

Response to Questionnaire concerning practical mechanisms for facilitating direct international judicial communications in the context of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("Convention")

Prepared by the Central Authority of the Hong Kong Special Administrative Region of the People's Republic of China
("the Central Authority of Hong Kong")

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A. *The feasibility and/or desirability of the appointment of a liaison judge or authority*

1. *Has a nomination been made in your country of 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 in cases involving child abduction or access/contact?*

There has been no formal nomination in the Hong Kong Special Administrative Region ("Hong Kong") of the People's Republic of China ("PRC"). However, one of our judges, the Hon Mr Justice Hartmann, has volunteered to be a liaison judge.

2. *If an appointment has not yet been made in your country, would such a nomination face any legal difficulties or constraints? Are there specific concerns you would like to raise regarding the feasibility and/or desirability of an appointment of a liaison judge/authority?*

It has been our understanding that the intention behind the recommendation is to create an international network of liaison judges to facilitate better understanding of each other's judicial systems and practices through informal contacts and communications between the judges. We supported the recommendation on the understanding that such arrangements were purely informal and did not involve any reciprocal juridical arrangement.

We believe it is desirable to have informal arrangements to encourage open exchange of ideas. If more formal arrangements are involved, we need assistance or authorization from the Central People's Government of the PRC to make appropriate arrangements.

B. *Administrative Aspects*

1. *If a judge or authority has been nominated:*

- (a) *What procedure was used in making the appointment?*

There was no formal procedure used in making the appointment.

The arrangement is informal in Hong Kong (see answer to Question A1).

- (b) *What role and functions have been attributed to the judge or authority?*

The liaison judge is to act as a channel of communication and liaison with judges of other Contracting States and territories.

- (c) *How does the judge or authority (if it is not the Central Authority) relate to the Central Authority in carrying out his/her functions?*

The judge will not in any way impinge on the work of the Central Authority. The judge will do no more than provide an informal channel of communication to judges in other jurisdictions concerning the working of our system.

- (d) *Have any arrangements been made with respect to possible language difficulties?*

The Hong Kong Judiciary maintains a list of certified interpreters. If necessary, the services of an appropriate interpreter can be engaged.

- (e) *Has the appointment been communicated to the Permanent Bureau?*

The informal arrangement mentioned in the answer to Question A1 is known to the Permanent Bureau.

- (f) *Has the appointment been communicated to other States?*

A list of liaison judges has been posted by the Permanent Bureau. There has been no form of formal notification to other jurisdictions.

2. *If a judge or authority has not been nominated, please give any views you have on how the matters referred to in 1(a), (b), (c) and (d) above might be addressed in your country.*

See Question B1.

3. *In the case of Federal States or States with more than one system of law, are there any particular difficulties in establishing a liaison structure and how might these be addressed?*

The Convention applies to both the Hong Kong Special Administrative Region and Macau Special Administrative Region but the Convention does not apply between the two regions. We do not see any particular difficulties in exchange of ideas between judges of the two regions through informal communications.

Practical and legal aspects

1. *To what extent are communications at the international level at present practiced in your country? Please provide examples.*

To date there have been no communications at the international level with liaison judges from other jurisdictions. For other types of international communications, please see answer to Question C2.

2. *Have there been any judicial decisions in your country in which judicial communications at the international level have been discussed?*

In a recent case (*D v G* [2002] HKLRD 52), a judge, with the consent of counsel, spoke to the Central Authority of another country in order to obtain information urgently. According to this Court of Appeal case –

(a) As far as Hong Kong court procedure was concerned, it was highly unusual and undesirable for a judge to take an active role in the investigation of facts.

(b) It was also highly unusual and undesirable that a judge should communicate with an executive authority (whether be in Hong Kong or overseas) to obtain information in order to enable him to reach a decision, as there could be little assurance that the person with whom the communication was made was speaking with the proper authority or knowledge, or had given the appropriate attention to the matters in hand.

(c) Even if most unusual circumstances prevailed, and a judge found it necessary to communicate with another court or agency, this should only be done in the presence, and with the consent, of all parties and their representatives. To do otherwise would give the appearance of receiving evidence without the knowledge of the parties and reaching a decision without communicating it to the parties.

3. *What procedural and legal safeguards should surround communications at the international level between judges or between a judge and another authority in the context of cases involving child abduction or access/contact?*

Please comment in particular on:

- *any limits on the subject-matter of communications;*
- *requirements concerning advance notification to parties, the presence of parties or their legal representatives (e.g. by use of conference call facilities), record keeping and confirmation in writing of the substance of the communication.*

We consider that judicial communications should be made known to all the parties at the earliest practicable opportunity to enable parties to make submissions to the deciding judge where appropriate. We also support the safeguards listed in paragraph 5.6 of the "Background" section.

D. *General*

1. *Have you any general comments or suggestions concerning the development of the international judicial liaison network?*

The Permanent Bureau should bear in mind that the procedures in civil law jurisdictions are different from that in common law jurisdictions. The role and function of a judge may differ, and therefore there should be discussion on interface at a judicial communication level.

2. *Is your country involved in international judicial networks, including at regional level, in other areas of civil law?*

[Central People's Government to advise how to respond]

3. *Would your country support the holding of more judicial and other seminars, both national and international, on issues concerning the 1980 Hague Convention?*

[Central People's Government to advise how to respond]