

Juin / June 2009



**Groupe de travail sur la médiation dans le cadre du processus de Malte  
Questionnaire**

*établi par le Bureau Permanent*

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**Working Party on Mediation in the Context of the Malta Process  
Questionnaire**

*drawn up by the Permanent Bureau*

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Questionnaire**

*drawn up by the Permanent Bureau*

**Identification**

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The Permanent Bureau kindly requests responses to the Questionnaire to be sent to < secretariat@hcch.net > by 20 July 2009 at the latest.

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<b>I – EXISTING STRUCTURES</b>	
1. Are there existing mediation services / structures in your country for <b>international</b> family disputes involving children?	<input type="checkbox"/> No  <input checked="" type="checkbox"/> Yes  Mediation is commonly provided domestically and mediation type services are occasionally used in international family disputes involving children.
2. If so, are the mediation services / structures provided:  a) within the judicial or administrative system?	<input type="checkbox"/> No  <input checked="" type="checkbox"/> Yes. Please specify: family dispute resolution, including mediation can be provided by a range of individuals and organisations, such as Family Relationship Centres which are funded by the Australian Government, community organisations, legal aid commissions; and government accredited individuals such as lawyers, social workers or psychologists known as family dispute resolution practitioners. The courts can refer people to family dispute resolution practitioners. The courts can also refer people to sessions with a family consultant to assist with reaching an agreement within the court hearing process.

<p>b) by NGOs?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Please name them and give details of the services they provide: International Social Services can arrange for mediations to take place. ISS collaborates closely with all Central Authorities in Australia in relation to the delivery of the International Abduction Service, which has been funded by the Federal Attorney General's Department since 2005.</p>
<p>3. If there are mediation services / structures in your country for <b>international</b> family disputes, how can parties to such disputes access mediation?</p>	<p><input type="checkbox"/> The parties can apply to participate in mediation services.</p> <p><input type="checkbox"/> A referral to mediation by a judicial or administrative authority is possible.</p> <p><input checked="" type="checkbox"/> Other. Please specify: mediation is not often used but where it is (mostly in cases between New Zealand and Australia) cases suitable for mediation are identified by the Central authority which will arrange for mediation or ask the court to refer the matter for mediation.</p>

## II – SCENARIO – CURRENT APPROACH IN NON-HAGUE CONVENTION CASES

How would the following scenario currently be approached in your country?

Parents with shared custody of their minor child split up, and one parent takes the child to your country with the intention of settling there without the permission and contrary to the wishes of the other parent. The left-behind parent would like the child to be returned or to have regular contact with the child. (The Hague Child Abduction Convention is not in force between the States involved.)

<p>1. What course of action would currently be recommended to the left-behind parent in your country (being that to which the child has been taken) in such a situation?</p>	<p>Please specify: Abduction involving non-Hague Convention countries – these cases are more challenging as the Australian Government does not have specific agreements regarding abduction to these countries except for Egypt. Different approaches may be required, such as engaging a local lawyer or making referrals to the International Social Services (ISS) network. The ISS network can assist in advising on the approach with has the highest likelihood of success in a particular country. The Department of Foreign Affairs operates a 24 hour consular service which can advise on local lawyers.</p>
<p>2. Would your country, being that to which the child has been taken, assist the left-behind parent in any way?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes, by facilitating contact with information-giving bodies</p> <p><input type="checkbox"/> Yes, by referring the left-behind parent to existing mediation services for international family disputes</p> <p><input type="checkbox"/> Yes, by giving legal advice</p> <p><input type="checkbox"/> Yes, by giving practical assistance to the parent</p> <p><input checked="" type="checkbox"/> Yes, by taking other measures. Please specify: The left-behind parent may be given the contact details of the International Social Services (ISS). In recognition of the impact of international parental child abduction (IPCA), ISS has established a telephone referral and support service for families affected by IPCA.</p>
<p>3. Does a central contact point exist in your country for such cases?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Please specify: ..... .....</p>
<p>4. Are there NGOs in your country that help parents in such situations?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Please specify: International Social Services (ISS)</p>

<p>5. If you were to identify the main problems that the left-behind parent might have to face in your country (being that to which the child has been taken) with her / his wish to have contact with the child / to have the child returned, what would they be?</p>	<p><input type="checkbox"/> Lack of specific structures for international family disputes</p> <p><input type="checkbox"/> Inefficiency of existing structures</p> <p><input type="checkbox"/> Lengthy processes under the existing structures</p> <p><input type="checkbox"/> Language problems</p> <p><input type="checkbox"/> Legal obstacles to agreed solutions</p> <p><input type="checkbox"/> Problems because of parallel asylum procedures regarding the other parent and child</p> <p><input type="checkbox"/> Difficulties in obtaining information on your legal system</p> <p><input type="checkbox"/> Problems locating the child within your country</p> <p><input type="checkbox"/> High costs of available mediation services</p> <p><input checked="" type="checkbox"/> Other. Please specify: Not having specific structures for resolving cases through mediation in cases involving a non-Hague convention country.</p>
<b>III – EXISTING RULES / LEGISLATION ON FAMILY MEDIATION</b>	
<p>Is family mediation regulated in your country?</p>	<p><input type="checkbox"/> No.</p> <p><input type="checkbox"/> Yes, there is general legislation on mediation, which also applies to family mediation. Please specify: ..... .....</p> <p><input checked="" type="checkbox"/> Yes, there is specific legislation on family mediation. Please specify: From 1 July 2008 changes to the family law system make Family Dispute Resolution a requirement before a person can apply to the court for a parenting order (exceptions to the requirement apply, such as cases involving family violence or child abuse or where the matter is urgent).</p> <p><input type="checkbox"/> Other. Please specify: ..... .....</p>
<b>IV - ADDITIONAL REMARKS</b>	
<p>Further remarks or questions:</p>	<p>Australia has a long history of use of alternative dispute resolution in family matters. Australia recently introduced a legislative requirement for families to try mediation before they can file for court orders, subject to some limited exceptions. This requirement was met with a significant increase in government</p>

	<p>investment in mediation services across Australia. Family dispute resolution can be provided by a range of individuals and organisations. If clients are in a remote locality within Australia there is the option of accessing family dispute resolution via a national 'toll free' telephone dispute resolution service. All family law dispute resolution providers must be accredited and must meet appropriate standards of training, experience and suitability. In terms of non-governmental organisations, International Social Services (ISS) (Australia) provides mediation type services to assist in resolving cross-border disputes. These services mainly consist of arranging for mediations to take place through the contacts that ISS has in other countries.</p>
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Thank you.