

Draft Proposal

Best Practices for International Family Mediation Processes *A Collaborative Process*

As outlined in the *Methodology*, the *Charter on International Family Mediation Processes* will consist of the core principles and a set of best practices. While the respect of all core principles is a requirement for international family mediation practice, **the best practices provide guidance to mediation practitioners to fulfil the principles.** Hence, this section of the Charter can be developed over the years.

The present document reflects a series of best practices developed during the participative workshops of the Geneva Meeting in October 2015 and will be integrated in the Charter.

As the majority of them are cross-cutting practices relating to many principles, we propose to organise them under following topics:

- ❖ Practices useful to facilitate the mediation process
- ❖ Practices useful when working with legal and administrative bodies
- ❖ Practices useful to take into account the best interest of the child
- ❖ Practices to nurture cross-cultural awareness and sensitivity
- ❖ Practices to ensure mediators' competencies
- ❖ Public awareness
- ❖ General trends

Practices useful to facilitate the mediation process

➤ Practices useful before mediation processes

International family mediation processes usually include a pre-mediation phase which allows specialised structures or independent mediators to speak and/or meet individually with the participants, enquire on their readiness to participate, organise and make arrangements for the mediation sessions and assess the suitability of mediation. This phase is considered to be essential for the management and the engagement of the mediation process, as well as to spot if there are issues of domestic violence. Equally, this phase can be useful to empower participants who were referred to mediation by administrative and legal authorities.

During this phase following good practices are recommended:

- ✓ Meet or speak with, and interview each party separately.
- ✓ Introduce the process, explain clearly the mediation framework and carefully enquire and assess with the parties whether the process can fulfil their needs and expectations. If not, the parties should be referred to other support services or another mediator.
- ✓ Maintain confidentiality on the content of the individual meeting with each participant.
- ✓ Be transparent on the mediation process and how it is linked to the judicial avenue.
- ✓ Raise participants' awareness on the advantages and utility of mediation to strengthen their voluntary commitment to the mediation process.



- ✓ Encourage the participants to have an open dialogue during mediation and be willing to explore options and arrangements.
- ✓ Formulate an assessment for suitability (internal, for the mediator), with consultation if possible.
- ✓ The assessment meeting should be free of charge.

➤ **Practices useful during mediation processes**

International family mediation processes have a number of specificities: geographic distance between the participants, interconnection with administrative and legal procedures of several countries, cost for travels, differences in culture. Hence, there must be flexibility to design the mediation process according to geographic, financial and legal constraints.

To adapt to each case and to constraints following good practices are recommended:

- ✓ Develop mediation at distance.
- ✓ Prioritise international cases on the caseload to have time to provide flexibility and adapt to legal and administrative timeframes.
- ✓ Encourage legal representation for both parties.
- ✓ Clearly explain the principle of confidentiality as it applies in the given context and clarify among participants their understanding of confidentiality.
- ✓ Give free choice of themes to discuss to the participants.
- ✓ Evaluate the suitability of mediation throughout the process.
- ✓ Adapt language and non-judgmental attitude to the participants.
- ✓ The empowerment of the participants should frame the mediation process, and the mediators should:
 - encourage active participation;
 - manage and control their behaviour and act with integrity;
 - build intermediary reports regarding progress and arrangements with participants;
 - use caucuses as deemed appropriate;
 - stay conscious of participants' perception of impartiality.

Practices useful when working with legal and administrative bodies

International Family Mediation Processes are often closely linked to administrative and legal procedures, from the outset of the process or when mediation agreements need to be rendered binding and enforceable in all countries concerned.

Hence, it is important for specialised mediation structures and independent mediators to demonstrate professionalism and to strengthen cooperation with administrative and legal authorities.

➤ **Awareness raising and promotion of international family mediation**

It is the responsibility of mediators to raise awareness and promote international family mediation practice in their countries. To do so, the following is recommended:

- ✓ Strive for, and promote, the professionalization of international family mediation, in particular by creating specialised structures and associations in each country. To do this, seek for guidance among existing structures.



- ✓ Ensure quality of mediators to enhance and promote the reputation of mediation as a reliable process (e.g. inform on required minimum standards, specialised training for international cases, cross-cultural awareness).
- ✓ As a mediator encourage and, when possible, offer training to representatives and lawyers regarding mediation and their role in that process.

➤ **Build up cooperation with administrative and legal bodies**

Specialised structures and mediation practitioners should enhance cooperation with administrations and legal bodies to facilitate access to mediation for families. To do so, the following is recommended:

- ✓ Present mediation practice to central authorities, highlight its added value and propose mediation services.
- ✓ Share lists of specialised mediators, specialised networks, and clarify roles of each player.
- ✓ Discuss with central authorities, the judiciary and specialised lawyers systems for referral to mediation.
- ✓ Demonstrate appropriate qualifications and share information on the mediation model being used, code of ethics and professional conduct, practice statistics, completed trainings.

➤ **General recommendations to legal and administrative bodies in your country**

Legal and administrative authorities can be active players in international family mediation processes. They should be encouraged by mediation practitioners to consider the following:

- ✓ Develop prevention of forced return in cases of international child abduction.
- ✓ Conduct a research on the save for States to use mediation for handling cross-border family conflicts (by proposing and facilitating mediation).
- ✓ Get involved in the creation of a global network of mediators specialising in cross-border family conflicts.

➤ **When and where core mediation principles are at risk**

When international family mediation processes are interconnected with judicial proceedings, mediation practitioners should inform administrative and legal authorities of the importance of the principle of confidentiality. They should clarify as well to which extent this principle can be upheld throughout the mediation process. Other principles, such as Voluntary participation, Decision-making by the participants, Independence, Impartiality and Consideration of the rights and the interests of the child should also be highlighted when cooperating with administrative and legal authorities.

Practices useful to take into account the best interest of the child

The consideration of the rights and the interests of the children affected by the conflict is essential during international family mediation processes. Given that mediation practice deals with very different family settings and cultures, it is important that the interests of the children are considered throughout the process in a flexible and transparent way and that there is a constant dialogue between the consideration of the legal framework and the interests of the children. Mediators should know the rights of the children and think of the best way to present them to the parents coming to mediation.



➤ **Awareness raising materials:**

- ✓ Create or make available sensitisation videos on the needs of the child, on the impact of parental alienation, as well as the impact of child abduction on the child.

➤ **At the beginning of the process, it is recommended that mediators:**

- ✓ Clearly distinguish the phase of pre-mediation from the actual mediation: mediators in charge of the intake, logistics and administrative formalities should not be the ones conducting mediation.
- ✓ Enquire if the children affected by the conflict have access to both parents and highlight the right of the children to have contact to both parents whenever safe and note the importance of being willing to cooperate in the best interest of the children.
- ✓ Before the actual mediation (and after the intake sessions with the participants), include a facilitated “child focused education session” where reference videos can be shown.

➤ **During the mediation process, mediators can:**

- ✓ Open a discussion with the participants on the needs and the wellbeing of their children. They should try to explain the rights of the child in a non-legal way.
- ✓ Use tools and methodologies to encourage parents to take into consideration the interest of the child (e.g. use an empty chair with a picture of the child, use a doll belonging to the child).
- ✓ Include peers in the process, such as other family members, teachers, community and religious leaders to encourage parents to take into consideration the interest of the child.
- ✓ Make participants feel aware and responsible towards finding an amicable solution as otherwise courts would decide on their behalf for their children’s fate (highlight that mediation is an opportunity to find a tailor made solution reflecting the geographic and financial reality, and availabilities of the parents).

➤ **Child inclusive practice**

Child inclusive mediation is a specialised practice and recommended for international family mediation processes; however, mediators need to be skilled and qualified to hear a child. Hence, it is recommended:

- ✓ To focus first on the parental conflict and afterwards guide the attention of participants on the interest of the child (with the help of the child expert).
- ✓ To appoint a child expert who will speak with the children and report back to the parents what they have voiced: there will be a report on the intervention of the child expert, accessible to other actors involved in the process (e.g. the judge, the mediator, etc.).
- ✓ To be clear with the participants, the children and any other actor that it is not the child who decides.

Practices to nurture cross-cultural awareness and sensitivity

International family mediators should feel responsible for both lineages involved in the conflict, even if culture is very different from the mediators’ one.



- ✓ Co-mediation is strongly recommended as a good practice, and whenever possible bi-gender co-mediation with two mediators from the legal and psycho-social fields, speaking the languages of the parties.
- ✓ Mediators should explicitly state and discuss the meaning of confidentiality for the mediation process and remain conscious of diverse understanding of confidentiality among the participants throughout the process (of what can be shared during mediation, what not, what can be told outside mediation and what not).
- ✓ Mediators must reflect about own personal values and be aware and honest about own limitations (emotional and cultural limitations, tolerance etc.). If he or she has an acknowledged position on a personal or cultural trait of a participant, express it and suggest using co-mediation.
- ✓ Mediators should try to participate in a training regarding cross-cultural awareness and communication.
- ✓ Mediators should remain aware of their personal cultural background in terms of values, beliefs, convictions, in order to maintain a multi-partial and fair attitude during mediation.
- ✓ Mediators can take account of other persons who could be important for the mediation and their roles, even if they would not be in a position to make decisions. This includes persons related to the parties who could be included in the process, and also other resources that can help advance the process (translators, cultural interpreters etc.).

Practices to ensure mediators' competencies

Mediation practitioners must be qualified to conduct international family mediations. They need to be familiar with the legal framework of cross-border family mediations and have access to specialist legal advice.

- **Professional and continuous training, supervision etc.**
 - ✓ Mediators should seek for continuous or advanced training, as well as apprenticeship through co-mediation, and look for guidance among peers around the world (supervision, inter-vision, forum discussions) to strengthen and keep an even-handed and fair attitude towards both parties in mediation.
- **Adherence to a Code of Conduct**
 - ✓ Mediators should adhere to a national code of professional conduct if available, and otherwise elaborate with peers, a set of minimum standards for family mediation practice.

General trends

- **Mediation settings**

The flexibility or adaptability of the mediation setting in terms of location, time and conduct are of paramount importance for international family mediation processes; it echoes specific challenges regarding cross-border family disputes (geographical distance, several cultures in play, unequal financial resources, strong emotional tensions and opportunity to see children again). Hence, mediators and authorities need to adapt to each particular situation to allow mediation to take place. Mediators are encouraged to:



- ✓ Provide services outside “normal” business hours.
- ✓ Adapt to situations of strong emotional tension (e.g. where face to face sessions are not possible).
- ✓ Remain multi-partial under all circumstances and at all times (e.g. on the phone, when they shuttle from one participant to the other).
- ✓ Assess the suitability of mediation bearing in mind that cross-border family mediations may have to be conducted under very different circumstances in terms of location, length of sessions and expectations.

➤ **Co-mediation**

Co-mediation is highly recommended for international family mediation processes to bring balance and fairness in the process and in the perception of the participants; this approach can take forms such as:

- ✓ *In situ* co-mediation (with two mediators present).
- ✓ Co-mediation at distance (with online component).

➤ **Online Mediation**

Online mediation facilitates international family mediation processes as it offers the possibility to mediate over distance. It is generally recognised as a positive development, however showing some crucial challenges. It is recommended to specialised structures and mediation practitioners to ensure that mediation at distance is conducted with a number of safeguards:

- ✓ The online system/platform must be reliable in technical terms (technical issues must be avoided).
- ✓ The online system should guarantee confidentiality; mediators should be transparent about the setting at distance (who is present in the room, what rooms looks like, absence of others plugged to the conversation, confidentiality guarantees – all possible teleconferencing systems etc.).
- ✓ The mediation process must be very structured and planned and mediators need to be aware of the potential gap occurring from the technological shift.
- ✓ Mediators should be transparent, in particular in case of a caucus.
- ✓ Mediators should be skilled in managing power imbalances at distance and integrating more participants in the process.

Transparency of mediation process

Transparency relates to the integrity of the process and, as a good practice, strengthens the right of people to be fully familiar of the conduct of an international family mediation process and its progress, especially if the mediation is linked to a legal procedure. Hence, it is recommended that mediators:

- ✓ Allow each participant to have a good understanding of all steps and phases throughout the entire mediation process.
- ✓ Clearly structure the process.
- ✓ Demonstrate an impartial attitude.
- ✓ Clarify their role of mediator.
- ✓ Express openness to all questions from the participants.