



## International Child Support Enforcement: FFY 2008 Update

*Office of Child Support Enforcement • Administration for Children and Families •  
Department of Health and Human Services  
National Child Support Enforcement Association*

## The HAGUE Multilateral Treaty

➤ *The Convention on the International  
Recovery of Child Support and Other  
Forms of Family Maintenance*



➤ **Comprehensive child support services  
as close to US system as possible**

Central Authority, Administrative Cooperation

Establishment, recognition and enforcement, cost free  
services

➤ **November 23, 2007 – U.S. First to Sign**

## **GOAL**

### **Develop a new worldwide child support convention that would:**

- Include provisions relating to administrative co-operation
- Be comprehensive, building upon the best features of existing Conventions
- Take account of future needs and new technologies
- Combine maximum efficiency with the flexibility necessary to achieve widespread ratification
- Have an inclusive process

## **PROCESS**

- **Five negotiating sessions (May 2003, June 2004, April 2005, June 2006 and May 2007)**
- **Meetings held between sessions by: (1) Drafting Committee, (2) Administrative Cooperation Working Group, including the Country Profile Sub-committee and (3) Forms Working Group**
- **All of this culminated in the November 2007 “Diplomatic Conference” where the text of the Convention was finalized**

## **KEY FEATURES OF NEW CONVENTION**

**Universality**  
**Accessibility**  
**Simplicity & Flexibility**  
**Speed & Efficiency**  
**Cost-effectiveness**  
**Responsive and fair**  
**Non-discrimination**  
**Co-operation and compliance**

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## **SCOPE OF APPLICATION OF CONVENTION**

- **Mandatory to cases of persons under the 21 with reserve for persons under 18**
- **Covers spousal support but administrative co-operation only applies where States have made a declaration**
- **Can extended to other maintenance obligations arising from a family relationship, parentage, marriage or affinity**
- **Can be extended to vulnerable adults**
- **Applies to regardless of the parents' marital status**

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## **ADMINISTRATIVE CO-OPERATION**

- **Administrative co-operation implemented using Central Authorities (CAs)**
- **Convention will provide for specific applications using recommended**
- **Time lines and responsiveness**
- **Means of communication**

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## **RECOGNITION AND ENFORCEMENT**

- **Applies to judicial and administrative decisions, settlements, “maintenance agreements” (authentic instruments)**
- **Main bases for recognition and enforcement**
  - Respondent habitually resident in the State of origin
  - Respondent submitted to the jurisdiction
  - Creditor habitually resident in the State of origin (reservation possible)
  - Child resident in the State of origin when proceedings instituted and respondent lived with the child there or resided there and provided support for the child there
  - Agreement to the jurisdiction by the parties except in the case of child support (reservation possible)
  - Authority exercising jurisdiction on a matter of personal status or parental responsibility (reservation possible)

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## **RECOGNITION AND ENFORCEMENT (cont.)**

### **➤ Grounds for refusing recognition and enforcement**

- Decision manifestly incompatible with public policy
- Decision obtained by fraud relating to procedure
- Competition between pending case and foreign decision
- Conflicting decisions (*res judicata*)
- No proper notice or opportunity to be heard
- Debtor exceeded limits on proceedings

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## **PROCEDURES FOR RECOGNITION AND ENFORCEMENT**

- **Registration for enforcement with limited grounds for refusal and no submissions from parties**
- **Challenge or appeal limited time and grounds**
- **Appeal if permitted by law of State addressed, without staying enforcement**
- **Alternative procedure**
- **Linkage with national enforcement procedures**
- **Direct applications to competent authorities (typically courts) are possible**

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## **ENFORCEMENT MEASURES**

- **Specific enforcement measures are left to the requested State but States are required to make available effective enforcement measures**
  
- **Convention provides a list of possible measures that a State might, at its option, use, including**
  - Wage withholding
  - Garnishment
  - Deductions from social security payments
  - Lien on or forced sale of property
  - Tax refund withholding
  - License denial or suspension

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## **SERVICES COVERED BY THE EFFECTIVE ACCESS TO PROCEDURES**

- **ALL services that a creditor needs in order to establish or recognize and enforce a child support decision.**
  
- **“Legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with.**
  
- **Such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs and proceedings. (Art. 3(c))**

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## **EFFECTIVE ACCESS TO PROCEDURES**

- **Contracting States obliged to provide effective access to procedures, including enforcement and appeal procedures.**
- **Effective access = Providing ALL services virtually cost-free**
- **Convention provides for completely cost-free services in child support cases processed through Central Authorities, with narrow exceptions**

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## **MAIN ELEMENTS OF PACKAGE ON EFFECTIVE ACCESS**

- Services of Central Authorities shall be provided without cost to applicant, with rare exceptions
- Free legal assistance to creditors for all child support applications, including establishment and recognition and enforcement of decisions, with rare exceptions
- No need to provide free legal assistance if the State has simple procedures that do not require such assistance, and the Central Authority provides any necessary services free of charge

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## **COST RECOVERY**

- States may recover costs from an unsuccessful party
- Recovery of costs may not take precedence over the recovery of maintenance but not intended to be used against creditors who act in good faith.

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## **CENTRAL AUTHORITIES GENERAL**

- **Each state shall designate a Central Authority (Federalized States)**
- **Central Authorities shall cooperate and promote cooperation**
- **Central Authorities shall seek resolution to difficulties**
- **May be performed by public bodies or other bodies subject to laws of state and competent supervision**

## **CENTRAL AUTHORITIES GENERAL (Cont'd)**

- **Shall not exercise power that can only be exercised by a judicial authority in a regulated state**
- **Each Central Authority shall bear its own costs**
- **May not impose and charge applicants for services under Convention (except under Article 7) and then only with prior consent and notice of cost.**

## **Central Authorities Specific Functions**

- **Transmit and receive applications**
- **Initiate or facilitate proceedings in response to an application**
- **Take all appropriate measures**
- **Provide or facilitate provision legal assistance**
- **Verify or obtain income or financial circumstances including assets of debtor or creditor**
- **Facilitate amicable solutions / voluntary payments**

## **Central Authorities Specific Functions (Cont'd)**

- **Facilitate enforcement**
- **Facilitate payments and expeditious transfer of funds**
- **Facilitate obtaining documentary or other evidence**
- **Provide assistance in establishing parentage**
- **Initiate or facilitate proceedings to obtain necessary provisional measures**
- **Facilitate service of documents**

## **Implementation**

- **Country Profile**
- **Mandatory and Recommended Forms**
- **Good Practice Guide**
- **Compliance Monitoring and Review**

## Country Profile (cont.)

- **Focuses on information or services required by the Convention.**
- **Completion will ensure that a Requesting Country will send the documents and information needed by the Requested Country**
- **Utilization will fulfil the obligation to provide information concerning laws, procedures and services by the time that the Country deposits its instrument of ratification.**
- **Completed online through a secure access on the Hague Conference website**
- **The Country Profile extremely useful tool for international case processing under the new Convention and could also be used as a source of good practices.**

## Forms

- **The goal is to adopt electronic, multilingual forms**
- **Use of the forms will significantly reduce translation costs**
- **Use of the forms will also insure that all of the documents and information needed to comply with the terms of the Convention are provided to the Requested Country**
- **There are two mandatory forms - the Transmittal Form and the Acknowledgment Form. Other recommended forms**
- **Harmonized and consistent forms – medium neutral language, common layout, and common content.**

## **Forms (cont.)**

- **The recommended forms will be considered in at the next Special Commission meeting.**
  - Application for Recognition or Recognition and Enforcement
  - Application for Enforcement of a Decision Made or Recognized in the Requested State
  - Application for Establishment of a Decision
  - Application for Modification of a Decision
  - Status of Application Reports
  - Abstract of a Decision
  - Statement of Enforceability of a Decision
  - Statement of Proper Notice
  - Financial Circumstances Form

## **Good Practice Guide**

- **Effective in supporting the implementation and operation of other Conventions**
  
- **Work has not begun yet**

## **Implementation Issues**

- **Requests for specific measures (Article 7)**
- **Acknowledgment of receipt of application and status report – timeframes (Article 12)**
- **Means of communication (Article 13)**
- **Findings of fact (Article 27)**
- **No review of the merits of a decision (Article 28)**
- **Physical presence of child/applicant not required (Article 29)**
- **Enforcement under internal law (Article 32)**

## **Implementation Issues**

- **Non-discrimination (Article 33)**
- **Transfer of funds (Article 35)**
- **Direct applications (Article 37)**
- **Protection of personal data (Article 38)**
- **Confidentiality (Article 39)**
- **Non-disclosures of information (Article 40)**
- **No legalization (Article 41)**

## **Implementation Issues**

- **Recovery of costs (Article 43)**
- **Language requirements (Article 44)**
- **Means and cost of translation (Article 45)**
- **Applicable law**

## **Areas of Consideration and Impact for US States**

- **Knowledge of convention**
- **Knowledge of other Countries systems and practices**
- **Broader responsibility than Central Registry**

## Areas of Consideration and Impact for US States (Cont'd)

- **Passage of newer version of UIFSA**
- **UIFSA does not exist in other countries**
- **Communication**
  - Patience
  - Time zones/dates
  - Language
- **Currency rates/exchange**

## Hague Treaty: Steps Toward Ratification



- **Implementing Legislation**
  - State Level (UIFSA 2008) UIFSA 2001 revised to address changes needed for Treaty; new chapter on Treaty cases, longer response times)
  - Federal Level (sent to Congress 7/16)
- **Senate Advice and Consent**
  - The President sent the Treaty Transmittal Package to the Senate first week September
  - President ratifies with Senate consent

## **Next Steps: Hague Treaty**

- **Senate gives consent for President to ratify**
- **Congress passes the proposed Federal implementing legislation**
- **Once all States adopt UIFSA 2008, instrument of ratification deposited**
- **A Second Country deposits instrument of Treaty ratification**

## **Websites for Additional Information**

- Information on the Convention including the full text, mandatory forms, the Explanatory Report, etc. [www.hcch.net](http://www.hcch.net)
- Information on UIFSA 2008 (revisions to UIFSA 2001 to implement the Convention in the US. [www.nccusl.org](http://www.nccusl.org)
- Information on the action taken by the Congress to ratify the treaty and make amendments of Title IV-D. [www.thomas.gov](http://www.thomas.gov)

# Thank You

Bedankt

Ευχαριστώ

Obrigado!

Grazie

Vielen Dank

Hvala

ขอบคุณ

Díky

תודה

شكراً

Thank You

Köszönettel

Merci