



INTERNATIONAL SOCIAL SERVICE

COVID-19 and Cross Border family conflicts

COVID-19 has led to special rules and measures like border closures, lock-down and quarantine. This has a direct impact on children who are not living with both parents or those are separated, with many questions arising about how to prioritise the child's best interests. This document provides guidance on how to apply international standards in times of this global health pandemic. COVID-19 does not change existing parental rights and duties, although adaptations in how these are executed may be necessary given the changes in security measures applied by States.

Reinforced cooperation between the central authorities, the judicial authorities, the public prosecutor and all relevant professionals is needed, to facilitate the flow of information about the impact of COVID-19 in the two countries to ensure children's rights are upheld, including the safe return of the child and speedy execution of court orders.

Key considerations for children:

- **COVID-19 adds additional concerns for children, grappling with family conflict, especially those of a cross-border nature.** It is therefore essential that children understand the implications of the pandemic and are part of discussions in finding appropriate responses.
- **Those responsible for caring for the children (parents and/or professionals) should have open exchanges with the children, adapted to their age about:**
 - their doubt(s) and apprehension about the new situation,
 - the impact of COVID-19 on contact with their parent(s),
 - if necessary, why it is not possible to see the other parent,
 - contact arrangements with the other parent and how, communication will be maintained through virtual means,
 - if necessary, that contact with the other parent may be limited but that the situation is temporary and that he or she will be able to communicate with his or her parents whenever he or she wants to during this period.

Key considerations for parents:

- **It is a right of the child and in his or her best interest to be able to maintain contact with both parents.** Both parents in principle share joint responsibility to discuss and decide how visits can take place safely. If needed, parents should seek help for such discussions, using alternative dispute resolution or other means.
- **A parent may agree to leave the child during the crisis with the other parent.** To avoid a potential conflict of interest related to the child's habitual residence, it is important to indicate that this written agreement is only for a short period of time. A child abduction case may arise, if the child does not come back after this period.

Guiding International Instruments & Standards and ISS-internal documents

- 1989 Convention on the Rights of the Child
- The 1980 Hague Convention (child Abduction)
- The 1996 Hague Convention (child protection)
- EU Brussels IIa Regulation
- Inter-American Convention on the Intl Return of Children
- European Directive 2008/52/EC on Mediation in Civil and Commercial Matters
- *Charter for International Family Mediation Processes*
- HCCJ Guide to Good Practice - Mediation

ISS services around the world may include:

- Counselling and pre-mediation services, in countries where ISS offers this service
- Referral to reliable mediation services, including abroad
- Act as a Central Contact Point for IFM under the Malta Process

- If a parent fears child abduction or another parent refuses contact with the child, he or she can contact organizations like ISS as well as lawyers and central authorities that can provide counsel and help.
- **During COVID-19, it may not be in the child’s best interest to meet the other parent in person due to health risks.** In such cases, other ways of contact should be used such as video or audio technology, text or instant messaging, and sending letters. Both parents should support these activities, especially for smaller children who are not able to do this alone.
- Parents should seek support from local authorities and/or ISS member in their country if needed, about communication tools and making “virtual contact time” meaningful.
- **Existing rights and titles on parental rights still are in force and not suspended during the pandemic.** If a parent fails to return the child (even though it would be possible) and amicable solutions cannot be found, an existing title under the existing rules and international Conventions may be enforceable. If the case falls under the 1980 Hague Convention, the parent can be obliged by a court order to return the child.
- **If a court decision has ordered the return of the child, it is important to stay in contact with the legal authorities, central authorities to obtain information about when the decision will be executed.** In several countries, during the pandemic, forced execution may be suspended until the health situation allows it.
- **COVID-19 is not a reason to avoid the return of a child to the other parent.** The health pandemic should generally not be used as an exception under art. 13 I b of the 1980 Hague Convention. An individual case by case approach is needed.

Key considerations for legal professionals:

- **Child’s right to maintain contact must be the central consideration.** Finding amicable solutions should be prioritised given the uncertainty surrounding the impact of COVID-19 and likely delay in court procedures.
- **Before providing advice, do national and/or regional rules:**
 - prevent travelling and personal contact with the other parent not living permanently in the household with the child?
 - prevent crossing a border or require a quarantine period? Are there exceptions?
 - make it necessary to change a decision (contact order) as a whole or hinder the enforcement of a title for a certain situation or time frame?
- **In child abduction cases,** the judge may order the other parent to allow access or a video exchange, via social network in order to maintain the link between parent and child until the court decision can be executed or made, with regards to return proceedings.

Specific Tools and sites

- <https://dobieroad.org/wp-content/uploads/2020/05/VIRTUAL-VISITATION-5-12-20.pdf>
- <http://www.divorcehelpforparents.com/virtual-visitiation.html>
- <http://centervideo.forest.usf.edu/video/qpi/ylc/mediaeffect/FAQ.pdf>
- <https://www.acf.hhs.gov/cb/resource/virtual-visitiation-resources>
- <https://www.afccnet.org/Portal/0/Hague%20covid19%20tool%20kit.pdf?ver=2020-05-07-165925-017>
- <https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>
- <https://www.valleyyouthhouse.org/when-family-conflict-arises-how-to-cope-during-covid-19/>
- Multilingual IFM Website www.ifm-mfi.org
- ISS fact sheets on parental responsibility, mediation, relocation, child abduction

Useful country information

Australia:

<https://www.iss.org.au/wp-content/uploads/2020/05/COVID-19-and-return-applications-under-the-1980-Hague-Convention.pdf>

France: <https://solidarites-sante.gouv.fr/soins-et-maladies/maladies/maladies-infectieuses/coronavirus/professionnels-du-social-et-medico-social/article/enfance-et-famille-protection-de-l-enfance-majeurs-vulnerables-protoges>

Germany: <https://www.forum-transfer.de/>

UK: <https://www.judiciary.uk/wp-content/uploads/2020/03/COVID19-Draft-Temporary-Amendments-to-Child-Abduction-Practice-Guidance-Final-26.03.2020.pdf>