIATION SERVICES

- ✧ In view of the specific challenges of cross-border family disputes, State authorities should refer the families concerned to specialised cross-border family mediators, mediation structures and services (see Core Principles 9 and 10), including mediation services available in another country (see the Useful Links section at the end of this document).
- ✧ While mandatory attendance at a session providing information on mediation is an option, mediation itself remains a voluntary process; that is, the participants cannot be forced to settle their dispute through mediation (see Core Principle 1).

III. PARTICULARITIES OF INTERNATIONAL CHILD ABDUCTION CASES

- ✧ Experience shows that mediation can help to prevent international child abduction. Therefore, parties in disputes where one parent might consider moving abroad should be encouraged to try mediation as early as possible.
- ✧ International child abduction cases have their own particularities. Therefore, the families concerned should be referred to experienced mediators and mediation services specialising in cross-border child abduction cases. It should also be ensured that information on urgent legal matters, such as important deadlines, is made accessible through the Central Authorities under the 1980 Hague Child Abduction Convention and through specialist practitioners.
- ✧ In international child abduction cases, the parties in the dispute should be encouraged to participate in mediation as a means of resolving together, to the extent possible, the residence details of the children, and as a means of facilitating the enforcement of court decisions regarding the return of the children. Mediation is intended to allow the parents to renew or improve communication within the family in the best interests of the children.

IV. PROTECTION OF THE RIGHTS, WELFARE AND SAFETY OF ALL INVOLVED

- ✧ Mediation should not put the rights, welfare and safety of those concerned at risk (see Core Principle 2). Not all cases are suitable for mediation, and at times mediation may have to be accompanied by the implementation of protective measures.
- ✧ Participants in mediation should have access to relevant legal information to allow informed decision-making (see Core Principle 3). State authorities should, to the extent feasible, provide relevant neutral legal information or refer participants to other bodies or specialised practitioners for legal advice.
- ✧ Particular importance is to be given to the rights, welfare and interests of the child(ren) affected by the conflict (see Core Principle 8). Depending on the State policy and mediation scheme being practised, and the specific family circumstances, a child-inclusive or child-focused mediation approach may be recommended.

V. ASSISTANCE WITH RENDERING THE MEDIATED AGREEMENT LEGALLY BINDING AND ENFORCEABLE IN ALL COUNTRIES CONCERNED

- ✧ To the extent feasible, State authorities should support the participants in their efforts to render their mediated agreement legally binding and enforceable in all jurisdictions concerned.

VI. FINANCIAL ASSISTANCE

- ✧ State authorities should consider the feasibility of providing financial support to families that participate in international family mediation, or refer the participants to sources of financial assistance for mediation.

VII. PROMOTION OF THE ESTABLISHMENT OF SPECIALISED MEDIATION SERVICES, COOPERATION AND NETWORKING

- ✧ State authorities are encouraged to strengthen cooperation with specialised mediation structures, and to support inter-country cooperation, to further promote the establishment and consolidation of specialised international family mediation services, including information hotlines.
- ✧ State authorities dealing with international family disputes may consider assigning a reference person for international family mediation, or similar collaborative settlement mechanisms, to interact with relevant services and practitioners.
- ✧ To the extent feasible, State authorities should assist with the establishment of lists of professionals that provide specialist legal advice on international family disputes (structures, lawyers, etc.) in each country.
- ✧ State authorities are encouraged to support the strengthening of multidisciplinary collaboration among the various stakeholders involved in cross-border conflicts (such as legal practitioners, courts, social services and specialist mediation services) to provide the most suitable support to the family members concerned in international family disputes.
- ✧ State authorities are encouraged to keep records of the numbers of cases referred to international family mediation and to evaluate possible cost savings to the national budget, as has already been done in some countries.

USEFUL LINKS

- ✧ ISS *Guide to International Family Mediation*, available at
<www.ifm-mfi.org/en/guide>

- ✧ The Hague Conference on Private International Law's *Guide to Good Practice on International Family Mediation*, available at
<https://assets.hcch.net/upload/guide28mediation_en.pdf>

- ✧ Further information on International Family Mediation at
<www.ifm-mfi.org>

- ✧ For assistance with finding specialist international family mediators, country by country, see:

Country Information Section, including also legal and psychosocial support desks, at
<www.ifm-mfi.org/en/country_info_main_page>

The Hague Conference's Central Contact Points for international family mediation, which are listed at
<www.hcch.net/en/publications-and-studies/details4/?pid=5360>

The global network of cross-border family mediators at
<www.crossbordermediator.eu>

MiKK e.V. International Mediation Centre for Family Conflict and Child Abduction at
<www.mikk-ev.de>