

Questionnaire concerning the practical operation of the Convention and views on possible recommendations

(1) The role and functioning of Central Authorities

- *General questions:*

1. Have any difficulties arisen in practice in achieving effective communication or co-operation with other central Authorities in accordance with Article 7 of the Convention? If so, please specify.
2. Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice?

Ans. Difficulties have arisen due to absence of implementing legislation.

- *Particular questions:*

3. What measures are taken by your Central Authority or other to secure the voluntary return of a child or to bring about an amicable resolution of the issues (Article 7 c)? Do these measures lead to delay?

Ans. The assistance of police and probation officers is enlisted to make an enquiry. The abducting parent is contacted and requested to return the child. In some cases, this has led to delay in view of the workload of the police and probation officers, and because the abducting parent may fail to respond promptly or at all.

4. What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague proceedings, including the participation of legal counsel and advisors (Article 7 g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?

Ans. The question of legal aid does not arise, inasmuch as it is intended that the cases will be brought to Court by State Counsel and Attorney of the Attorney General's Office.

5. Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?

Ans. The Central Authority (as from the year 2000) is the Ministry of Women and it will instruct the Attorney General's Office which will appear on behalf of the applicant parent. No case has yet been brought in Court.

6. What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protection, especially where issues of (alleged) abuse or violence have arisen? In particular, does your Central Authority

- a ensure that appropriate child protection bodies are alerted;
- b provide information to either parent in respect of legal, financial, protection and other resources in your State;
- c facilitate contact with bodies providing such resources;
- d assist in providing any necessary care for the child pending custody proceedings;
- e provide any other support, advice or information to a parent who accompanies the child on return;
- f provide any assistance in ensuring that undertakings attached to a return order are respected.

Ans. No such case has yet occurred.

7. What arrangements does your Central Authority make for organising or securing the effective exercise of rights of access (Article 7 f)?

In particular, in the case of an applicant from abroad, does your Central Authority:

- a provide information or advice; -

Ans. Yes

- b facilitate the provision of legal aid or advice;

Ans. Advice and legal assistance in Court is provided by the Attorney General 's Office. Services of State Counsel & State Attorney

- c initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;

Ans. Initiate proceedings.

- d assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;

Ans. Not yet arisen.

- e assist in cases where modification of existing access provisions is being sought.

Ans. Not yet arisen

8. Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why?

Ans. No return has yet been submitted.

9. Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions, as set out in footnotes 11 and 12?

Ans. Yes, Mauritius supports the conclusions.

10. Would you support any other recommendations in respect of the particular functions which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above?

Ans. Yes

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation

1. How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.

Ans. The Supreme Court - 9 judges

2. Do you have any special arrangements whereby jurisdiction to hear return application is concentrated in a limited number of courts? Are such arrangements being contemplated?

Ans. No.

3. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

a. is it possible for the application to be determined on the basis of documentary evidence alone?

Ans. Yes

b. what special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings?

Ans. Rules have not yet been made.

c. who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised?

Ans. The Master & Registrar of the Supreme Court.

d. what appeal is possible from the grant or refusal of a return application, within that time limits do appeals operate, on what grounds and subject to what limitations?

Ans. • Appeal to Court of Civil Appeal and the Judicial Committee of Privy Council.

- Appeal should be lodged within 21 days of the date of judgment.
- In case of appeal to the Judicial Committee of the Privy Council, leave of the Supreme Court should be obtained. Leave is granted where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance ought to be submitted to the Judicial Committee, or the appeal raises a constitutional matter.

4. In what circumstances, and by what procedures/methods, will a determination be made as to whether a child objects to being returned?

In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any.)

Ans. The Court will give a hearing to a child depending on his age and maturity. Article 388-1 of the Code Napoleon provides that –

388-1 Dans toute procédure le concernant, le mineur capable de discernement peut, sans préjudice des dispositions prévoyant son intervention ou son consentement, être entendu par le juge.

Lorsque le mineur en fait la demande, son audition ne peut être écartée que par une décision spécialement motivée. Il peut être entendu seul, avec un conseiller légal ou une personne de son choix. Si ce choix n'apparaît pas conforme à l'intérêt du mineur. Le juge peut procéder à la désignation d'une personne.

L'audition du mineur ne lui confère pas la qualité de partie à la procédure.

5. Where the person opposing return raises any other defences under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? Does the raising of defences under Articles 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

Ans. Not yet applicable.

6. Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

Ans. Not yet applicable

7. Would you support any of the following recommendations?

- a. calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.

Ans. Yes

- b. underscoring the obligation of State Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.

Ans. Yes

- c. calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.

Ans. Yes

- d. calling for firm judicial management both at trial and appellate levels, of the progress of return applications.

Ans. Yes

- e. calling upon States Parties to enforce return orders promptly and effectively.

Ans. Yes.

- f. Recommending that the "grave risk" defence under Article 13 should be narrowly construed.

Ans. Yes

- g. proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.

8. Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- rights of custody (Article 3 a and Article 5 a);
- habitual residence (Article 3 a and Article 4);
- rights of access (Article 5b);
- the actual exercise (of rights of custody) (Article 3 b and Article 13 a);
- the settlement of the child in its new environment (Article 12);
- consent or acquiescence to the removal or retention of the child (Article 13 a);
- grave risk (Article 13 b);
- exposure to physical or psychological harm (Article 13 b);
- intolerable situation (Article 13 b);
- fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).

Ans. None.

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)

1. To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject-matter of undertakings required/requested. At what point in return proceedings are possible undertakings first raised, and how?

Ans. Court has not yet considered any case.

2. Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court?

Ans. Court has not yet considered any such case, but in principle, undertakings are given in cases before the Supreme Court.

3. To what extent are your courts entitled and prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned to overcome obstacles to the prompt return of a child)?

Ans. -

4. Is consideration being given to the possible advantages 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*, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)?

Ans. Under consideration.

5. Have you experience of cases in which questions have arisen as to the right of the child/and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

Ans. No

6. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

Ans. -

7. Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an application for return, communicated

with a judge or other authority in the requesting State and, if so, for what purposes. What procedural safeguards surround such communications?

Ans. No.

8. Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?

Ans. No – but the Chief Justice may be contacted.

9. Where a child is returned to your Country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?

Ans. The question of legal aid does not arise inasmuch as it is intended that cases under the Convention will be handled by State Counsel & State Attorney.

10. Where custody has been granted in the jurisdiction of, and in favour of, the left behind parent, is the order subject to review if the child is returned, upon application of the abducting parent?

Ans -

11. Would you support any of the following recommendations?

- a. that Contracting States should consider ratification of or accession to 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*, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.

Ans. Yes

- b. that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.

Ans. Yes

- c. that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.

Ans. Yes

- d. that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement.

Ans. Yes

- e. that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority.

Ans. Yes

- f. that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.

Ans. Yes

(4) Procedures for securing cross-frontier access/ contact between parent and child.

1. What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?

Ans. Service of State Counsel and State Attorney

2. On what basis do your courts at present exercise jurisdiction to:

- a grant and
- b modify access/contact orders?

Ans. Not case has yet been lodged. Therefore, we cannot state by what principle the Court will be guided. Jurisdiction is exercised in virtue of section 6(1)(b) of the 2000 Act.

3. What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's habitual residence? In this context is consideration being given to 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*?

Ans. ● A motion of exequatur is made to the Supreme Court under the Foreign Judgment (Reciprocal Enforcement) Act.

- Under consideration.

4. What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?

Ans. Not yet provided.

5. What facilities/procedures are in place to promote agreement between parents in international access/contact cases?

Ans. Not yet provided.

6. Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?

Ans. Yes

7. What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?

Ans. - Undertakings.

- **Financial agreement.**

8. What information concerning services and what other facilities are available to overseas applicants for access/contact orders?

Ans. Overseas applicants will generally obtain information from the relevant Central Authority abroad.

9. What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:

a the effective exercise of rights of access in your/in the other jurisdiction;

Ans. -

b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;

Ans. -

c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

Ans. -

10. What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (e.g. financial guarantee, surrender of passports)?

Ans. - **financial guarantee**
- **injunctions to Passport Office**
- **contempt proceedings.**

11. How in practice are access orders enforced?

Ans. **Not yet applied.**

12. Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please specify.

Ans.

(5) Securing State compliance with Convention obligations

1. Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.

Ans. -

2. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations?

Ans. -

3. Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or not to accept the accession? What questions would you include?

Ans. **Yes**

4. Are you in favour of an increase in the number of Special Commissions (or similar meetings) to review the practical operation of the Convention? Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

Ans. **Yes**

5. Are there any other measures or mechanisms which you would recommend:

a to improve the monitoring of the operation of the Convention;

Ans. -

b to assist States in meeting their Convention obligations;

Ans. Training

c to evaluate whether serious violations of Convention obligations have occurred?

Ans. Report by Contracting State to the Permanent Bureau whenever a case has remained unsolved.

(6) Miscellaneous and general

1. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?

Ans. The Permanent Bureau has provided valuable assistance to Mauritius in submitting copies of foreign legislation for the purpose of enacting its own implementing legislation.

2. Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to account set aside for that purpose?

Ans. -

3. Would you favour a recommendation that State Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?

Ans. -

4. Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject-matter of the Convention?

Ans. Yes

5. Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?

Ans. -

6. Please provide information concerning any bilateral arrangements made with non-Hague States with a view to achieving all or any of the objectives set out in Article 1 of the Convention.

Ans. No bilateral arrangement.

7. Do you have any comments on the following proposition:

“Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention.”

Ans. Yes, Mauritius agree to the proposition.