

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**

State: INDIA

Name of contact person: JUSTICE VIKRAMAJIT SEN

Name of Authority / Office: HIGH COURT OF DELHI

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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.

<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
2. If so, are the mediation services / structures provided:	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Please specify: <b>Services are available at the Delhi High Court Mediation Cell.</b>
a) within the judicial or administrative system?	
b) by NGOs?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Please name them and give details of the services they provide: ..... .....
3. If there are mediation services / structures in your country for <b>international</b> family disputes, how can parties to such disputes access mediation?	<input type="checkbox"/> The parties can apply to participate in mediation services. <input type="checkbox"/> A referral to mediation by a judicial or administrative authority is possible. <input type="checkbox"/> Other. Please specify: <b>By approaching the Cell presently through litigation.</b>

II – SCENARIO – CURRENT APPROACH IN NON-HAGUE CONVENTION CASES	
<p>How would the following scenario currently be approached in your country?</p> <p>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>	
<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:</p> <p><b>In India the principles of Hague Conventions may be applied if a matter is brought before an Indian Court.</b></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 checked="" type="checkbox"/> Yes, by referring the left-behind parent to existing mediation services for international family disputes</p> <p><input checked="" type="checkbox"/> Yes, by giving legal advice</p> <p><input type="checkbox"/> Yes, by giving practical assistance to the parent</p> <p><input type="checkbox"/> Yes, by taking other measures. Please specify:</p> <p>.....</p> <p>.....</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>.....</p> <p>.....</p>
<p>4. Are there NGOs in your country that help parents in such situations?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Please specify:</p> <p>.....</p> <p>.....</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 checked="" type="checkbox"/> Lack of specific structures for international family disputes</p> <p><input type="checkbox"/> Inefficiency of existing structures</p> <p><input checked="" 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 checked="" type="checkbox"/> Problems locating the child within your country</p> <p><input type="checkbox"/> High costs of available mediation services</p> <p><input type="checkbox"/> Other. Please specify: ..... .....</p>
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**III – EXISTING RULES / LEGISLATION ON FAMILY MEDIATION**

<p>Is family mediation regulated in your country?</p>	<p><input type="checkbox"/> No.</p> <p><input checked="" type="checkbox"/> Yes, there is general legislation on mediation, which also applies to family mediation. Please specify:</p> <p><b>India has a statutory frame work that encourages conciliation in family disputes. Hindu Marriage Act and Special Marriage Act both provide that in any matrimonial suit, it shall be the duty of the court in the first instance to make every endeavour to bring about reconciliation between the parties. The Civil Procedure Code, 1908, also provides that in every proceedings relating to family matters, the first endeavour of the Court should be to assist the parties in arriving at a settlement. The Family Courts Act, 1984 obliges the Court in its Preamble to affect reconciliation between the parties and Section 9 further this objective by laying down the method to be adopted for reaching to a settlement. The Legal Services Authorities Act, 1987 also provides for, viz., People Courts for settling family disputes. Part III of the Arbitration and Conciliation Act, 1996 provides for Conciliation.</b></p> <p><input type="checkbox"/> Yes, there is specific legislation on family mediation. Please specify: <u>No.</u> .....</p> <p><input type="checkbox"/> Other. Please specify: ----- ..... .....</p>
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**IV - ADDITIONAL REMARKS**

<p>Further remarks or questions:</p>	
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Thank you.