

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION
DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT
INTERNATIONAL D'ENFANTS ET DE LA CONVENTION DE LA HAYE
DU 19 OCTOBRE 1996 CONCERNANT LA COMPÉTENCE, LA LOI APPLICABLE,
LA RECONNAISSANCE, L'EXÉCUTION ET LA COOPÉRATION EN MATIÈRE
DE RESPONSABILITÉ PARENTALE ET DE MESURES DE PROTECTION DES ENFANTS**

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION AND THE HAGUE CONVENTION
OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION,
ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL
RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

drawn up by the Permanent Bureau

*Document préliminaire No 1 de novembre 2010 à l'intention de la
Commission spéciale de juin 2011 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

*Preliminary Document No 1 of November 2010 for the attention of the
Special Commission of June 2011 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

**QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION
DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT
INTERNATIONAL D'ENFANTS ET DE LA CONVENTION DE LA HAYE
DU 19 OCTOBRE 1996 CONCERNANT LA COMPÉTENCE, LA LOI APPLICABLE,
LA RECONNAISSANCE, L'EXÉCUTION ET LA COOPÉRATION EN MATIÈRE
DE RESPONSABILITÉ PARENTALE ET DE MESURES DE PROTECTION DES ENFANTS**

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION AND THE HAGUE CONVENTION
OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION,
ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL
RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

drawn up by the Permanent Bureau

INTRODUCTION TO THE QUESTIONNAIRE

Objectives of the Questionnaire

This Questionnaire is addressed in the first place to States Parties to the 1980 and / or 1996 Convention(s).¹ It has the following broad objectives:

- a. To seek information from States Parties as to any significant developments in law or in practice in their State regarding the practical operation² of the 1980 and / or 1996 Convention(s);
- b. To identify any current difficulties experienced by States Parties regarding the practical operation of the 1980 and / or 1996 Convention(s);
- c. To obtain the views and comments of States Parties on the services and supports provided by the Permanent Bureau of the Hague Conference on Private International Law regarding the 1980 and / or 1996 Convention(s);
- d. To obtain feedback on the use made of the Guide to Good Practice under the 1980 Convention and the impact of previous Special Commission recommendations;
- e. To obtain views and comments on related projects of the Hague Conference on Private International Law in the fields of international child abduction and international child protection; and
- f. To obtain views and comments on the priorities for the upcoming Special Commission meeting.

The Questionnaire will facilitate an efficient exchange of information on these matters between States Parties, as well as other invitees, prior to the Special Commission meeting.

Scope of the Questionnaire

This Questionnaire is intended to deal with only those topics not covered by the Country Profile for the 1980 Convention (currently in development and to be circulated for completion by States Parties in April 2011). The new Country Profile will provide States Parties with the opportunity to submit, in a user-friendly tick-box format, the basic information concerning the practical operation of the 1980 Convention in their State. States Parties should therefore be aware that, for the purposes of the Special Commission meeting, their answers to this Questionnaire will be read alongside their completed Country Profile.

States Parties should also be aware that this *general* Questionnaire will be followed, in due course, by a questionnaire dealing specifically with the issue of a protocol to the 1980 Convention. This Questionnaire is not therefore intended to deal directly with any questions surrounding the issue of a protocol to the 1980 Convention.

Whilst this Questionnaire is primarily addressed to States Parties to the 1980 and / or 1996 Convention(s), we would welcome from all other invitees to the Special Commission (*i.e.*, States which are not yet Party to either Convention, as well as certain intergovernmental organisations and international non-governmental organisations) any comments in respect of any items in the Questionnaire which are considered relevant.

¹ References in this document to the "1980 Convention" and the "1996 Convention" are to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* respectively.

² As stated in Info. Doc. 1, where reference is made to the "practical operation" of the 1980 or 1996 Convention in documentation for this Sixth Meeting of the Special Commission, this is intended to refer to the *implementation and operation* of the relevant Convention.

We intend, except where expressly asked not to do so, to place all replies to the Questionnaire on the Hague Conference website (< www.hcch.net >). Please therefore clearly identify any responses which you do not want to be placed on the website.

We would request that replies be sent to the Permanent Bureau, if possible by e-mail, to secretariat@hcch.net no later than **18 February 2011**.

Any queries concerning this Questionnaire should be addressed to William Duncan, Deputy Secretary General (wd@hcch.nl) and / or Hannah Baker, Legal Officer (hb@hcch.nl).

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1980 AND 1996 CONVENTIONS**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 and / or the 1996 Convention(s), **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit:³ **Hong Kong Special Administrative Region of the People's Republic of China**

For follow-up purposes

Name of contact person: Ms Susana SIT

Name of Authority / Office: Department of Justice

Telephone number: (852) 2867 3403

E-mail address: susanasit@doj.gov.hk

PART I: RECENT DEVELOPMENTS⁴

1. Recent developments in your State

- 1.1 Since the 2006 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of:
- a. International child abduction; and
 - b. International child protection?
- Where possible, please state the reason for the development in the legislation / rules.

" We" in the following replies refers to the Central Authority of the Hong Kong Special Administrative Region of the Peoples' Republic of China ("HKSAR")

The Administration of the HKSAR has recently taken on board the recommendations of the Law Reform Commission to enhance the preventive measures and remedies in respect of parental international child abduction in the following areas, and legislative exercise is underway to implement the proposed reforms:

- to extend the scope of eligible parents who can apply under the domestic law for the injunction including prohibiting the child from leaving the jurisdiction without necessary permission, so as to cover all parents regardless of whether they are involved in any divorce/ matrimonial proceedings;
- to expressly empower the court to order the disclosure of the whereabouts or location of the child for the recovery of the child;
- to empower the Immigration Department and the police to hold the child in a place of safety where there is stop order issued by the court prohibiting the abducted child from leaving the jurisdiction or where an application for the stop order is pending; and
- to advise parents of their obligations to notify the Immigration Department of the court order prohibiting the removal of their child from the jurisdiction without their consent.

- 1.2 Please provide a brief summary of any significant decisions concerning the

³ The term "State" in this Questionnaire includes a territorial unit, where relevant.

⁴ This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction and international child protection which have occurred in your State since the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter "the 2006 Special Commission"). However, if there are important matters which you consider should be raised from *prior to* the 2006 Special Commission, please provide such information here.

interpretation and application of the 1980 and / or 1996 Convention(s) given since the 2006 Special Commission by the relevant authorities⁵ in your State.

There are no significant decisions concerning the interpretation and application of the 1980 Convention.

- 1.3 Please provide a brief summary of any other significant developments in your State since the 2006 Special Commission relating to international child abduction and / or international child protection.

Please see reply to 1.1 above.

2. Issues of compliance

- 2.1 Are there any States Parties to the 1980 and / or 1996 Convention(s) with whom you are having particular difficulties in achieving successful co-operation? Please specify the difficulties you have encountered and, in particular, whether the problems appear to be systemic.

There are so far no particular difficulties in co-operating with other Contracting States.

- 2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of either Convention?

We are not aware of such situations/ circumstances.

⁵ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 and 1996 Conventions. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION
--

3. The role and functions of Central Authorities designated under the 1980 Convention⁶

In general

- 3.1 Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities? If so, please specify.

There are so far no particular difficulties in achieving effective communication or co-operation with other Contracting States.

- 3.2 Have any of the duties of Central Authorities, as set out in Article 7 of the 1980 Convention, raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?

So far, we have not experienced any particular problems in discharging our duties as Central Authority or in our cooperation with the State parties.

- 3.3 Has your Central Authority encountered any difficulties with the interpretation and / or application of any of the 1980 Convention provisions? If so, please specify.

We have not encountered such difficulties so far.

Legal aid and representation

- 3.4 Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (Art. 7(2) g)) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States you have dealt with? If so, please specify.

The measures taken by us to provide or facilitate the provision of legal aid/advice and/or representation have not resulted in any delays in proceedings. Hague Convention cases are accorded priority in our jurisdiction.

- 3.5 Are you aware of any other difficulties in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁷

⁶ See also question 6 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

⁷ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "Conclusions and Recommendations of the 2006 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings"):

"1.1.4 The importance for the applicant of having effective access to legal aid and representation in the requested country is emphasised. Effective access implies:

a) the availability of appropriate advice and information which takes account of the special difficulties arising from unfamiliarity with language or legal systems;

We are not aware of any difficulties regarding the obtaining of legal aid, advice and/or representation for left-behind parents or taking parents.

b) the provision of appropriate assistance in instituting proceedings;

c) that lack of adequate means should not be a barrier to receiving appropriate legal representation.

1.1.5 The Central Authority should, in accordance with Article 7[(2)] *g)*, do everything possible to assist the applicant to obtain legal aid or representation.

1.1.6 The Special Commission recognises that the impossibility of, or delays in, obtaining legal aid both at first instance and at appeal, and / or in finding an experienced lawyer for the parties, can have adverse effects on the interests of the child as well as on the interests of the parties. In particular the important role of the Central Authority in helping an applicant to obtain legal aid quickly or to find an experienced legal representative is recognised."

Locating the child

- 3.6 Has your Central Authority encountered any difficulties with locating children in cases involving the 1980 Convention, either as a requesting or requested State? If so, please specify the difficulties encountered and what steps were taken to overcome these difficulties.

There was a case which we initially encountered difficulties in locating the abducted child as she and the taking parent had no connection with Hong Kong. They entered Hong Kong under tourist visas and had not left any contact details with the immigration authorities. Swift action was taken to obtain a stop order from court preventing the child from leaving the jurisdiction. The stop order was served on the border authorities with a note to the taking parent to make contact with us. The child and her parent were stopped when they attempted to leave the jurisdiction. The parent subsequently made contact with us to resolve the matter through the Hague proceedings.

- 3.7 Where a left-behind parent and / or a requesting Central Authority have no information or evidence regarding a child's current whereabouts, will your Central Authority still assist in determining whether the child is, or is not, in your State?

Yes, we will assist. If the left-behind parent or the requesting Central Authority suspect that the child has entered Hong Kong, even the current address is unknown, we will ascertain from the immigration authority as to whether the child is indeed within the jurisdiction. If positive, a stop order from court will be applied and the procedure described in 3.6 above will then follow.

- 3.8 In your State do any particular challenges arise in terms of locating children as a result of *regional* agreements or arrangements which reduce or eliminate border controls between States? If so, please specify the difficulties encountered and any steps your State has taken to overcome these difficulties. Are there any *regional* agreements or arrangements in place to assist with locating children because of the reduced / eliminated border controls?

We do not have such challenges.

- 3.9 Where a child is not located in your State, what information and / or feedback is provided to the requesting Central Authority and / or the left-behind parent as to the steps that have been taken to try to locate the child and the results of those enquiries?

Where a child is not located in our jurisdiction, it is either because (i) he/she has not entered Hong Kong or has already left Hong Kong or (ii) their travel records indicate that he/she is in Hong Kong but the current address is unknown due to the existing information is insufficient. If it is the first scenario, we will advise the Central Authority/left behind parent of the negative outcome resulting from the inquiries made with the border authorities. If the child has once been in Hong Kong but left, information as to the next destination will also be passed. If it is the second scenario, we will advise the Central Authority/left behind parent accordingly and sought for further particulars to assist our law enforcement agencies to locate the child including the particulars of any persons within the jurisdiction who may have information of the child's whereabouts.

- 3.10 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)? Have you encountered any particular difficulties in working with these external agencies? Is there any good or

bad practice you wish to share on this matter?

We work closely with the police, immigration and social welfare officers and have not encountered any difficulties. Each of these agencies has established a contact point for the purpose of handling child abduction cases to facilitate efficient communication and coordination of actions.

Information exchange, training and networking of Central Authorities

3.11 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁸

From time to time, we exchange information with other Central Authorities on domestic laws and practices relating to the operation of the Convention through case dealings.

3.12 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call, as proposed in Recommendations Nos 1.1.9 and 1.1.10⁹ of the 2006 Special Commission?

We have not organised or participated in any other networking initiatives between Central Authorities.

3.13 Would your Central Authority find it useful to have an opportunity to exchange information and network with other Central Authorities on a more regular basis than at Special Commission meetings?

We would find it most helpful to have an opportunity to exchange information and network with other Central Authorities on a more regular basis so as to promote inter-States cooperation and to enhance a better understanding, particularly in the area of respective abduction patterns, prevention strategies and protection measures.

⁸ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

⁹ See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7):

"1.1.9 The Special Commission recognises the advantages and benefits to the operation of the Convention from information exchange, training and networking among Central Authorities. To this end, it encourages Contracting States to ensure that adequate levels of financial, human and material resources are, and continue to be, provided to Central Authorities.

1.1.10 The Special Commission supports efforts directed at improving networking among Central Authorities. The value of conference calls to hold regional meetings of Central Authorities is recognised."

*Statistics*¹⁰

- 3.14 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

We submit statistics through the web-based INCASTAT database on a regular basis.

Views on possible recommendations

- 3.15 What recommendations would you wish to see made in respect of the role and particular functions that Central Authorities might, or do, carry out?

Central Authorities should continue to play an active role after the return of the child in particular where the child's safety is in issue, to monitor and ensure that the welfare of the child is well looked after pursuant to the provisional protective measures until the appropriate courts are effectively seised with the relevant issues, and to this end, Central Authorities should be given sufficient powers.

4. Court proceedings

- 4.1 If your State has not limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, it has not "concentrated jurisdiction"), are such arrangements being contemplated?¹¹ If the answer is no, please explain the reasons.

We have "concentrated jurisdiction". The hearing of return applications is limited to a small number of High Court Judges who have family law experience.

- 4.2 Are any procedural rules in place in your State in relation to return proceedings brought under the 1980 Convention? If so, do you consider that the procedural rules which are applied allow the relevant authorities to reach a decision within six weeks? To what extent do you consider that delays in return proceedings under the 1980 Convention are linked to a lack of appropriate procedures?

Return proceedings are governed by the Rules of the High Court which provide, *inter alia*, for the exchange of affidavit evidence only and within stipulated time limits. Oral evidence is generally not allowed and if allowed, it is at the discretion of the judge on a case by case basis and in exceptional circumstances. In addition, strict timeframes are set by judges during the course of the proceedings to ensure that the applications are expeditiously dealt with and a decision be reached within the 6 week period and if not practicable within the shortest possible period. In our view, a lack of appropriate rules and procedures is a major factor in causing delays in the return proceedings.

5. Domestic violence allegations and Article 13(1) b) of the 1980 Convention¹²

¹⁰ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7).

¹¹ See, for example, the "Conclusions and Recommendations of the Fourth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (22-28 March 2001)" (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings") at para. 3.1:

"The Special Commission calls upon Contracting States to bear in mind the considerable advantages to be gained by a concentration of jurisdiction to deal with Hague Convention cases within a limited number of courts."

¹² See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.1.12, 1.4.2 and 1.8.1 to 1.8.5. Please also refer to question 6 of this Questionnaire regarding the safe return of children.

- 5.1 Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases in your State? What is the general approach of the relevant authorities to such cases?

The issue of domestic violence or abuse is not often raised as a defence to the application for return of the child.

Where there is a claim of child abuse/domestic violence, we will work with the social welfare, police and medical officers for formulating the case plan. Usually, the social welfare officer will check with the child (and the taking parent if appropriate) to ascertain if medical examination is required. The police will also investigate the case where there are suspected criminal elements, including conducting video-recording interview with the child if required. A multi-disciplinary case conference, involving concerned professionals, e.g. social worker, medical officer, child psychologist and police, will be conducted to evaluate the claim and discuss the welfare plan for the child (and the abducting parent if appropriate). A wide range of services including shelter, medical and psychological assessments, counselling services, will be available to the victim(s). All the above actions will be expeditiously carried out and on-going assessments will be made to ensure the safe and timely return of the child.

- 5.2 In particular:
- a. What is the standard of proof applied when a taking parent relies on Article 13(1) b)?

It is established by case authorities that the risk of physical or psychological harm must be actual and substantial. The test is a stringent one and will only be satisfied in exceptional circumstances.

- b. Bearing in mind the obligation in the 1980 Convention to act expeditiously in proceedings for the return of children,¹³ how far do the relevant authorities in your State investigate the merits of a claim that domestic violence or abuse has occurred? How are resulting evidentiary issues dealt with (e.g., obtaining police or medical records)? How is it ensured that no undue delay results from any such investigations?

Please refer to the reply of 5.1 above concerning the investigation of a claim of domestic violence/abuse conducted by the relevant authorities. In the multi-disciplinary case conference, members will share reports from the medical officer, social worker, police officer and other relevant professionals. Conclusion on whether there is any domestic violence or abuse on the child will be drawn. The pledge for conducting multi-disciplinary case conference upon receiving referral is 10 days. All follow-up actions and assessments are expeditiously carried out. Provided the case meets the Convention requirements, return proceedings will be instituted in parallel with the above actions to ensure that no undue delay is caused to the return of the child.

¹³ Art. 11 of the 1980 Convention: "The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children."

- c. Is expert evidence permitted in such cases and, if so, regarding which issues? How is it ensured that no undue delay results from the obtaining of such evidence?

The court, apart from considering the evidence of the parents, will call for reports from the social welfare officer, police officer, medical officer, child psychologist and other relevant professionals, in determining the merits of the claim and in considering the sufficiency and enforceability of any conditions to be imposed by the return order for alleviating the risks concerned. All the reports are to be submitted within a strict time frame stipulated by court to ensure that no undue delay to the proceeding is caused.

- 5.3 Where allegations of domestic violence / abuse are made by the taking parent, how will the relevant authority deal with any reports from children as to the existence of such domestic violence / abuse?

Risk assessment will immediately be conducted initially by the social worker to ensure the safety of the child (and the taking parent where appropriate). If injuries are found on the victims, they will be sent for medical examination. To safeguard the interests of the child, a report will be made to the police to conduct enquiries as to existence of any criminal offence. Individual interview will be conducted with the child in the presence of the social welfare officer/child psychologist and depending on the age and maturity of the child, relevant information will be obtained. Information from the child's carer(s), if any, will also be gathered. A multi-disciplinary case conference will then be convened to discuss the case nature and welfare plan for the child (and the taking parent where appropriate).

- 5.4 Where allegations of domestic violence / abuse are made by the taking parent, what tools are used by judges (or decision-makers) in your State to ascertain the degree of protection which can be secured for the child (and, where appropriate, the accompanying parent) in the requesting State upon return (e.g., information is sought from the requesting Central Authority, direct judicial communications are used, expert evidence on foreign law and practice is obtained, direct notice can be taken of foreign law, etc.)?

Information is sought from the requesting Central Authority as to the availability as well as the nature of the protective measures and services or facilities available in the requesting state to address the risks concerned and to ensure that the child (and the accompanying parent where appropriate) return to a safe environment, including the possibility of providing a mirror order to ensure that the protective measures incorporated in the return order for securing the child's safe return are implemented in the requesting state.

- 5.5 Do any regional agreements affect the operation of Article 13(1) b) in your State (e.g., for European Union Member States excluding Denmark, Art. 11(4) of the Brussels II a Regulation¹⁴)? If so, please comment upon how the relevant regional provision(s) have operated in practice.

There are no such agreements.

- 5.6 From your practical experience, what do you see as the main (a) similarities, and (b) inconsistencies between States Parties regarding the application and interpretation of Article 13(1) b) in cases of alleged domestic violence? Can you

¹⁴ Full title: Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

suggest any good practice which should be promoted on this issue?

Since, so far, we have not had any outgoing return applications that involve the claim of domestic violence under Art. 13(1) (b), we are unable to make any comparison from practical experience.

5.7 Do you have any other comments relating to domestic violence or abuse in the context of either the 1980 or the 1996 Convention?

We do not have any other comments.

6. Ensuring the safe return of children¹⁵

*The implementation of previous Special Commission recommendations*¹⁶

6.1 What measures has your Central Authority taken to ensure that the recommendations of the 2001 and 2006 Special Commission meetings¹⁷ regarding the safe return of children are implemented?

Protective measures in the form of conditions or undertakings are incorporated in the return order to safeguard the welfare of the child upon his return until the intervention of the court in the requesting state. Maintain close liaison with the requesting Central Authority to ensure that the protective measures are duly complied with and, if possible, ensure that a mirror order is in place before the child's return. Secure information from the requesting Central Authority concerning services and facilities available in the requesting state to safeguard the child (and the taking parent where appropriate) and ensure that the taking parent who wishes to return with the child is provided with such information.

¹⁵ See Art. 7(2) *h*) of the 1980 Convention and the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.1.12 and 1.8.1 to 1.8.5. Please also refer to the "Domestic violence allegations and Article 13(1) *b*) of the 1980 Convention" section of this Questionnaire (question 5).

¹⁶ See the Conclusions and Recommendations of the Special Commission of 2006 (*op. cit.* note 7) at paras 1.1.12 and 1.8.1 to 1.8.5 and the Appendix to the Conclusions and Recommendations.

¹⁷ *Id.*

- 6.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

We will request the requesting Central Authority to alert the appropriate protection agencies in the requesting State to ensure that protective measures and services necessary for the safe return of the child are in place before the child's return and continue to maintain close liaison with the requesting Central Authority after the child's return to ensure that any conditions or undertakings embodied in the return order for the protection of the child's welfare are duly observed until legal proceedings in the requesting state are on foot.

*Methods for ensuring the safe return of children*¹⁸

- 6.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns? How does the relevant authority in your State ensure that the conditions or requirements put in place are implemented and adhered to?

We are prepared to apply to court for a mirror order in respect of the protective measures taken on a provisional basis in the requested State. We will serve the order on the protection bodies including the police and the social welfare agencies and maintain close contacts with them to ensure that the child is well taken care of upon return and that the protective measures/conditions put in place are implemented and adhered to. Domestic proceedings eg. wardship proceedings to enhance the protection of the child's welfare will be resorted to, where necessary, after the child's return.

Direct judicial communications

- 6.4 Please comment upon any cases (whether your State was the requesting or requested State), in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome? What procedural safeguards surround such communications in your State?¹⁹

Information to be furnished later.

Use of the 1996 Convention to ensure a safe return

- 6.5 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (Arts 7 and 11), in providing for their recognition by operation of law (Art. 23), and in communicating information relevant to the protection of the child (Art. 34)?

We do not have such experience as international conventions can only be implemented through the operation of domestic laws.

¹⁸ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹⁹ See the draft General Principles on Judicial Communications which will be circulated prior to the 2011 Special Commission meeting.

Other important matters

- 6.6 Are you aware of cases in your State where a primary carer taking parent has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State? Please provide case examples where possible.

We are not aware of any such cases.

- 6.7 What steps has your State taken to ensure that all obstacles to participation by parents in custody proceedings after a child's return have been removed (in accordance with Recommendation No 1.8.5 of the 2006 Special Commission)? In particular, where a custody order has been granted in the jurisdiction of, and in favour of, the left-behind parent, is the order subject to review if the child is returned, upon application of the taking parent?

Where the taking parent is subject to criminal prosecution in the place of habitual residence, we will persuade the Central Authority to intervene to secure the dropping of the criminal charge either before or immediately after the return with the child. It is noted that the ability and willingness of the authorities to secure the withdrawal of criminal prosecution vary from jurisdiction to jurisdiction.

If the custody order was made upon the ex parte application of the left-behind parent while the taking parent was abroad with the child, the taking parent has the right to apply to court to hear his/her evidence and set aside the custody order that has been granted. In other circumstances, either parent or both may apply under the "liberty to apply" clause (if the order contains such clause) or for leave to apply to vary the terms of the custody order.

- 6.8 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

Close contact was maintained with the requesting Central Authority to monitor the effectiveness of those interim protective measures upon the child's return. We fully support the recommendation that States Parties should co-operate to provide each other with follow-up information on the enforcement of protective measures, insofar, as is possible.

7. The interpretation and application of the exceptions to return

In general

- 7.1 Where the taking parent raises any exceptions under Article 13 or Article 20 of the 1980 Convention, what are the procedural consequences? What burden and standard of proof rest on the taking parent in respect of such exceptions?²⁰

The court will consider the evidence of the parents and request reports to be prepared for consideration from various agents including reports from medical officer/child psychologist, social worker and police officer. If the circumstances warrant, the court may ask for report on the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence. The court will consider such reports in determining the merits of the claim and will consider the sufficiency and enforceability of any conditions to be imposed in the return order for alleviating the risk concerned.

As regards the standard of proof in relation to a claim by the taking parent under Article 13(1)(b), please see reply to 5.2(a).

If the child objects to being returned, the court will determine the issue according to the principles laid down in Article 13 as interpreted by decided cases, i.e. the child must have attained sufficient age and degree of maturity and the child must express a valid objection to being returned. Depending on the circumstances, and with the consent of both parents, the judge may see the child in his chambers. The meeting may or may not be held in the presence of the parents, depending on the relevant circumstances. The court will, however, insist on the presence of a neutral party, such as a social welfare officer, and before making any decision, will advise the contesting parents in general terms of what took place during the meeting. As to the views of the child, the court may also seek the assistance of the Official Solicitor to represent the child to facilitate a determination on the merits of the objection raised.

- 7.2 Does the raising of exceptions under Article 13 or Article 20 in practice cause a delay to return proceedings? What measures, if any, exist to keep such delay to a minimum?

In our experience, the raising of exceptions had not caused any delay to the return proceedings as the tendering of evidence and the progress of the proceedings are strictly regulated by Rules of the High Court and the time frames set by the presiding Judges.

²⁰ In relation to Art. 13(1) b), see also question 5.2 above.

Article 13(2) and hearing the child

- 7.3 In relation to Article 13(2) of the 1980 Convention:
- a. By whom, and how, will any enquiry be made as to whether a child objects to a return?

The social worker with expertise in this area will make enquiry and interview the child with the consent of the parents. The reasons for the objection will be explored and a report will be prepared for the consideration by the court in the return proceedings. The judge may see the child in chambers, depending on the circumstances and with the consent of the parents to ascertain the reason of objection. Please also refer to reply in 7.1 above.

- b. Who will assess the child's maturity for the purposes of Article 13(2)?

The social worker with expertise in this area and/or the child psychologist who have the chance to seek the views from the child, will assess the child's maturity for the purposes of Article 13(2). A report will be prepared for the consideration by the court in the return proceedings. Depending on the circumstances and with the consent of the parents, the judge may see the child in his chambers to assess the child's maturity. Please also refer to reply in 7.1 above.

- c. In what circumstances, in practice, might the relevant authority in your State refuse to return a child based on his or her objections? Please provide case examples where possible.

So far, the court has not refused to return a child based on his/her objections.

- 7.4 How, if at all, have other international and / or regional instruments affected the manner in which the child's voice is heard in return proceedings in your State?²¹

None so far.

- 7.5 How does your State ensure that hearing a child does not result in any undue delay to the return proceedings?

Progress of the return proceedings is firmly managed by judges by setting strict time frames to ensure that the hearing proceeds expeditiously with a view to reach a decision within 6 weeks of the institution of the proceedings.

²¹ For EU Member States, excluding Denmark, reference should be made to Art. 11(2) of the Brussels II a Regulation:

"When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity."

Article 20

- 7.6 How has Article 20 of the 1980 Convention been applied in your State? Are you aware of an increase in the use of this Article (please note that Art. 20 was not relied upon at all according to the 1999 Statistical Survey, nor was it a sole reason for refusal in 2003²²)?

We have not come across a case raising Article 20 as a defence and are not aware of an increase in the use of this Article.

Any other comments

- 7.7 Do you have any other comment(s) you would like to make regarding any of the exceptions to return within the 1980 Convention?

We do not have any other comments.

8. Article 15 of the 1980 Convention

- 8.1 Have you encountered any difficulties with the use of Article 15? If so, please specify the difficulties encountered and what steps, if any, have been taken to overcome such difficulties.

We have not encountered any such difficulties so far.

- 8.2 Has the use of Article 15 caused undue delay in return proceedings in your State? Are there particular States Parties with whom you have had difficulties in this regard? Please provide case examples where possible.

We have no such experience.

- 8.3 Are you aware of any cases in your State where direct judicial communications have been used in relation to Article 15? If so, please provide details of how, if at all, direct judicial communications assisted in the particular case.²³

We are not aware of any such cases.

9. Immigration, asylum and refugee matters under the 1980 Convention

- 9.1 Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the taking parent to re-enter the State from which the child was wrongfully removed or retained? If so, how have such issues been resolved?

We do not have any experience of such cases.

²² It was, however, partially relied upon in eight cases (9%), all of which were in Chile. See N. Lowe, "A Statistical Analysis of Applications made in 2003 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I – Overall Report", Prel. Doc. No 3, Part I, of October 2006 for the attention of the Fifth Meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction of October – November 2006 (2007 update, published in September 2008). Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents".

²³ See *supra*, note 19.

- 9.2 Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the State in which the application for return is to be considered. How have such cases been resolved?

We do not have any experience of such cases.

- 9.3 Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?

We do not have any experience of such cases.

- 9.4 Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

We do not have any experience of such cases.

10. Newly acceding States to the 1980 Convention

- 10.1 If your State has recently *acceded* to the 1980 Convention, what steps have been taken to inform other States Parties of the measures taken to implement the Convention in your State?²⁴ Did you find the Standard Questionnaire for newly acceding States²⁵ useful for this purpose?

Not applicable.

- 10.2 How regularly does your State consider declaring its acceptance of the accessions of new States Parties to the 1980 Convention (Art. 38)?

Under the Basic Law of the HKSAR, acceptance of new acceding states is a matter to be decided by the Central People's Government of the People's Republic of China.

- 10.3 What measures, if any, do your authorities take to satisfy themselves that a newly acceding State is in a position to comply with 1980 Convention obligations, such that a declaration of acceptance of the accession can be made (Art. 38)? How does your State ensure that this process does not result in undue delay?

Please see reply to 10.2 above.

11. The Guide to Good Practice under the 1980 Convention

- 11.1 In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures, Part III on Preventive Measures and Part IV on Enforcement²⁶ – to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

We have used the Guide to Good Practice as reference in improving the implementation and operation of the Convention and as the basis for the preparation of the Office Practice Manual. The Guide also serves as reference in our making of policy and practical decisions relating to the implementation of the Convention. The Guide provides useful practical guidance to the relevant authorities which play a part in the operation of the Convention.

- 11.2 How have you ensured that the relevant authorities in your State have been made

²⁴ See Art. 38 of the 1980 Convention.

²⁵ The Standard Questionnaire for newly acceding States is available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Questionnaires and responses".

²⁶ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

aware of, and have had access to, the Guide to Good Practice?

The relevant authorities in our jurisdiction are well aware of and have access to the Guide to Good Practice posted in HCCH's websites. Their attention is also drawn to the relevant parts when seminars/lectures are conducted for them.

11.3 Do you have any comments regarding how best to publicise the recently published Guide to Good Practice – Part IV on Enforcement (published October 2010)?

Through trainings and lectures offered by institutions relating to respective professions such as Bar Association and Law Society, and to agencies involving in the operation of the Convention such as the social welfare officers, immigration officers, police officers and child psychologist as well as community organisations relating to children's welfare.

11.4 Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures; Part IV on Enforcement; and the draft of Part V on Mediation)?

Not at the moment.

11.5 Do you have any other comments about any Part of the Guide to Good Practice?

We do not have any other comments about any Part of the Guide to Good Practice.

12. Relationship with other instruments

- 12.1 Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Convention, in particular, the *1989 United Nations Convention on the Rights of the Child*?

The UNCRC establishes an obligation to give due consideration of a child's wishes and feelings in court proceedings concerning the child, having regard to the child's age and maturity. However, the 1980 Convention is silent on such, leaving the discretion of hearing the child to be exercised by individual jurisdiction. Perhaps it is time to consider including an explicit obligation to hear the child to conform the treatment of return cases across jurisdictions.

- 12.2 Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Convention, for example, the Brussels II a Regulation²⁷ and the *1989 Inter-American Convention on the International Return of Children*?

We have no comments.

13. Publicity and debate concerning the 1980 Convention

- 13.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national Parliament or its equivalent? What was the outcome of this debate or discussion, if any?

We are not aware of any publicity (positive or negative) or any debate/ discussions given rise by the 1980 Convention.

- 13.2 By what methods does your State disseminate information to the public about the 1980 Convention?

Through talks and seminars given to the public, eg. to the university students. Also, the information about the Convention can be found in our website <http://www.doj.gov.hk/childabduct/index.html>

PART III: THE PRACTICAL OPERATION OF THE 1996 CONVENTION²⁸

14. Implementation of the 1996 Convention

- 14.1 If your State is Party to the 1996 Convention, do you have any comments regarding:

- a. How it has been implemented?

Not applicable

- b. How it is operating?

Not applicable.

²⁷ *Op. cit.* note 14.

²⁸ This part of the Questionnaire is directed both to States Parties and non-States Parties to the 1996 Convention save where indicated otherwise, and should be completed by all States insofar as is appropriate.

- c. Further, when implementing the 1996 Convention, did your State use the implementation checklist drawn up by the Permanent Bureau in consultation with States Parties?²⁹ If so, do you have any comments regarding the implementation checklist and how it might be improved in future?

Not applicable.

- 14.2 If your State is not Party to the 1996 Convention, is your State considering implementing the 1996 Convention? What are viewed as the main difficulties, if any, in implementing this Convention?

According to the Basic Law of the HKSAR, the application to the HKSAR of any international agreements shall be decided by the Central People's Government of the People's Republic of China in accordance with the circumstances and needs of the HKSAR and after seeking the views of the Government of the HKSAR. We will give due consideration to the 1996 Hague Convention and express our views through the Central People's Government in due course.

²⁹ Available on the Hague Conference website at < www.hcch.net > under "Conventions" then "Convention No 34" and "Practical operation documents".

15. The role and functions of Central Authorities designated under the 1996 Convention

- 15.1 If your State is Party to the 1996 Convention:
- a. Did you encounter any difficulties designating a Central Authority?
Not applicable.
 - b. Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities? If so, please specify.
Not applicable.
 - c. Have any of the duties of Central Authorities within the 1996 Convention raised any particular problems in practice either in your State, or in States Parties with whom you have co-operated?
Not applicable.
 - d. Has your Central Authority encountered any particular difficulties with the interpretation or application of the 1996 Convention provisions? If so, please specify.
Not applicable.
 - e. Would you consider the development of any model forms under the 1996 Convention useful (*e.g.*, in relation to the provisions regarding transfer of jurisdiction (Arts 8 and 9), or in relation to the certificate which may be given by the relevant authorities under Art. 40)?
Not applicable.

16. Publicity concerning the 1996 Convention

- 16.1 If your State is Party to the 1996 Convention, by what methods does your State disseminate information to the public about the 1996 Convention?
Not applicable.
- 16.2 Could you provide a list (including contact details and website addresses) of non-governmental organisations in your State which are involved in matters covered by the 1996 Convention?
Not applicable.

17. Relationship with other instruments

- 17.1 Do you have any comments or observations on the impact of regional³⁰ or international instruments on the operation of the 1996 Convention, in particular, the *1989 United Nations Convention on the Rights of the Child*?
Not applicable.

³⁰ *E.g.*, the Brussels II a Regulation (*op. cit.* note 14).

<p style="text-align: center;">PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION</p>

18. Transfrontier access / contact³¹

- 18.1 Since the 2006 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access.

There have not been any significant developments since the 2006 Special Commission.

³¹ See the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 7) at paras 1.7.1 to 1.7.3.

- 18.2 Please indicate any important developments in your State, since the 2006 Special Commission, in the interpretation of Article 21 of the 1980 Convention.

There are no important developments.

- 18.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:
- a. the granting or maintaining of access rights;
 - b. the effective exercise of rights of access; and
 - c. the restriction or termination of access rights.

So far, we have not experienced any problems in respect of (a), (b) and (c).

Please provide case examples where possible.

Not applicable.

- 18.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"³² to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

We have used the particular General Principles and Guide to Good Practice as reference in improving the implementation and operation of the Convention with regard to contact/access cases. As we have only few cases on contact/access, we are unable to think of further principles of good practice drawn from practical experience.

19. International family relocation³³

- 19.1 When does a parent require the permission of (a) the other parent, and (b) the relevant State authorities, to relocate internationally with a child (*i.e.*, to move with a child from your State to another State, on a long-term basis)?

When the child is the subject of a court order which specifies that permission of the other parent must be sought and/or leave of the court must be obtained before the child can be removed from the jurisdiction.

- 19.2 Do you have a specific procedure in your State which applies when a parent wishes to seek the relevant authority's permission to relocate internationally? When permission of the relevant authority is required to relocate internationally, what criteria are applied to determine whether such permission should be granted, or not?

³² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

³³ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move. 1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

Following from the reply in 19.1 above, the particular procedures/conditions specified in the court order governing the removal of the child to another jurisdiction must be complied with.

- 19.3 Are you aware of any recent decisions in your State concerning international family relocation which may be of interest to the Special Commission meeting? In particular, are you aware of any cases where the international relocation of a child was permitted by the relevant authorities in your State following the return of the child to your State under 1980 Convention procedures?

We are not aware of any such cases.

- 19.4 Do you have any comment on the Washington Declaration on International Family Relocation³⁴ reached at the conclusion of the International Judicial Conference on Cross-Border Family Relocation³⁵ in March 2010? In particular, do you have any comment on paragraph 13 of the Washington Declaration, which states:

"The Hague Conference on Private International Law, in co-operation with the International Centre for Missing and Exploited Children, is encouraged to pursue the further development of the principles set out in this Declaration and to consider the feasibility of embodying all or some of these principles in an international instrument. To this end, they are encouraged to promote international awareness of these principles, for example through judicial training and other capacity building programmes."

We have no comments.

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

20. Non-Convention cases and non-Convention States

- 20.1 Are you aware of any troubling cases of international child abduction which fall outside the scope of the 1980 Convention? Are you aware of any troubling cases of international child protection which fall outside the scope of the 1996 Convention?

We are not aware of any such cases.

- 20.2 Has your State had a significant number of cases of international child abduction or protection with any particular non-Contracting States?

No.

- 20.3 Are there any States that you would particularly like to see become a State Party to (a) the 1980 Convention and / or (b) the 1996 Convention? If so, what steps would you suggest could be taken to promote the Convention(s) and encourage ratification of, or accession to, the relevant Convention(s) in those States?

We have no particular recommendations at this stage.

- 20.4 Since the 2006 Special Commission, has your State concluded:

³⁴ Available in full on the Hague Conference website at < www.hcch.net > under "News & Events" then "2010".

³⁵ The International Judicial Conference on Cross-Border Family Relocation was held in Washington, D.C., United States of America, from 23 to 25 March 2010 and was co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children (< www.icmec.org >), with the support of the United States Department of State.

- a. Any bilateral, or other, agreements on international child abduction with States not Party to the 1980 Convention?

No.

- b. Any bilateral, or other, agreements on international child protection with States not Party to the 1996 Convention?

Not applicable.

Please provide brief details of any such agreements, including which non-Contracting States are party to the agreement(s).

Not applicable.

- 20.5 Are there any States which are not Parties to the 1980 or 1996 Conventions or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2011 and 2012?³⁶

We have no particular recommendations at the moment.

³⁶ See the "Request for funding" made in Info. Doc. No 1 (circulated at the same time as this Prel. Doc. No 1).

*The "Malta Process"*³⁷

20.6 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?³⁸ Have any steps been taken towards implementation of the Principles in your State?

We do not have any comments.

- b. Do you have any comment to make on the "Malta Process" generally?

We do not have any comments.

- c. What is your view as to the future of the "Malta Process"?

We have no comments.

**PART VI: TRAINING AND EDUCATION AND
THE TOOLS, SERVICES AND SUPPORTS PROVIDED
BY THE PERMANENT BUREAU**³⁹

21. Training and education

- 21.1 Do you have any comments regarding how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the 1980 and 1996 Convention(s)? In particular, how have the conclusions and recommendations of these seminars or conferences (some of which are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section"), had an impact on the functioning of the 1980 and 1996 Convention(s)?

We are of the view that judicial (or other) seminars and conferences have supported the effective functioning of the Convention by facilitating efficient exchange of information/experience, enhancing understanding of each other's practices and promoting smooth cooperation between States Parties within the perimeter of respective legal systems.

- 21.2 Can you give details of any training sessions / conferences organised in your State, and the influence that such sessions have had?

Seminars are provided by the Central Authority to the relevant authorities within the government, such as the Social Welfare Department and the Police Department. Institutions responsible for the continuing legal education would organise training

³⁷ The "Malta Process" is a dialogue between certain States Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and the problems posed by international abduction between the States concerned. For further information see the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

³⁸ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

³⁹ Further information regarding the tools, services and supports provided by the Permanent Bureau will be set out in the report to the 2011 Special Commission meeting on this subject (see the "Documentation" section of Info. Doc. No 1).

sessions/seminars on this subject from time to time and one of those judges responsible for handling convention cases would normally be invited to be the speaker. These training sessions are well received by attendees which raise their awareness as well as update their knowledge on the operation of the Convention.

22. The tools, services and supports provided by the Permanent Bureau (including through the International Centre for Judicial Studies and Technical Assistance)

In general

22.1 Please comment or state your reflections on the specific tools, services and supports provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

- a. INCADAT (the international child abduction database, available at < www.incadat.com >). INCADAT underwent a complete revision and an improved, re-designed version was launched on 30 April 2010;⁴⁰

It provides very useful reference and is very user friendly.

- b. *The Judges' Newsletter* on International Child Protection - the bi-annual publication of the Hague Conference on Private International Law which is available in hard copy and online for free;⁴¹

It provides very useful reference.

- c. The specialised "Child Abduction Section" of the Hague Conference website (< www.hcch.net >);

It provides very useful reference.

- d. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);⁴²

It provides very useful reference.

- e. iChild (the electronic case management system designed by the Canadian software company WorldReach);⁴³

We have not used it yet.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.⁴⁴ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau (often through the

⁴⁰ Further information regarding the INCADAT re-launch can be found on the Hague Conference website at < www.hcch.net > under "News & Events" then "30 April 2010". Further information regarding the improvements to INCADAT and the continuing work being undertaken will be provided in the report to the 2011 Special Commission meeting on the services provided by the Permanent Bureau (see Info. Doc. No 1).

⁴¹ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is now possible to download individual articles as required. Further, an index of relevant topics is being created to enable more user-friendly searches of the publication. The publication is also in the process of being re-designed. Further information regarding this publication will be provided in the report to the 2011 Special Commission meeting (see Info. Doc. No 1).

⁴² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

⁴³ Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "iChild".

⁴⁴ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

International Centre for Judicial Studies and Technical Assistance) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

We very much appreciate the Permanent Bureau's efforts in organising seminars, conferences and special meetings as well as providing support in maintaining relevant materials and updated information in its website for the effective operation of the Convention by the Central Authorities.

- g. Where individuals contact the Permanent Bureau seeking help in cases involving international child protection issues (which occurs on an almost daily basis), providing referrals (primarily to Central Authorities) and offering advice of a general nature on the operation of the Convention(s);

We fully appreciate the Permanent Bureau for providing such support service which ensures the smooth operation of the Convention.

- h. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);⁴⁵

It ensures the effective operation of the Convention on a wide basis.

- i. Supporting communications between Central Authorities, including maintaining an online database of updated contact details.

It is important to have such support in order to maintain the effectiveness and efficiency in the implementation of the Convention.

Other

- 22.2 What other measures or mechanisms would you recommend:
a. To improve the monitoring of the operation of the Conventions;

Setting up an independent office competent to review the practical operation of the Convention and to deal with reports of suspected serious violations of Convention obligations.

- b. To assist States in meeting their Convention obligations; and

Facilitating regular meetings of Central Authorities e.g. through video-conferencing, to share views and discuss problems relating to operation.

- c. To evaluate whether serious violations of Convention obligations have occurred?

Same as a.

⁴⁵ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences.

<p style="text-align: center;">PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS</p>

23. Views on priorities and recommendations for the Special Commission

- 23.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

We think "Consideration of the draft Guide to Good Practice on Mediation under the 1980 Convention" should be accorded particular priority because to achieve a smooth and amicable resolution is of paramount importance in serving the best interest of the subject child.

- 23.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

We have no particular suggestions at the moment.

24. Any other matters

- 24.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 and / or the 1996 Convention(s).

There are no particular matters we can think of at this stage.