

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: \_\_\_\_\_United States\_\_\_\_\_

Name of contact person: \_\_\_\_\_Stefanie B. Eye\_\_\_\_\_

Name of Authority / Office: U.S Department of State, Overseas Citizens Services,  
\_\_\_\_\_

Telephone number: \_\_\_\_\_(202) 736-9127\_\_\_\_\_

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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.

I – EXISTING STRUCTURES	
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 checked="" type="checkbox"/> No  <input checked="" type="checkbox"/> Yes. Please specify: .....Currently, couples can seek out private mediators without having a court case filed. Or, in some states, they may be referred to a mediator through a court program. .... .....
b) by NGOs?	<input type="checkbox"/> No  <input checked="" type="checkbox"/> Yes. Please name them and give details of the services they provide: ... <b>There are several NGOs throughout the U.S. that provide mediation services directly or that provide accreditation or credentialing and referrals to private mediators. The U.S. Central Authority is currently working on compiling a list of such resources and their services.</b> .....

	.....
<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 checked="" type="checkbox"/> [ X ] The parties can apply to participate in mediation services.</p> <p><input checked="" type="checkbox"/> [ X ] A referral to mediation by a judicial or administrative authority is possible.</p> <p><input type="checkbox"/> [ ] Other. Please specify:</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:</p> <p>Contact a lawyer for legal advice and assistance. The parent could also contact various NGOs that assist parents of abducted children. Some of the NGOs may be able to refer the parent to a mediation program.</p> <p>If the left-behind parent has a valid custody or visitation order, the provisions of that order may be directly enforceable under U.S. state law. The process is intended to be very rapid: ‘next day’ enforcement is the statutory requirement. This would be faster than mediation in most cases.</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 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:</p> <p>.....If the parent needs help locating the child, we would refer the parent to law enforcement or the National Center for Missing and Exploited Children (NCMEC). We could also refer the parent to legal services in the state where the child is located and to resources available on our website. [At this time we do not have a mediation referral service]</p>
<p>3. Does a central contact point exist in your country for such cases?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Please specify:</p> <p>...They could contact either the Department of State or NCMEC, who may be able to help parents identify sources for legal assistance and provide information about other available</p>

	resources.
4. Are there NGOs in your country that help parents in such situations?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Please specify: .....Yes, there are several NGOs that help parents of abducted children. We are currently working on compiling a list of such resources for parents.

<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 checked="" type="checkbox"/> Language problems</p> <p><input type="checkbox"/> Legal obstacles to agreed solutions</p> <p><input checked="" 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 checked="" type="checkbox"/> High costs of available mediation services</p> <p><input checked="" type="checkbox"/> Other. Please specify:          .....There could be problems with arranging for visitation if there are immigration or visa restrictions on either of the parents or the child.</p> <p>The parent in the U.S. may not be willing to agree to a mediated settlement if it were not enforceable in the other country.</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 type="checkbox"/> Yes, there is general legislation on mediation, which also applies to family mediation. Please specify:          .....          .....</p> <p><input type="checkbox"/> Yes, there is specific legislation on family mediation. Please specify:          .....          .....</p> <p><input checked="" type="checkbox"/> Other. Please specify:          ...Mediators are regulated differently in each U.S. state. They are not regulated at all in some states. The qualifications and training required for mediators varies widely across the country.</p>
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**IV - ADDITIONAL REMARKS**

<p>Further remarks or questions:</p>	<p>In addition to varying qualifications for mediators, there is a wide variety of services that could fall under the term mediation. Some community-based mediation is aimed at helping the couple reach an agreement.</p>
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	<p>Other, more structured forms of Alternative Dispute Resolution, could involve a case evaluator who comments on the case and is closer to a judge in helping the couple craft a fair agreement, and some involve binding agreements and others do not.</p> <p>In the US, most mediated agreements can then be taken in front of a judge who will turn the agreement into an enforceable court order – unless the agreement contains provisions that are contrary to law</p> <p>.....</p>
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Thank you.