

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1980 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **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:¹	JAPAN
<i>For follow-up purposes</i>	
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PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child abduction. Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No
 Yes, please specify:

The 1980 Hague Convention entered into force in Japan on 1 April 2014. On the same date, the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (The Implementation Act), and its relevant domestic regulations were enacted. Also, the Minister for Foreign Affairs was designated as the Central Authority of Japan.

The Implementation Act prescribes the mandates of Japanese Central Authority (JCA) in providing assistance for the return of child and the exercise of rights of access, and the court procedures for the child return cases. In accordance with the Implementation Act and relevant regulations, the appropriate and expeditious operation to achieve the objectives of the 1980 Hague Convention has been carried out.

As of 1 April 2017, the 1980 Hague Convention has entered into force between Japan and 93 states and regions.

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

No case law is available at this point.

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² 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 Sixth 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 *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* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior* to the 2011 / 2012 Special Commission, please provide such information here.

³ The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. 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.

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

[Establishment of JCA]

The Hague Convention Division was established within the Consular Affairs Bureau of the Ministry of Foreign Affairs as the secretarial office of the Central Authority. The officers of the Hague Convention Division include lawyers, mental health professionals, a DV victims support professional, former judicially members who have a career as a judge and a family court investigating officer and an immigration officer on secondment to the Ministry of Foreign Affairs.

[Designation of IHNJ]

In May 2015, two Japanese judges and in May 2017, one more judge were designated as members of the International Hague Network of Judges. They actively participate in international meetings and conferences on international family affairs, including those concerned with the 1980 Hague Convention, to exchange opinions with other members of the IHNJ and share the information with judges in Japan.

2. Issues of compliance

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

- No
 Yes, please specify:

In some Contracting States, the judicial process of the child return cases takes excessively long period of time and, as a result, does not satisfy the requirement of expeditious processing of the case under the 1980 Hague Convention. Also, in some Contracting States, there is no concentration of jurisdiction over the Hague child return cases. Thus, depending on the court exercising the jurisdiction, it might take long period of time. In some cases, it took more than few months before the initial hearing date was scheduled.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No
 Yes, please specify:
 Please insert text here

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

3. The role and functions of Central Authorities designated under the 1980 Convention⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No
 Yes, please specify:

- Some states were slow in their response in the communication, and required reminder from our side before responding.

- Although almost all of the Contracting States accept communication in English, the Central Authorities of some states have very few staff member who is capable of communicating in English or French. This makes it difficult for us to achieve smooth communication and requires extra efforts on our part. As of 13 April 2017, Japan has accepted the largest number of states as Convention partners. However, being unable to have direct communication in English or French with the Central Authority has been an obstacle in accepting the accession by a newly acceding state.

⁴ See also Section 5 below on "Ensuring the safe return of children" which involves the role and functions of Central Authorities.

- Some Contracting States have not provided their country profile or provide it only in Spanish language. It will be easier for us to access the information if their country profiles are available in English.

- Some Contracting States had not updated their country profiles and the information was outdated. As a result, there has been a case where a package of original application documents sent to the Central Authority's address mentioned in the country profile was returned to us.

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?

No

Yes, please specify:

- Please refer to our response in Section 3.1, 3.5 and 3.6.

- Some Contracting States are not able to provide the option of alternative dispute resolution, because they do not have any domestic institution which is capable of facilitating family dispute mediation.

3.3 Has your Central Authority encountered any challenges with the application of any of the 1980 Convention provisions? If so, please specify.

No

Yes, please specify:

Please insert text here

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?

No

Yes, please specify:

Please insert text here

3.5 Are you aware of any other challenges 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?⁵

No

Yes, please specify:

- In the requested states where the Central Authority or other organization commissioned by the Central Authority file a petition before the court on behalf of the applicant to realize the return of child, some Central Authorities made findings as regard to the matters which is supposed to be determined by the court, such as the grounds for refusal of return. This resulted in a refusal by the Central Authority to file the case before the court or to carry out its mandates under Article 7 of the 1980 Hague Convention.

- In a certain state, the Central Authority does not have a system to refer the applicants to lawyers. Therefore, the applicants have to find a lawyer without the assistance from the Central Authority of the requested state. It is often quite difficult for the applicant to find in a foreign country a lawyer who is familiar with the 1980 Hague Convention cases. In addition, if there is no legal aid available to a person residing outside the state, an applicant with economic hardship would be unable to pursue the court process unless he/she finds an attorney willing to provide a pro bono representation.

⁵ 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](#)") and paragraphs 32 to 34 of the [Conclusions and Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

- In some requested states, the applicants with economic hardship are unable to effectively argue their cases at the court, because there is no legal aid available in the requested state to cover the costs of translating the evidential documents or hiring in-court interpreters.

Locating the child

3.6 Has your Central Authority encountered any challenges with locating children in cases involving the 1980 Convention, either as a requesting or requested State?

No

Yes, please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

- JCA has been able to locate the child in all cases once we find out the child is in Japan. There have been a few cases in which the child was obviously not in Japan, and JCA faced some difficulties in identifying where the child was.

- In some cases, it takes a quite long time for the Central Authority of the requested state to locate the child. We have a few outgoing cases in which the child is not located after one year period. In such states, it has been difficult to locate the child unless the applicant already has a good idea of the whereabouts of child.

3.7 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)?

No

Yes, please share any good practice on this matter:

- JCA is authorized to request other governmental agencies and local authorities to provide information about the child and a person who resides with the child such as immigration records, family registry and school records. There has been no case in which JCA was unable to locate the child.

Information exchange, training and networking of Central Authorities

3.8 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?⁶

No

Yes, please specify:

- JCA has been actively exchanging views and expertise with other Central Authorities of states with which we have cases. Since the 1980 Hague Convention came into force in Japan (1 April 2014), staff members of JCA have visited and held meetings with the members of the Central Authorities in more than 20 foreign Contracting states. We also have visited and exchanged expertise also with the courts, law firms, DV victim support organizations and non-governmental organizations such as local branches of International Social Service in these states.

- JCA has also received visits by the members of some foreign Central Authorities to exchange our views and expertise.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

No

Yes, please specify:

- JCA co-hosted the Asia Pacific Symposium on the 1980 Hague Convention held at the Waseda University in Tokyo in June 2016.

- Since the 1980 Hague Convention entered into force in Japan on 1 April 2014, the JCA has sent its representatives to the following international symposiums related to the 1980 Hague Convention.

Cross Border Family Law Matters and the Well-being of the Child: Asia Pacific Perspectives (Beijing, 13 May 2014)

South East Asia Regional Seminar of the Working Party on Mediation in the Context

⁶ 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.

of the Malta Process (Kuala Lumpur, 28 - 29 November 2014)
 Towards the Well-being of the Child through the Hague Child Abduction and Protection of Children Conventions: An Asia Pacific Symposium (Macao, 25 – 26 June 2015)
 3rd World Conference of Women's Shelters (The Hague, 3 – 6 November 2015)
 Commonwealth & Common Law Conference 2015 (Sydney, 16 -19 November 2015)
 Fourth Malta Conference on Cross-Frontier Child Protection and Family Law (Malta, 2 -5 May 2016)
 Culture, Dispute Resolution and the Modernized Family Conference (London, 8 July 2016)
 Symposium on Cross-Border Disputes Involving Children (Singapore, 26 – 27 September 2016)

Statistics⁷

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

Please insert text here

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

- No
 Yes, please specify:

JCA has a standard guideline for the expeditious processing of the cases. For example, the notice of receipt of the application will be sent out to the applicant within 2 days from the receipt of the original copy of the application. JCA will decide whether to accept or reject the application, or will request the applicant to submit additional documents or evidences to support his application within 2 weeks from the receipt of the application. Also, JCA starts the procedure for locating the child immediately after receiving the application.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

While JCA has handled almost all the cases without delay, there were some cases where delays were caused because the applicants did not submit the documents required under the law and regulations in a timely manner. Also, there are cases where excessive delays have been caused because the applicants have not contacted JCA for a long period of time after JCA made the decision for assistance or the applicant has not taken necessary procedures, such as filing the petition before the court. JCA is not mandated to file a petition to the court on behalf of the applicant in both return and access cases. The applicant or his/her private attorney needs to file a petition to the court to initiate the court process. Therefore, the process may be delayed in case the applicant does not follow necessary procedures in a timely manner after JCA made a decision for the assistance.

4. Court proceedings & promptness

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

- Yes
 No, please indicate if such arrangements are being contemplated:
 Please insert text here

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*. note 5).

⁸ See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

4.2 Does your State have mechanisms in place to handle return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No
 Yes, please explain:

Both the Tokyo Family Court and the Osaka Family Court, authorized to hear the Hague return cases as the court of first instance, have procedural guidelines in order to conclude the cases within 6 weeks of the filing before the court. The Hague return cases are processed in accordance with these guidelines. In practice, the initial hearing is held within about 2 weeks of the filing. The court will plan the proceeding schedule by hearing from the parties how much time they need to collect their evidences and, if necessary, advise the parties to gather the objective and typical evidences before the second hearing, such as interview records from the police or diplomatic missions, medical records, pictures and records of email. The second hearing will be held within about 5 weeks of the filing where court will directly hear the parties based on the evidences submitted to the court prior to the hearing.

Through these procedures, the Hague return cases are usually processed in an expeditious manner at Japanese courts and have not resulted in significant delay of the process.

4.3 If your response to the previous question is No, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No, please explain:
 Please insert text here
 Yes, please explain:
 Please insert text here

4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

Japan is not experiencing significant delays in handling return cases. The average time between the filing of case and reaching a decision at the court of first instance is less than 9 weeks. The average time between the filing of the case before the court of first instance and the conclusion of the appeal case at the court of second instance is about 4 months.

4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

- No, please explain:
 Please insert text here
 Yes, please explain:

- Under specific conditions, Japanese courts may issue ne exeat order requiring the respondent not to have the child depart from Japan and to surrender the child's passport to JCA pursuant to the article 122 of the Implementation Act. The courts take these measures as necessary.

4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

- Yes
 No, please explain:

Japanese courts do not use direct judicial communication with regard to specific cases, because Japan lacks the legal basis (ex. international agreements or domestic legislations) necessary for case-specific direct judicial communication. On the other hand, within the framework of International Hague Network Judges, our sitting judges exchange views and experiences on general matters with judges from other states through members designated to the network.

4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

- Yes
 No, please explain:

Please refer to the answer in Section 4.6.

4.8 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?

Japan has no such cases.

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

In line with the Recommendations of 2006 and 2011/2012 Special Commission meeting, Japan has been taking the following measures to ensure the safe return of children.

[Collecting the information relating to the social background of the child]

Pursuant to Article 7(2)(d) of the 1980 Hague Convention, Article 15 of the Implementation Act stipulates that JCA may collect the information relating to the social background of the child and share it with the Central Authority of concerned State on the conditions set forth under the article are met. With respect to the incoming cases, Japanese courts may request JCA to collect and provide the information required in adjudicating the case such as the information relating to the social background of the child in the state of habitual residence (The Implementation Act, Article 83).

[Reporting abuse and providing information on the protection of DV victims]

In the out-going cases, Pursuant to Article 7(e) and (h) of the Convention, JCA reports to the relevant authorities of potential risk of child abuses in accordance with Article 6 and 8 of the Child Abuse Prevention Act when the risk of abuse exists upon the return of child to Japan. Also, when consulted by other Central Authority involved or the parties to the dispute, DV support professional within JCA refers them to DV support organizations in Japan, and, provides information, if necessary, about legal protective measures available in Japan, such as restraining order and exclusion order, and the measures to prevent the disclosure of registered residential records to the third party at municipality offices.

In the incoming cases, when a taking parent consults JCA about the risk of child abuse upon the child's return to the state of habitual residence or JCA finds that the circumstances require protective measures to ensure the safe return of child, JCA may request the Central Authority of the state of the child's habitual residence to take appropriate protective measures, and notify Japanese diplomatic missions in the state of habitual residence about the return of child and provide the taking parent with information about the local DV shelters and support organizations.

In addition, JCA has made contracts with 8 local DV support organizations in the US and Canada in order to create an environment in which vulnerable parents can receive various supports in the Japanese language. This helps these parents forgo the removal of the child and also helps support the child and the taking parent upon return to the state of habitual residence.

[Support for access with the child]

Where the access rights is not respected following the child's return to the state of habitual residence, a person whose access rights is not respected may file application to the JCA requesting its assistance in securing the exercise of access rights regardless of when the abduction or retention took place, or whether they took place at all. There have been

⁹ See **Art. 7(2) h)** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra.* note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra.* note 5).at paras 39-43.

the child return cases where the JCA provided assistance in securing the access rights following the child's return to the state of habitual residence.

[Criminal procedure]

When the taking parent expresses concerns about facing criminal prosecution upon his/her return to the state of habitual residence with the child and asks for the assistance, JCA requests the Central Authority of requesting state to check whether the taking parent is likely to face criminal charges.

5.2 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)?

As mentioned above in Section 5.1, if JCA finds that the circumstances require protective measures to ensure the safe return of child, it will alert and request the Central Authority of requesting state to take appropriate protective measures. JCA also notifies Japanese diplomatic missions in the requesting state about the child's scheduled return. JCA also gathers information about the DV shelters and supports organizations through Japanese diplomatic missions in the requesting state, and provides it to the taking parent in order to ensure the safe return of child.

5.3 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?

In accordance with the Implementation Act, the Japanese court orders are simple either to return or not to return the child to the state of habitual residence. Therefore, in court ordered return cases, the Japanese courts cannot address any specific conditions or procedures such as undertaking, mirror order or safe harbor order. The issue of safe return of the child (and Taking Parent) is mainly considered in deciding the existence of ground for refusal such as the grave risk exception in accordance with the Implementation Act. On the other hand, in in-court conciliation cases, the settlement can include various conditions with regard to ensuring the safe return of the child (and Taking Parent), such as how to return the child, custody upon return, interim access with the other parent and child support.

Use of the 1996 Convention to ensure a safe return

5.4 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**)?

- No
 Yes, please explain:
 Please insert text here

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, harassment, etc.) or others, 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 explain and provide case examples where possible.

If the taking parent refuses to return to the state of habitual residence with the child in spite of a binding return order due to concerns about of domestic violence etc., JCA conveys such concerns to the Central Authority of requesting state to gather relevant information so as to mitigate such concerns of the taking parent.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

As mentioned in Section 5.3, the court considers the safety of taking parent when it examines the existence of the grave risk exception in accordance with the Implementation Act. In addition, as mentioned in Section 5.1 and 5.2, in order to secure the safe return of the child and taking parent, the DV support professional within JCA may request the Central Authority of the state of habitual residence to take appropriate protective measures. JCA may also inform Japanese diplomatic missions in the state of habitual residence about the child's return and gather information about local DV shelters and support organizations to provide it to the taking parent upon request. Also, JCA requests the Central Authority of requesting state to check whether the taking parent is likely to face criminal charges.

Post-return information

5.7 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?

In principle, Japan considers that the purpose of the Convention as stipulated under Article 1 is fulfilled when the child returns to the state of habitual residence. However, JCA follows up with the child through the Japanese diplomatic missions, as necessary, for the purpose of securing the safety of Japanese nationals, and if necessary, JCA shares the relevant information with the taking parent who did not return with the child.

5.8 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 requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No
 Yes, please explain:
[Please insert text here](#)

6. Voluntary agreements and mediation

6.1 How does your Central Authority (either directly or through any intermediary) take, or is it considering taking, appropriate steps under **Article 7-(c)** to secure the voluntary return of the child or to bring about an amicable resolution of the issues? Please explain:

-JCA introduces ADR institutions to both parties involved and encourage them to seek an amicable resolution. For this purpose, JCA has signed the contract agreements with 6 ADR institutions in Japan, and bears mediation fee at one of these institutions up to 4 sessions.

The parties may also seek to settle the case through the "in-court conciliation" during the court proceedings. The "in-court conciliation" is facilitated by a conciliation committee consisting of the one judge, who is also the sitting judge in the child return case, and 2 conciliation commissioners (mediators). The courts encourage the parties to resolve the case through the "in-court conciliation".

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

The Guide to Good Practice on Mediation was referred to during the drafting process of the Implementation Act. It is also used, as necessary in handling the cases, by the ADR institutions and the courts.

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

No, please explain:

JCA gathers and facilitates access to information on ADR such as mediation services.

Yes, please explain:

Please insert text here

7. Preventive measures

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

No

Yes, please describe:

Please insert text here

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

Yes

No, please explain:

Japanese Immigration does not require the proof of consents of parents when a child departs from Japan.

8. The Guide to Good Practice under the 1980 Convention

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

The part was referred to in the drafting process of the Implementation Act, and also as required in the daily operation of the Central Authority.

b. Part II on Implementing Measures. Please explain:

The part was referred to in the drafting process of the Implementation Act, and also as required in the daily operation of the Central Authority.

c. Part III on Preventive Measures. Please explain:

The part was referred to in the drafting process of the Implementation Act, and also as required in the daily operation of the Central Authority.

d. Part IV on Enforcement. Please explain:

The part was referred to in the drafting process of the Implementation Act, and also as required in the daily operation of the Central Authority. Furthermore, the courts refer to the part, as necessary, in handling the individual cases.

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

The Courts, the Ministry of Justice and lawyers have been made aware of the Guide. The website of the Ministry of Foreign Affairs provides a link to the text of Guide to Good Practice on the HCCH website.

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

¹⁵ 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".

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

Please insert text here

9. **Publicity and debate concerning the 1980 Convention**

9.1 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?

No

Yes, please indicate the outcome of this debate or discussion, if any:

It received considerable publicity when the 1980 Hague Convention entered into force in Japan and when the first return order under the 1980 Hague Convention was made by a Japanese court.

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

-For the purpose of raising awareness and understanding about the 1980 Hague Convention among the public, JCA offers information about the 1980 Hague Convention on the Ministry of Foreign Affairs' website including the general information on the Implementation Act, the application process and available assistances. The leaflets and a short film which explain the 1980 Hague Convention process are also available on the website.

-JCA has published pamphlets (available in English and Japanese) and leaflets (available in 13 languages) about the 1980 Hague Convention, and widely distributes them to municipal offices, foreign diplomatic missions and other related organizations.

-JCA host or cooperates the following seminars in order to disseminate information and raise awareness about the 1980 Hague Convention.

-Seminars for lawyers, hosted by the Japan Federation of Bar Association.

-About 30 seminars a year at related organizations including the regional bar associations, offices of municipal governments, the police departments and DV support organizations.

-Seminars for foreign diplomats and consuls in Japan

-Seminars at Japanese diplomatic missions overseas

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION
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10. **Transfrontier access / contact**¹⁶

10.1 Since the 2011 / 2012 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?

No

Yes, please explain:

-As mentioned in Section 1.1, the 1980 Hague Convention entered into force in Japan on 1 April 2014. On the same date, the Implementation Act and its related regulations were enacted. The Implementation Act and these regulations lay down the application process and conditions as well as the court procedures for the access case.

-JCA refers the applicants to visitation supporting institutions commissioned by the Central Authority and covers the fee for the use of visitation supporting institution 4 times at maximum. In addition, "Online Mimamori Contact" was introduced in September 2015 to provide online access between a child and his/her parent living abroad under the supervision of a social worker at the expense of JCA 4 times at maximum.

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

Please insert text here

10.3 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;
 - A State where the child was located did not offer the applicant living outside the state's territory the legal aid or assistance to find an attorney. As a result, the applicant with economic hardship had to give up filing of petition to seek the access rights.
 - One Central Authority did not accept an access application pertaining to a child abducted before the entry into force of the 1980 Hague Convention in the State.
- b. the effective exercise of rights of access; and
Please insert text here
- c. the restriction or termination of access rights.
 - In an out-going case, the access rights were not realized because the Central Authority could not locate the child.

Please provide case examples where possible.
Please insert text here

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

The Guide was referred to in the drafting process of the Implementation Act, and it is also utilized in the daily operation of the Central Authority.

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

Since the 2011/2012 Special Commission, there has been no significant development regarding legislations applicable to international family relocation. There is no case law available as of today.

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

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States? Please explain:

Japan considers that the conclusion by more states would strengthen the universal implementation of the Convention. Japan would particularly like to see more Asian states to

¹⁷ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁸ 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."

become Contracting States to the Convention.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

As mentioned above, Japan would like to see more Asian states acceding to the Convention. Therefore, Japan would like to see Non-Contracting states in the region being invited to the Special Commission meeting.

*The "Malta Process"*¹⁹

12.2 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?²⁰

Please insert text here

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address cross-border family disputes over children involving States that are not a Party to the 1980 and 1996 Hague Conventions?

No

Yes, please explain:

Please insert text here

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

Please insert text here

<p>PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU</p>
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13. Training and education

13.1 Can you give details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had?

[International symposium hosted by JCA]

-JCA co-hosted with HCCH and the Waseda University the Asia Pacific Symposium on the 1980 Hague Convention held in June 2016 at the Waseda University, Tokyo. The symposium was attended by the participants from the HCCH offices and 19 states and 2 regions, mainly from the Asia Pacific region, including both Contracting and Non-Contracting States. The symposium contributed to building expertise among the people involved in the operation of the Convention and strengthening the system for effective implementation. It also provided a forum for the Contracting States to share their expertise with the Non-Contracting States in the Asia Pacific region, and an opportunity for Japanese legal professionals to take part in the international discussions about the 1980 Hague Convention. This led to a better understanding of the operation of the Convention, and

¹⁹ 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 addressing 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".

²⁰ 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".

created a momentum for the Non-Contracting States to consider concluding the Convention.

[Seminars hosted by JCA]

-Every year, JCA invites legal experts from overseas and hosts seminars designed for Japanese legal professionals, including judges, family court investigating officers, lawyers and in-court mediators, to learn about the practical operation of the 1980 Hague Convention in other Contracting States. On such occasions, JCA also hosts the meetings between the invited lecturers and JCA officers, Japanese bar associations and courts members to exchange views and expertise. Followings are some examples of the past training events.

-Mediation training by Mr. Christoph Cornelius Paul, lawyer and mediator of Mikk, Germany (March 2015, Tokyo and Osaka)

-“The Enforcement in 1980 Hague Convention Cases in Germany and the Welfare of the Child” by Eberhard Carl, a former judge of the Frankfurt Appeals Court and a mediator in Germany (February 2016, Tokyo and Osaka)

-“International Parental Child Abduction, a Holistic Approach” by Dr. Ann Wollner, the manager and co-founder of the legal unit at International Social Service Australia (March 2017, Tokyo)

[Sending officers to give lectures on the 1980 Hague Convention]

-JCA sends its officers to the 1980 Hague Convention seminars hosted by Japan Federation of Bar Associations, regional bar associations, municipal governments, the police departments and DV support organizations.

-JCA sends its child psychology experts to the courts’ training sessions for the enforcement officers to provide lecture on the enforcement of return decision under the 1980 Hague Convention.

[Lectures at the courts]

-Internal study sessions and lectures by academics about the interpretation and operation of the 1980 Hague Convention are regularly held at the Tokyo and Osaka Family Courts, the only courts authorized to exercise the initial jurisdiction over the Hague return cases.

-For the purpose of improving the handling of Hague cases by Japanese judicial professionals, the Supreme Court of Japan holds periodical meetings with JCA and Tokyo and Osaka Family Courts to exchange views and opinions, and provides judges and enforcement officers with necessary information about the legal framework of the Convention and its effective operation through trainings.

-Japanese Hague Networking judges share their expertise with judges and other judicial professionals handling the Hague cases.

The above mentioned seminars and trainings have contributed to further understand the 1980 Hague Convention and its operation, not only among the officers of JCA, judges, mediators and lawyers, but also among the municipal authorities and other related organizations. These seminars are effective tools in disseminating useful practical information to many lawyers and municipal officers who has no experience of handling the Hague cases. Inviting foreign experts to seminars creates opportunities to gain knowledge about operations in other Contracting States and to cultivate mutual understanding among the Contracting States about their practices and differences.

14. The tools, services and support provided by the Permanent Bureau

In general

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

- a. The Country Profile available under the Child Abduction Section.

It is effective to know the procedures in other Contracting States. However, not all the Contracting States provide their country profile. Also, some country profiles have neither been updated for a while and contain outdated information, nor been provided in English or French. Japan would like to request all the Contracting States to provide their

country profile either in English or French and update its information at least once a year.

- b. INCADAT (the international child abduction database, available at < www.incadat.com >).

It is an effective tool as it provides plentiful case laws and is easy to search for cases. However, some improvements need to be made in some areas. For example, the provided case laws do not evenly reflect the varieties of judicial practices among all the Contracting States. For some of the cases available, only the summaries are provided instead of the full text.

The website of Japanese Ministry of Foreign Affairs provides Japanese translations of some of the case laws on the INCADAT making them available to the courts, the lawyers and the public including the parties involved.

- c. *The Judges' Newsletter* on International Child Protection - the publication of the Hague Conference on Private International Law which is available online for free;²¹ It offers plenty of useful information.

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

It is well-organized for accessing the information on the 1980 Hague Convention. While, currently, the information is sorted into different categories of information such as contacts of the Central Authority and Country profiles, it would be more convenient if it also contains a section where all the information is organized state by state.

- e. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²

INCASTAT is a very useful tool in comprehending the universal operation of the 1980 Hague Convention. Japan supports the practice of conducting the comprehensive analysis of operational data submitted by Contracting States in the year when the Special Commission meeting is held. However, the data entry format of INCASTAT needs some alternation in order to accommodate diverse and different judicial systems of Contracting States so that INCASTAT can be utilized for the daily operation of all Contracting States. Japan has faced with some difficulties when entering its data into INCASTAT, because the judicial practices in Japan cannot be properly reflected current data entry options of the format.

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons 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;

-The participation of the HCCH experts in international conferences and seminars is significant to seek unified operation of the Convention among the Contracting States. JCA co-hosted, with the HCCH, the Asia Pacific Symposium on the 1980 Hague Convention in June 2016, which provided opportunity for the Contracting States to gain mutual understanding about each other's interpretation and operation of the Convention and for the Non-Contracting States to give practical consideration to the possibility of acceding to the Convention.

- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴

²¹ 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 possible to download individual articles as required.

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ 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.

-Japan favors wider ratification of, or accession to, the 1980 Hague Conventions, and supports the Permanent Bureau providing necessary information to the states contemplating the ratification of, or accession to, the Convention.

- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;

-JCA refers to the HCCH website for contact details of other Central Authorities, and thus, requests the Permanent Bureau to call for the update of the information to all Contracting States at least once a year.

- i. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges

The contact details of the Hague Network Judges are very important information, and needs to be periodically updated.

Other

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;
Please insert text here

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

When a state accedes to the 1980 Hague Convention before implementing domestic legislations and structure necessary to fulfill the State's obligation under the Convention, it may cause a considerable burden on the other Contracting States as they may be required to make inquiry into progress in the acceding state before determining whether to accept the accession, or it may result in the non-compliance by the acceding state after the Contracting State accepts the accession and the Convention came into effect between the two countries. This undesirable situation may be avoided by making sure that the newly acceding state has all necessary legislation and structure in place before the accession. For this reason, the Permanent Bureau is recommended to research inspecting whether a newly acceding state has necessary legislations to implement and has the Central Authority ready to fulfill its mandate under the Convention, and provides advise if necessary.

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

It is not appropriate for the Permanent Bureau to evaluate whether the Contracting States have violated the Convention.

PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS
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15. Views on priorities and recommendations for the Special Commission

15.1 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.

- Operation of the 1980 Hague Convention in the new Contracting States.

The increasing number of Asia and South American states acceding to the 1980 Hague Convention resulted in the diversification of culture, social and legal system among the Contracting States. In light of such development, it is important to seek the uniformed interpretation and operation of the 1980 Hague Convention while acknowledging and respecting the diversity among the Contracting States. The Special Commission would be an ideal forum to seek the uniformed interpretation and operation, and to provide the valuable information to the newly acceding states and states contemplating its accession to the Convention.

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

Please insert text here

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.

[Please insert text here](#)