# SC 1965 SERVICE, 1970 EVIDENCE & 1980 A2J NOVEMBER 2023 PREL. DOC. NO 5



Title	Questionnaire relating to the Convention of 25 October 1980 on International Access to Justice (Access to Justice Convention)
Document	Prel. Doc. No 5 of December 2022
Author	РВ
Agenda Item	IV
Mandate(s)	C&D No 36 of CGAP 2021 C&D No 32 of CGAP 2022
Objective	To seek information to assist the PB in its ongoing monitoring of the Access to Justice Convention and define key issues to be addressed at the 2023 meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions
Action to be Taken	For Action/Completion □  For Approval □  For Decision □  For Action / Completion ⊠  For Information □
Annexes	N/A
Related Documents	N/A

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# Questionnaire relating to the Convention of 25 October 1980 on International Access to Justice (Access to Justice Convention)

### I. About this Questionnaire

With a view to preparing for a meeting of the Special Commission on the practical operation of the 1965 Service, 1970 Evidence and 1980 Access to Justice Conventions, scheduled to be held in November 2023, the Permanent Bureau (PB) has drawn up the following Questionnaire (separate questionnaires have been prepared for the 1965 Service and 1970 Evidence Conventions). Responses to this Questionnaire will assist the PB in its ongoing monitoring of the practical operation of the Access to Justice Convention. Importantly, the information and views provided in the responses will also assist in defining the key issues to be addressed at the meeting of the Special Commission. With a view to facilitating discussions at this meeting, the PB will prepare a document collating the responses and summarising the findings.

Respondents are kindly asked to submit their completed Questionnaire by Friday 31 March 2023.

### II. Instructions for Completion

Authorities should respond to each question by:

- indicating an answer from the options provided (where applicable, more than one option may be selected); and / or
- entering text in the field provided.

Contracting Parties to the Access to Justice Convention are kindly requested to submit a single response that accounts for all designated Central Authorities and territorial units in which the Access to Justice Convention applies. This may include different practices among Central Authorities or among territorial units.

Non-Contracting Parties are kindly requested to submit a single response.

At the end of the Questionnaire, you will have the option of uploading additional information / supporting documentation to your response (in PDF format only). Please ensure you prepare the relevant files to be uploaded.

Information collected in these responses will be **published** on the Access to Justice Section of the HCCH website, unless the PB is expressly asked not to do so, or the question provides otherwise. Please clearly identify any responses which you do not want to be made publicly available.

#### Please note:

- You can save your response to this Questionnaire at any time by pressing the "resume later" button at the top of your screen. You will be asked to create a name and password which you will then need to re-enter when you wish to resume your response.
- If you wish to return to a previous question when completing this Questionnaire, you should press the "previous" button at the bottom of the page and not the back button in your web browser.

Please do not hesitate to address any questions you may have to <a href="mailto:secretariat@hcch.net">secretariat@hcch.net</a>.

# **Questionnaire for non-Contracting Parties / States**

This Questionnaire is for States that are *not* Party to the Access to Justice Convention. If your State is a Party to the Access to Justice Convention, please complete the Questionnaire for Contracting Parties.

Contact Information						
Name o	of your State:					
The follo	owing contact information will not be publ	ished	d as part of the Questionnaire response.			
Name o	of the contact person:					
Title of o	contact person:					
Name o	of authority / office					
Telepho	one number:					
Email ad	ddress:					
	of additional authorities / offices consulte pleting this Questionnaire (if relevant):	d				
The Acc Contract basis. The physical Howeve domicile Globally Key feat Outline.	This extends to matters including legal aid I detention and safe-conduct. The Conventer, it ensures that a person's status as a force in that State (a Contracting Party to the Convention Party to the Convention of the Access to Justice Convention of the Access to Conven	her C and t tion c oreigr Conve Conve	contracting Parties on a non-discriminatory the provision of legal advice, security for costs, does not seek to alter State domestic laws. In national or their absence of residence or cention) are not grounds for discrimination.  Sention.  The found at: Access to Justice Convention			
its	s the Access to Justice Convention and s benefits widely known by relevant uthorities in your State?	(a) (b) (c)	Yes. No. Unsure.			
yo Ju	lease provide information regarding why our State is not a Party to the Access to ustice Convention.  More than one answer is possible.	(a) (b) (c) (d)	The question of becoming a Party to the Convention has not been examined in detail.  Your State relies on other mechanisms (e.g., internal law or bilateral arrangements) to provide access to justice on a non-discriminatory basis for foreign nationals and non-residents – please specify.  [insert answer]  Your State has not encountered any problems in providing access to justice on a non-discriminatory basis to foreign nationals and non-residents.  There are legal or policy reasons in your State that prevent your State from becoming a Party to the Convention – if			

_		1	
			possible, please specify.
			[insert answer]
		(e)	There are operational obstacles (e.g.,
			resources or competing priorities) that
			prevent your State from becoming a Party
			to the Convention – please specify.
			[insert answer]
		(f)	The authorities of your State do not see any
		(1)	added value in the Convention (e.g.,
			compared to regimes established under
			other judicial cooperation treaties) - please
			specify (including a description of these
			other regimes).
			[insert answer]
		(g)	There are other specific issues arising out
			of the Convention that prevent your State
			from becoming a Party – please specify.
			[insert answer]
		(h)	The number of persons involved in
		` ′	cross-border litigation (e.g., nationals and
			habitual residents of your State involved in
			litigation in a foreign State or foreign
			nationals and habitual residents involved in
			litigation in your State) who would benefit
			•
			from non-discrimination with regard to the
			matters covered by the Convention have so
			far been limited and has not required your
			State to participate in a global Convention
			<ul> <li>please specify.</li> </ul>
			[insert answer]
		(i)	Other – please specify.
			[insert answer]
3.	Is your State currently studying / does	(a)	Yes, your State is currently studying it –
	your State intend to study the Access to		please specify the current status and, if
	Justice Convention, with a view to		known, a timetable for accession.
	becoming a Party in the future?		[insert answer]
		(b)	Yes, your State intends to study it in the
		(5)	future.
		(c)	No.
If the	answer to Q3 above is "yes":	(c)	Yes – please specify.
		(a)	
3.1	Is there anything the PB could assist with	/l= \	[insert answer]
	to facilitate your State becoming a Party	(b)	No.
	to the Convention (e.g., in the form of		
	webinars or providing additional		
	information)?		
4.	In judicial proceedings before the courts	(a)	Yes – if possible, please provide citation or
	of your State, does the law or practice of	( ~ )	link to text online, as well as a summary of
	your State impose any security, bond or		the legal regime (including any
	deposit upon certain categories of		qualifications or exceptions).
	persons such as foreign nationals or		
	persons who are not resident or	(1-)	[insert answer]
	domiciled in your State?	(b)	No
5.	Have persons in your State transmitted	(a)	Yes - please explain / specify.
	applications for legal aid to the	` ′	[insert answer]
	Competent Authority of a Contracting	(b)	No.
	Party under Article 1(2) of the	(c)	No information available.
<u> </u>	. a.g andor / idolo ±(2) or the	(0)	110 IIIIOIIIIAGOII AVAIIADIO.

#### Convention? This could apply in circumstances where a person in your State was formerly a habitual resident of a Contracting Party to the Convention and where court proceedings are or will be commenced in that jurisdiction. If possible, please indicate whether or not legal aid was granted in the Contracting Party; if legal aid was not (fully) granted, please explain what the reasons were. (Art. 1(2) of the Access to Justice Convention provides that persons who formerly had their habitual residence in a Contracting Party in which court proceedings are to be or have been commenced shall be entitled to legal aid as provided in Art. 1(1) if the cause of action arose out of their former habitual residence in that State (e.g., tenancy, wrongful termination or social security claims arising from employment contracts performed in that State)). 6. Is your State a party to any bilateral or (a) Yes - please specify. regional instruments that regulate [insert answer] transmitting or processing requests of (b) No. legal aid in cross-border situations? 2023 Meeting of the Special Commission & Monitoring The 2023 meeting of the Special Commission provides a unique opportunity for non-Contracting Parties to attend, observe discussions and learn about the practical operation of the Access to Justice Convention (in addition to the Service and Evidence Conventions). 7. If your State is not a Member of the Yes. (a) HCCH, would it be interested in attending (b) No. the 2023 Special Commission meeting (c) Not applicable - your State is a Member of as an Observer? the HCCH and will be invited to attend. Members will automatically receive an invitation to attend the meeting of the Special Commission. 8. Are there any specific topics or practical 1. [insert answer] issues related to the Access to Justice 2. [insert answer] 3. Convention that your State would like [insert answer] discussed at the 2023 meeting of the Special Commission?

# **Additional Information & Supporting Documents**

Please indicate whether the information

provided in Q8 above may be published.

Additional Documents	
Please provide links to and / or any additional	Please include links.

(a)

(b)

Yes.

No.

information or documentation to support your response. This may include:

- ⇒ feasibility studies considering the Access to Justice Convention;
- ⇒ books, articles, or other published work; and case law:
- ⇒ information about practices in existing <u>Contracting Parties</u> that would assist your State in considering the Access to Justice Convention.

#### Please upload documents.

### **Publication of responses**

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.
- (b) No.

### **User Experience**

The format for this questionnaire has changed from the usual MS Word fillable form to an online form. The PB is keen to hear about your experience completing the online form.

- (a) The online form was easy to use.
- (b) I had challenges using the online formplease specify.

#### [insert answer]

Please provide any additional comments you have on the form so that the PB can improve the user experience.

If you have previously completed an MS Word fillable form questionnaire from the PB, we would be interested to hear whether the online form is an improvement.

- (a) I prefer the MS Word fillable form used in earlier questionnaires.
- (b) I prefer the online form used in this questionnaire.
- (c) I have no comment.

Thank you for taking the time to complete this questionnaire.

# **Questionnaire for Contracting Parties**

This Questionnaire is for States that are Party to the Access to Justice Convention. If your State is *not* a Party to the Access to Justice Convention, please complete the Questionnaire for non-Contracting Parties.

Cont	act Information		
Nam	e of Contracting Party:		
	The following contact information will not be p	ublish	ed as part of the Questionnaire response.
Nam	e of contact person:		
Title	of contact person:		
Nam	e of authority / office:		
Telep	phone number:		
E-ma	il address:		
	es of additional authorities / offices ulted in completing this Questionnaire (if ant):		
Gene	eral Feedback		
1.	How does your State rate the general operation of the Access to Justice Convention?	(a) (b) (c) (d)	Excellent. Good. Satisfactory. Requires improvement – please explain. [insert answer]
2.	How does your State rate the operation of the Model Forms?	(a) (b)	Good. Requires improvement – please explain issues. [insert answer]
3.	In your State's opinion, should the PB develop further guidance or explanatory material on the operation of the Access to Justice Convention?	(a) (b)	Yes – please specify what would assist. [insert answer] No.
Opei	ation of the Convention		
4.	Has your State, as a requesting or as a requested State, experienced any difficulties in the application of any of the chapters of the Access to Justice Convention?	(a)	Yes.  (More than one answer is possible)  (i) Legal aid (Arts 1-13).  (ii) Security for costs and enforceability of orders for costs (Arts 14-17).  (iii) Copies of entries and decisions (Art. 18).  (iv) Physical detention and safe conduct (Arts 19-20)  [Please provide additional information about any of the above]  No.

5. Has the concept of habitual residence, as (a) Yes - please explain. used in the Access to Justice Convention, [insert answer] led to any difficulties of interpretation or (b) No. application in your State? 6. Has your State granted legal aid to legal Yes - please explain. (a) persons (as opposed to "natural" persons) [insert answer] under Chapter I of the Convention (noting (b) No. comments in the Explanatory Report by Gustaf Möller, which excludes legal persons from Chapter 1). 7. If your State has made a reservation under Yes - please explain. (a) Article 28(1), please indicate whether your [insert answer] State has exercised the power granted by (b) No. that Reservation. (Art. 28(1) allows a Contracting Party to exclude the obligation of Article 1 of the Convention: (1) in the case of persons who are not nationals of a Contracting Party, but who have their habitual residence in a Contracting Party other than the reserving State, and / or (2) in the case of persons who formerly had their habitual residence in the reserving State, if, in either of these cases, there is no reciprocity of treatment between the reserving State and the State of nationality of the applicant.) 8. In your State, is legal aid made available Civil and commercial - please explain. only in civil and commercial matters, or [insert answer] also in administrative, social or fiscal (b) Administrative, social or fiscal - please matters? (Art. 1(3)) explain. [insert answer] 9. In judicial proceedings before the courts of Yes - please provide citation or link to text your State, does the law or practice of your online, as well as a summary of the legal State impose any security, bond or deposit regime (including any qualifications or upon certain categories of persons such as exceptions). foreign nationals or persons who are not [insert answer] resident or domiciled in your State? (b) No. 10. Is your State able to provide the PB with an Yes - please explain or upload information. (a) example or case of the Convention [insert answer] operating effectively in practice? (b) No.

#### **Use of Information Technology**

The questions below seek information from Contracting Parties on the use of technology and in light of the COVID-19 pandemic.

- 11. Has your State taken any steps (including through legislation) to enable or increase the use of technology or electronic means to facilitate the transmission or processing of applications for legal aid under the Convention, including in response to the COVID-19 pandemic?
- (a) Yes please explain any steps taken or ongoing projects.

  [insert answer]
- (b) No.
- 12. In the past five years, has your State received any applications using electronic means?
- (a) Yes please select the means. (More than one answer is possible.)
  - (i) E-mail (regular).
  - (ii) E-mail (secured / encrypted).
  - (iii) Electronic transmission via online platform administered by the government.
  - (iv) Electronic transmission via online platform administered by a private service provider.
  - (v) Electronic transmission using distributed ledger technology (DLT).
  - (vi) Other please specify. [insert answer]
- (b) No.
- 12.1. If no, please provide further information about why this is not yet possible.

[insert answer]

- 13. In the past five years, has your State **sent** any applications using electronic means?
- (a) Yes please select the means. (More than one answer is possible.)
  - (i) E-mail (regular).
  - (ii) E-mail (secured / encrypted).
  - (iii) Electronic transmission via online platform administered by the government.
  - (iv) Electronic transmission via online platform administered by a private service provider.
  - (v) Electronic transmission using DLT.
  - (vi) Other please specify.
  - [insert answer]
- (b) No.
- 13.1. If no, please provide further information about why this is not yet possible.
- [insert answer]
- 14. What challenges, if any, has your State faced regarding the use of information technology under the Access to Justice Convention?

  More than one answer is possible.
- (a) None.
- (b) Internal law limitations.
- (c) Judicial or administrative structures.
- (d) Implementation challenges (e.g., lack of resources, lack of infrastructure).
- (e) Cost.
- (f) System interoperability / compatibility.
- (g) Security concerns.

	(h) Other – please specify. [insert answer]
15. In addition to the Access to Justice Convention, is your State a party to any bilateral, regional, or multilateral agreements that provide rules for access to justice in a cross-border context?	(a) Yes - please specify.  [insert answer] (b) No.
For Parties that answered yes to Q15 above: 15.1 Do any of these agreements provide for the use of electronic means (e.g., e-mail) to transmit or process applications for access to justice?	(a) Yes – please specify.  [insert answer] (b) No.
2023 Meeting of the Special Commission & Monit	toring
16. What are the three key topics or practical issues related to the Access to Justice Convention that your State would like discussed at the 2023 meeting of the Special Commission?	<ol> <li>[insert answer]</li> <li>[insert answer]</li> <li>[insert answer]</li> </ol>
16.1. Please indicate whether the information provided in Q16 above may be published.	(a) Yes. (b) No.
17. Does your State have any suggestions that could assist in the promotion, implementation, or operation of the Access to Justice Convention?	(a) Yes - please specify.  [insert answer] (b) No.
17.1 If the answer to Q17 above is "yes", please indicate whether the information provided may be published.	(a) Yes. (b) No.

# **Data & Statistics for Contracting Parties**

General Application									
1.	Please indicate, by numbering from 1 to 4, the Access to Justice Convention chapters which have been most frequently applied in your State (1 representing the highest, 4 the lowest)	<ul> <li>□ Legal aid, including legal advice (Arts 1-13)</li> <li>□ Security for costs and enforceability of orders for costs (Arts 14-17)</li> <li>□ Copies of entries and decisions (Art. 18)</li> <li>□ Physical detention and safe-conduct (Arts 19-20)</li> </ul>							
Appl	ication for Legal Aid								
Chapter 1 - Legal Aid									
Incoming Requests									
2.	How many <b>incoming applications</b> for legal aid has	Year		per of requ received	ests Number of requests granted				
	your State received and	2017	Insert a	nswer.		Insert answer.			
	granted?	2018	Insert a	nswer.		Insert answer.			
		2019	Insert answer.			Insert answer.			
		2020	Insert answer.			Insert answer.			
		2021	Insert a	nswer.		Insert answe	er.		
		2022	Insert a	answer- i e.	f data	Insert answer- if data available.			
		Unknown – p		olain.					
3.	Which three States made the	Requ	esting Sta	nte		Number			
	most requests?	Insert answe	er.		Insert	answer.			
		Insert answe	e <mark>r</mark> .		Insert	<mark>answer</mark> .			
		Insert answe	e <mark>r</mark> .		Insert answer.				
4.	If possible, please provide a		< 1	1-3	3-6	6-12	> 12		
	breakdown of how long (in months) it took to execute	2017							
	incoming requests.	2018							
		2019							
		2020							
		2021							
2022 (if data available)									

		Unknown – please explain. Insert answer.						
5.	Please select the categories	Category	Number granted	Total Number				
	of persons that have been granted legal aid in your State (as a requested State) in the past five years under the Convention.	Nationals of a Contracting Party (Art. 1(1))	Insert answer.	Insert answer.				
	Please also indicate the total number of persons in each category.	Persons habitually resident in a Contracting Party (Art. 1(1))	Insert answer.	Insert answer.				
		Persons who formerly had habitual residence in your State	Insert answer.	Insert answer.				
		Persons seeking the recognition and enforcement of a decision in circumstanc es of Article 13.2	Insert answer.	Insert answer.				
		Unknown – please explain. Insert answer.						
Outg	going Requests							
Outg	going Requests  How many outgoing	Year	Number	of requests sent				
	How many <b>outgoing applications</b> for legal aid has	Year 2017	Number Insert answer.	of requests sent				
	How many <b>outgoing</b>			of requests sent				
	How many <b>outgoing applications</b> for legal aid has	2017	Insert answer.	of requests sent				
	How many <b>outgoing applications</b> for legal aid has	2017 2018	Insert answer. Insert answer.	of requests sent				
	How many <b>outgoing applications</b> for legal aid has	2017 2018 2019	Insert answer. Insert answer. Insert answer.	of requests sent				
	How many <b>outgoing applications</b> for legal aid has	2017 2018 2019 2020	Insert answer. Insert answer. Insert answer. Insert answer.					
	How many <b>outgoing applications</b> for legal aid has	2017 2018 2019 2020 2021	Insert answer. Insert answer. Insert answer. Insert answer. Insert answer. Insert answer. Insert answer if dat					
	How many <b>outgoing applications</b> for legal aid has	2017 2018 2019 2020 2021 2022 Unknown - ple	Insert answer. Insert answer. Insert answer. Insert answer. Insert answer. Insert answer. Insert answer if date ease explain.					

		Insert answer			Insert	answer.		
8.	If possible, please provide a	Year	< 1	1-3	3-6	6-12	> 12	
	breakdown of how long (in months) it took to have	2017						
	outgoing requests executed.	2018						
		2019						
		2020						
		2021						
		2022 (if data available)						
		Unknown – pl Insert answer	-	lain.				
9.	Please indicate the categories of persons in your State (as the requesting State) that have been	Year	Nation als of your State	Habitual residents of your State	Seeking enforce (Art. 1	cement of	gnition or a decision	
	granted legal aid abroad in the past five years and indicate the number in each category.	2017	Insert answe r.	Insert answer.	Insert answer.			
		2018	Insert answe r.	Insert answer.	Insert answer.			
		2019	Insert answe r.	Insert answer.	Insert answer.			
		2020	Insert answe r.	Insert answer.	Insert answer.			
		2021	Insert answe r.	Insert answer.	Insert answer.			
		2022 (if data available)	Insert answe r.	Insert answer.	Insert answer.			
		Unknown – pl Insert answer	-	lain.				
Cha	pter II – Security for Costs and E	nforceability of	Orders fo	or Costs				
	ming Applications question applies if your State ha	as not excluded	the appli	cation of Cha	apter II.			
10.	Please indicate how many	Year	Number	of applicati	ons			
	applications for the	2017						
			Insert answer.					

	enforcement of orders for	2018	Inser	t answer.					
	costs and expenses ("Article 15 Applications")	2019	Inser	t answer.					
	have been <b>received</b> annually	2020	Inser	t answer.					
	by the Central Authority(ies) of your State, in the past five	2021	Inser	t answer.					
	years?	2022	Inser	t answer-	if da	ta avai	lable.		
		Unknown – pl Insert answer	n – please explain. <mark>nswer</mark>						
11.	Which three States made the	Requesting State Number					er		
	most requests?	Insert answer.				Inser	t answer.		
		Insert answer.			Inser	t answer.			
		Insert answer				Inser	t answer.		
12.	If possible, please provide a	Year	< 1	1-3	3-6	3	6-12	> 12	
	breakdown of how long (in	2017							
	months) it took to have incoming requests executed.	2018							
		2019							
		2020							
		2021							
		2022 (if available)							
		Unknown – pl Insert answer	ease e	explain.					
	ioing applications question applies if your State ha	s not excluded	the ap	plication o	f Cha	apter II			
13.	Please indicate how many	Year	Num	ber of requ	iests				
	applications for the enforcement of orders for	2017	Insert answer.						
	costs and expenses	2018	Inser	t answer.					
	("Article 15 Applications"), have been <b>sent</b> annually by	2019	Inser	t answer.					
	the authorities of your State	2020	Inser	t answer.					
	to the Central Authorities of other Contracting Parties in	2021	Inser	t answer.					
	the past five years?	2022	Inser	t answer-	if da	ta avai	lable.		
		Unknown – pl Insert answer	ease e	explain.					
14.	To which three States has	Requ	ested	State			Numb	er	
	your State sent most requests?	Insert answer				Inser	t answer.		
		Insert answer				Inser	t answer.		

		Insert answer.				Insert answer.			
15. If possible, please provide a breakdown of how long (in months) it took to have outgoing requests executed.		Year	< 1	1-3	3-6	6-12	> 12		
	2017								
	2018								
		2019							
		2020							
		2021							
		2022 (if available)							
		Unknown – please explain.  Insert answer							

### Case Law, Additional Information & Supporting Documents

#### **Case Law**

Please list all your State's judicial decisions that have considered the Access to Justice Convention since 2014 and provide a link to or upload the decisions (in PDF format only).

Please list judicial decisions, including links. *Please upload documents*.

#### **Additional Documents**

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- $\Rightarrow$  books, articles, or other published work.

Please list judicial decisions, including links. *Please upload documents*.

### **Publication of responses**

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.
- (b) No.

## **User Experience**

The format for this questionnaire has changed from the usual MS Word fillable form to an online form. The PB is keen to hear about your experience completing the online form.

- (a) The online form was easy to use.
- (b) I had challenges using the online form please specify.

#### [insert answer]

Please provide any additional comments you have on the form so that the PB can improve the user experience.

If you have previously completed an MS Word fillable form questionnaire from the PB, we would be interested to hear whether the online form is an improvement.

- (a) I prefer the MS Word fillable form used in earlier questionnaires.
- (b) I prefer the online form used in this questionnaire.
- (c) I have no comment.

Thank you for taking the time to complete this questionnaire.