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**REPONSES AU QUESTIONNAIRE SUPPLEMENTAIRE
CONCERNANT UN NOUVEL INSTRUMENT MONDIAL SUR
LE RECouvreMENT DES ALIMENTS ENVERS LES ENFANTS
ET D'AUTRES MEMBRES DE LA FAMILLE**

PARTIE I : DISPOSITIFS RELATIFS AUX RECouvreMENTS ET TRANSFERTS

Question 25 : Le recouvrement de la pension alimentaire s'effectue par virement bancaire ou par mandat postal. Parfois, en cas de conflit, le montant peut être déposé par le débiteur d'aliments à la caisse du tribunal compétent.

Question 26 : Le Maroc ayant ratifié la Convention de New York relative au recouvrement de la pension à l'étranger du 20 juin 1956, par conséquent le paiement dont est redevable un débiteur d'aliment est recouvré conformément aux dispositions de ladite Convention.

Question 29 : Lorsque le paiement s'effectue de l'étranger vers notre Pays, le bénéficiaire n'est tenu d'honorer aucun frais.

Toutefois, lorsque le virement de la pension alimentaire doit s'effectuer de notre Pays à un Pays tiers, dans cette situation le débiteur est redevable de certains frais exigibles notamment le paiement des taxes.

Question 30 : Des organismes bancaires dans un souci d'accélérer le transfert de fonds vers l'étranger ont mis en place des systèmes de virements électroniques.

Toutefois, pour le moment, nous ne disposons pas encore d'accords établis soit par le secteur Public soit par le secteur privé afin d'effectuer le virement à moindre coût.

**PARTIE II : STATISTIQUES RELATIVES AUX TRANSFERTS DE FONDS TRANS-
FRONTIÈRES**

Question 1 : OUI

Question 3 : Même réponse

Question 4 :

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Question 5 : La fréquence type de recouvrement est généralement mensuelle.

Question 6 :

PARTIE III : UTILISATION DES TECHNOLOGIES DE L'INFORMATION

Question 7 : Dans un contexte purement national, l'autorité qui a prononcé la détermination de la pension alimentaire est habilitée à poursuivre son recouvrement.

Question 8 : En application de la Convention de New York du 20 juin 1956, l'autorité centrale marocaine (*le Ministère de la Justice*) en tant qu'autorité intermédiaire est habilitée à se faire transmettre des demandes de recouvrements par voie postale et même parfois par télécopie. S'agissant de ce dernier mode de transmission, cela ne saurait être valable pour l'ensemble des documents car pour leur transmission à la juridiction compétente, celle-ci a besoin de disposer d'originaux, notamment pour les décisions judiciaires.

Question 9 : Même réponse.

Question 10 : OUI

Question 11 : OUI

Question 12 : OUI

PART I - COLLECTION AND TRANSFER AGREEMENTS. PRELIMINARY
DOCUMENT NO. 1 OF JUNE 2002:

25. HOW IS THE PAYMENT AND COLLECTION OF (A) CHILD SUPPORT AND (B) MAINTENANCE FOR A SPOUSE OR OTHER FAMILY MEMBER ORGANISED IN YOUR COUNTRY?

IN MEXICO, FAMILY MATTERS ARE REGULATED BY LAWS ENACTED BY EACH OF THE MEMBER STATES OF THE FEDERATION AND LAWS ENACTED IN THE FEDERAL DISTRICT (i.e., THE TERRITORY THAT SERVES AS THE SEAT OF THE MEXICAN GOVERNMENT). HOWEVER, IT IS IMPORTANT TO MENTION THAT THE PROVISIONS OF THE LAW ON MAINTENANCE OF EACH OF THE THIRTY-ONE MEMBER STATES AND THOSE OF THE FEDERAL DISTRICT'S LAW ARE FAIRLY SIMILAR.

IN MEXICO THE CONCEPT OF "MAINTENANCE" (i.e., ALIMENTS/ALIMENTOS) COMPRISES THE SUPPORT AND ASSISTANCE OF OFFSPRING, SPOUSE AND OTHER FAMILY MEMBERS. HOWEVER, THERE ARE NORMS THAT SPECIFICALLY APPLY TO THE CASE OF OFFSPRING AND NORMS THAT SPECIFICALLY APPLY TO THE CASE OF SPOUSE AND OTHER FAMILY MEMBERS.

IN GENERAL TERMS, MAINTENANCE INCLUDES: FOOD, CLOTHING, HOUSING, MEDICAL ASSISTANCE AND HOSPITALIZATION, AS WELL AS PREGNANCY AND CHILDBIRTH EXPENSES.

IN THE CASE OF MINORS, MAINTENANCE FURTHER INCLUDES: EXPENSES RELATED TO THEIR EDUCATION AND THOSE REQUIRED TO ALLOW THEM TO EVENTUALLY EXERCISE A TRADE, ART, OR PROFESSION, APPROPRIATE TO THEIR PERSONAL CIRCUMSTANCES. HOWEVER, MAINTENANCE DOES NOT INCLUDE PROVIDING THE MINORS WITH THE MEANS NECESSARY TO EXERCISE SUCH TRADE, ART, OR PROFESSION (E.G., MEANS TO SET UP SHOP).

ACCORDING TO LEGISLATION, MAINTENANCE MUST BE PROPORTIONAL. IN OTHER WORDS, IT MUST BE QUANTIFIED ACCORDING TO THE DEBTOR'S MEANS AND THE CREDITOR'S NEEDS. FURTHERMORE, MAINTENANCE IS, AT THE LEAST, AUTOMATICALLY INCREASED IN A WAY EQUIVALENT TO THE ANNUAL PERCENTAGE RISE OF THE "NATIONAL PRICE INDEX TO CONSUMERS", PUBLISHED BY THE CENTRAL BANK (UNLESS THE DEBTOR IS ABLE TO PROVE THAT HIS INCOME HAS NOT INCREASED IN THE SAME PROPORTION. IN THIS CASE, THE INCREASE IN MAINTENANCE IS ADJUSTED TO THE DEBTOR'S REAL INCOME INCREMENT).

THE OBLIGATION TO PROVIDE MAINTENANCE IS RECIPROCAL. THIS MEANS THAT HE WHO IS BOUND TO PROVIDE IT HAS ALSO THE RIGHT TO DEMAND AND RECEIVE IT. THE RIGHT TO RECEIVE MAINTENANCE MAY NOT BE RENOUNCED NOR MAY IT BECOME THE OBJECT OF TRANSACTIONS.

PARENTS ARE LEGALLY REQUIRED TO PROVIDE MAINTENANCE TO THEIR CHILDREN, UNTIL THEY REACH ADULT AGE (18 YEARS OF OLD). IF OFFSPRING WERE TO CONTINUE REQUIRING MAINTENANCE BEYOND THIS AGE, PROOF OF SUCH NECESSITY MUST BE PROVIDED IN ORDER TO ENABLE THE INTERESTED PARTY TO JUDICIALLY DEMAND THE FULFILLMENT OF THE OBLIGATION. LIKEWISE, HUSBANDS AND WIVES AND INDIVIDUALS WHO COHABIT (i.e., WHO LIVE IN CONCUBINAGE), HAVE THE OBLIGATION TO PROVIDE MAINTENANCE TO THEIR SPOUSE OR PARTNER.

MEXICAN LEGISLATION STATES THAT IN CASE OF MISSING PARENTS OR IN CASES WHERE IT IS IMPOSSIBLE FOR THEM TO PROVIDE MAINTENANCE TO THEIR CHILDREN, THE OBLIGATION FALLS TO THE CLOSEST ASCENDANTS (by KINSHIP) FROM BOTH LINES. ON THE OTHER HAND, SINCE THE OBLIGATION TO PROVIDE MAINTENANCE IS RECIPROCAL, OFFSPRING ARE LEGALLY BOUND TO PROVIDE MAINTENANCE TO THEIR PARENTS. LIKEWISE, IN CASE OF MISSING OFFSPRING OR IN CASES WHERE IT IS IMPOSSIBLE FOR THEM TO PROVIDE MAINTENANCE TO THEIR PARENTS, THE OBLIGATION FALLS TO THE CLOSEST DESCENDANTS (by KINSHIP).

IN CASE OF MISSING ASCENDANTS OR DESCENDANTS OR WHEN IT IS IMPOSSIBLE FOR THEM TO PROVIDE MAINTENANCE, THE OBLIGATION FALLS TO SIBLINGS (WHETHER THEY SHARE ONE OR BOTH PARENTS). IF THERE ARE NO SIBLINGS, THE OBLIGATION FALLS, SUBSEQUENTLY, TO COLLATERAL RELATIVES UP TO THE FOURTH DEGREE (i.e., UNCLES AND THEN COUSINS).

FURTHERMORE, THE LAW STATES THAT THE INDIVIDUALS ABOVE MENTIONED (SIBLINGS, UNCLES AND COUSINS), ARE BOUND TO PROVIDE MAINTENANCE TO THEIR UNDER AGE OR DISABLED RELATIVES (IN THIS LAST CASE, THE DUTY EXTENDS TO ADULT RELATIVES UP TO THE FOURTH DEGREE).

IF THERE ARE VARIOUS RELATIVES (E.G., SEVERAL SIBLINGS) RESPONSIBLE FOR PROVIDING MAINTENANCE, WHO ARE ABLE/HAVE THE MEANS TO DO SO, THE LAW STATES THAT IT IS UP TO A JUDGE TO DIVIDE THE AMOUNT AMONG THEM, IN A PROPORTIONAL MANNER TO THE DIMENSION OF THEIR RESPECTIVE STATES.

ACCORDING TO MEXICAN LEGISLATION, THE FOLLOWING PERSONS ARE ENTITLED TO REQUEST THE SECURING OF MAINTENANCE:

I. THE MAINTENANCE CREDITOR;

II. HE WHO EXERCISES PARENTAL RIGHTS OR HE WHO HAS CUSTODY OR GUARDIANSHIP OVER THE MINOR;

III. THE TUTOR;

IV. THE SIBLINGS AND COLLATERAL RELATIVES UP TO THE FOURTH DEGREE;

V. HE WHO HAS UNDER HIS CARE THE MAINTENANCE CREDITOR, AND

VI. THE PUBLIC PROSECUTOR (MINISTERIO PUBLICO).

AS STATED, FAMILY MATTERS ARE REGULATED BY LAWS ENACTED BY EACH OF THE MEMBER STATES OF THE FEDERATION AND LAWS ENACTED IN THE FEDERAL DISTRICT. LIKEWISE, THESE ENTITIES HAVE THEIR OWN SPECIALIZED TRIBUNALS (i.e., LOCAL TRIBUNALS ON FAMILY MATTERS) AND PROCEDURES. IN OTHER WORDS, MAINTENANCE CASES FALL UNDER THEIR LOCAL JURISDICTION.

JUDGES WHO OVERSEE FAMILY MATTERS ARE ENTITLED TO ACT EX OFFICIO, PARTICULARLY IN CASES INVOLVING MINORS AND MAINTENANCE. LEGAL PROCEEDINGS CONCERNING MAINTENANCE ARE QUITE SIMPLE, AND DO NOT REQUIRE ANY FORMALITIES. FOR EXAMPLE, IN THE FEDERAL DISTRICT, THE ONLY PREREQUISIT TO INITIATE LEGAL PROCEEDINGS TO OBTAIN MAINTENANCE IS THE TESTIMONY OF THE CREDITOR BEFORE THE COMPETENT AUTHORITY.

26. WHAT, IF ANY, PARTICULAR ARRANGEMENTS APPLY WHERE PAYMENTS ARE TO BE MADE OR COLLECTED FROM ABROAD?

AT THIS POINT IN TIME NO AGREEMENTS FOR THE TRANSFER OF MAINTENANCE PAYMENTS HAVE BEEN CONCLUDED (WITH BANKS OR OTHER INSTITUTIONS). IN FACT, MAINTENANCE PAYMENTS FROM ABROAD ARE HANDLED THROUGH OUR DIPLOMATIC AND CONSULAR REPRESENTATIONS. THESE MISSIONS RECEIVE THE FUNDS IN QUESTION AND THEN THEY PROCEED TO TRANSFER THEM TO MEXICO BY WAY OF DIPLOMATIC POUCH.

MAINTENANCE PAYMENTS FROM MEXICO TO A FOREIGN COUNTRY ARE USUALLY MADE USING BANK ACCOUNTS. THUS, THE CONCERNED PARTIES HAVE TO BEAR ALL THE EXPENSES INVOLVED WITH THE OPENING OF SUCH ACCOUNTS, AS WELL AS THE PAYMENT OF COMMISSIONS.

29. WHAT ARE THE TYPICAL BANKING COSTS INVOLVED IN THE TRANSFER OF MAINTENANCE PAYMENTS FROM / TO YOUR COUNTRY?

SINCE THERE ARE NO AGREEMENTS WITH BANKS OR OTHER INSTITUTIONS SUCH FIGURES ARE NOT KNOWN.

30. HAVE ANY ARRANGEMENTS BEEN DEVELOPED IN YOUR COUNTRY, EITHER BY THE PUBLIC OR THE PRIVATE SECTOR, TO FACILITATE THE EASY AND LOW-COST TRANSFER OF PAYMENTS TO / FROM ABROAD?

NO SUCH AGREEMENTS HAVE BEEN CONCLUDED.

PART II STATISTICS CONCERNING THE CROSS- BORDER TRANSFER OF FUNDS.

1. DOES YOUR COUNTRY HAVE ANY MEANS OF MONITORING / TRACKING / ESTIMATING (A) CROSS-BORDER CHILD SUPPORT PAYMENTS OR (B) CROSS-BORDER MAINTENANCE PAYMENTS FOR A SPOUSE OR OTHER FAMILY MEMBER? PLEASE RESPOND BY YES OR NO.

YES (AS STATED BEFORE, MEXICO USES ITS DIPLOMATIC POUCHES FOR THE TRANSFER OF MAINTENANCE PAYMENTS. THUS, IT IS IN FACT POSSIBLE TO TRACK AND HAVE CONTROL OVER SUCH SHIPMENTS).

2. WHAT IS YOUR ESTIMATE OF THE TOTAL NUMBER OF (A) OUTGOING AND (B) INCOMING CROSS-BORDER TRANSFER IN 2003? IF POSSIBLE, IT WOULD BE APPRECIATED IF YOU COULD MAKE A DISTINCTION BETWEEN TRANSFERS FOR (I) CHILD SUPPORT AND (II) MAINTENANCE OR A SPOUSE OR OTHER FAMILY MEMBER.

A) THERE ARE NO AVAILABE FIGURES.

B) IN 2003 THERE WERE 4,315 OPERATIONS OF INCOMING CROSS-BORDER MAINTENANCE TRANSFERS (ALL THESE CONCERNED MAINTENANCE FOR MINORS).

3. WHAT IS YOUR ESTIMATE OF THE TOTAL AMOUNT OF (A) OUTGOING AND (B) INCOMING CROSS-BORDER MAINTENANCE PAYMENTS IN 2003? IF POSSIBLE IT WOULD BE APPRECIATED IF YOU COULD MAKE A DISTINCTION BETWEEN PAYMENTS FOR (I) CHILD SUPPORT AND (II) MAINTENANCE FOR A SPOUSE OR OTHER FAMILY MEMBER.

A) THERE ARE NO AVAILABE FIGURES.

B) IN 2003, THE TOTAL AMOUNT OF TRANSFERS CONCERNING MAINTENANCE OF MINORS WAS \$633,640 U.S. DOLLARS.

4. WHAT IS YOUR ESTIMATION OF THE ANNUAL MINIMUM, MAXIMUM AND AVERAGE AMOUNT PER CASE HANDLED IN 2003? IF POSSIBLE, IT WOULD BE APPRECIATED IF YOU COULD MAKE A DISTINCTION BETWEEN PAYMENTS FOR (A) CHILD SUPPORT AND (B) MAINTENANCE FOR A SPOUSE OR OTHER FAMILY MEMBER.

THE ANNUAL AVERAGE AMOUNT CONCERNING THE PAYMENT OF MAINTENANCE FOR MINORS WAS \$1,500 US. DOLLARS.

5. WHAT IS THE TYPICAL FREQUENCY OF YOUR CORSS-BORDER COLLECTION AND TRANSFER OF MAINTENANCE PAYMENTS?

IF POSSIBLE, IT WOULD BE APPRECIATED IF YOU COULD MAKE A DISTINCTION BETWEEN (I) OUTGOING AND (II) INCOMING CROSS-BORDER PAYMENTS.

I) THERE ARE NO AVAILABE FIGURES.

II)THE FREQUENCY OF INCOMING CROSS-BORDER TRANSFERS CONCERNING MAINTENANCE PAYMENTS FOR MINORS IS 90% MONTHLY AND 10% EVERY TWO WEEKS.

6. WHAT IS THE APPROXIMATE COST INVOLVED (FOR EXAMPLE, PROCESSING FEE, ADMINISTRATIVE COST, CURRENCY CONVERSION) FOR A CROSS-BORDER TRANSFER IN YOUR COUNTRY FOR:

(A) PAPER - BASED (CHECK, BANK NOTE, ETC.) TRANSFERS

(B) ELECTRONIC TRANSFERS (SWIFT OR OTHER (PLEASE SPECIFY))

PLEAS PROVIDE AMONUNTS IN (EUROS OR (US DOLLARS) FOR QUESTIONS, 3, 4 AND 6.

* THERE ARE NO FIGURES AVAILABLE DUE TO THE FACT THAT ELECTRONIC MEANS AND BANKS ARE NOT USED TO MAKE PAYMENTS.

PART III THE USE OF INFORMATION TECHNOLOGY

7. IN A PURELY DOMESTIC CONTEXT MAY THE COMPETENT AUTHORITY RESPONSIBLE FOR CHILD SUPPORT AND OTHER FORMS OF FAMILY

MAINTENANCE IN YOUR COUNTRY RECEIVE OR SEND BY WAY OR FAX OR E - MAIL:

LOCAL LEGISLATION REQUIRES ORIGINAL DOCUMENTATION FOR ANY LEGAL PROCEEDING. THUS, DOCUMENTS TRANSMITTED VIA E-MAIL OR FAX HAVE NO LEGAL VALUE.

A) MAINTENANCE APPLICATIONS (i.e. FOR THE ESTABLISHMENT, RECOVERY, MODIFICATION OR ENFORCEMENT OF MAINTENANCE);

NO

B) PUBLIC DOCUMENTS (FOR EXAMPLE, COURT OR TRIBUNAL DOCUMENTS, ADMINISTRATIVE DOCUMENTS, NOTARIAL ACTS, OFFICIAL CERTIFICATES SUCH AS BIRTH OR MARRIAGE CERTIFICATES); AND,

NO

C) OTHER TYPES OF REQUESTS?

NO

8. IN THE INTERNATIONAL CONTEXT, ARE CROSS-BORDER ARRANGEMENTS IN PLACE IN YOUR COUNTRY, AS REQUESTED STATE, ACCORDING TO WHICH THE COMPETENT AUTHORITY RESPONSIBLE FOR CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE MAY ACCEPT BY WAY OF FAX OR E - MAIL FORM ABROAD:

AS MENTIONED BEFORE, DOCUMENTS TRANSMITTED VIA E-MAIL OR FAX HAVE NO LEGAL VALUE.

A) MAINTENANCE APPLICATIONS (SEE QUESTION 7 (A));

NO

B) PUBLIC DOCUMENTS (SAME AS QUESTION 7 (B)); AND,

NO

C) OTHER TYPES OF REQUESTS?

ALL COMMUNICATION CONCERNING EXCHANGES OF INFORMATION
BETWEEN CENTRAL AUTHORITIES ARE DONE VIA FAX OR E-MAIL.

9. IN THE INTERNATIONAL CONTEXT, ARE CROSS-BORDER ARRANGEMENTS IN
PLACE IN YOUR COUNTRY, AS REQUESTING STATE, ACCORDING TO WHICH
THE COMPETENT AUTHORITY RESPONSIBLE FOR CHILD SUPPORT AND OTHER
FORMS OF FAMILY MAINTENANCE CAN USE

E - MAIL AND FAX TO FORWARD:

A) MAINTENANCE APPLICATIONS (SAME AS QUESTION 7 (A));

NO

B) PUBLIC DOCUMENTS (SAME AS QUESTION 7 (B)); AND,

NO

C) OTHER TYPES OF REQUESTS?

IF SO, PLEASE PROVIDE EXAMPLES.

ALL COMMUNICATION CONCERNING EXCHANGES OF INFORMATION BETWEEN CENTRAL AUTHORITIES ARE DONE VIA FAX OR E-MAIL.

10. WITH REGARD TO QUESTIONS 7 AND 8, DOES YOUR COUNTRY APPLY A "FUNCTIONAL EQUIVALENT" APPROACH IN RELATION TO ELECTRONIC DOCUMENTS AND ELECTRONIC COMMUNICATIONS, COVERING DOCUMENTS LISTED UNDER (A), (B) AND (C), THAT WOULD APPLY TO CHILD SUPPORT OR OTHER MAINTENANCE MATTERS? PLEASE RESPOND BY YES OR NO. IF YES, PLEASE DISTINGUISH BETWEEN THE DOMESTIC AND INTERNATIONAL CONTEXT. IF NO, PLEASE EXPLAIN.

NO, MEXICAN LEGISLATION ON FAMILY AND PROCEDURAL MATTERS DOES NOT REGULATE THE EXCHANGE AND PRESENTATION OF INFORMATION AND DOCUMENTS BY ELECTRONIC MEANS.

11. ARE ELECTRONIC SIGNATURES USED IN YOUR COUNTRY IN RELATION TO ELECTRONIC DOCUMENTS AND ELECTRONIC COMMUNICATIONS THAT WOULD APPLY TO CHILD SUPPORT OR OTHER MAINTENANCE MATTERS? PLEASE RESPOND BY YES OR NO. IF YES, PLEASE DISTINGUISH BETWEEN THE DOMESTIC AND INTERNACIONAL CONTEXT. IF NO, PLEASE EXPLAIN.

NO.

12. HAS YOUR COUNTRY ENACTED LEGISLATION BASED ON (A) THE UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE, AND (B) THE UNCITRAL MODEL ON ELECTRONIC SIGNATURES? PLEASE RESPOND BY YES OR NO. IF YES, PLEASE INDICATE IF THEY APPLY TO MAINTENANCE MATTERS AND DISTINGUISH BETWEEN THE DOMESTIC AND INTERNATIONAL CONTEXT. IF NO, PLEASE EXPLAIN.

NOT IN FAMILY MATTERS. HOWEVER, ITS USE IS CONTEMPLATED IN THE COMMERCIAL ARENA MATTER.

OBLIGATIONS ALIMENTAIRES
MAINTENANCE OBLIGATIONS

Doc. pré. No 6
Prel. Doc. No 6

Février / February 2004



NETHERLANDS

ADDITIONAL QUESTIONNAIRE CONCERNING A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

*Preliminary Document No 6 of February 2004
for the attention of the Special Commission of June 2004
on the International Recovery of Child Support
and other Forms of Family Maintenance*

PART I COLLECTION AND TRANSFER ARRANGEMENTS - PRELIMINARY DOCUMENT NO 1 OF JUNE 2002

Questions 25, 26, 29 and 30 of the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 1 of June 2002, deal with the collection and transfer arrangements of child support and maintenance for other family members. These Questions are copied below.

States and organisations that responded to Preliminary Document No 1 of June 2002 are requested only to supply supplementary responses to those questions, covering any relevant developments since they responded the first time.

States and organisations that were not able to respond to Preliminary Document No 1 are asked to provide full responses.

- 25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organized in your country?
- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?
- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?
- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

no relevant developments since our previous response.

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

- 1 Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.

YES

- 2 What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.

a-Outgoing: 1200
b-Incoming: 1650
i and ii: unknown

- 3 What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.

a-€ 800.000
b-€ 670.000
i and ii: unknown

- 4 What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.

outgoing(2003)
Min. € 68,-
Max. € 27.000,-
Av. € 666,-
incoming(2003)
Min. € 35,-
Max. € 36.000,-
Av. € 406,-

- 5 What is the typical frequency of your cross-border collection and transfer of maintenance payments?

Collection
(a) ___% Weekly
(b) ___% Monthly
(c) ___% Quarterly
(d) 100% Other (We collect daily , per case av. once in 2-3 months)
i and ii: unknown

TRANSFER
(a) ___% Weekly
(b) ___% Monthly
(c) 100% Quarterly
(d) ___% Other
i and ii: unknown

If possible, it would be appreciated if you could make a distinction between (i) outgoing and (ii) incoming cross-border payments.

6 What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:

(a) Paper-based (check, bank note, etc.) transfers

€ 9,80 outgoing check or € 3,50 incoming

(b) Electronic transfers (SWIFT or other (please specify))

Depends on the country we transfer to. Between € 3,50 and over € 100,-

Please provide amounts in € (Euros) or \$ (US dollars) for Questions 3, 4 and 6.

PART III THE USE OF INFORMATION TECHNOLOGY

7 **In a purely domestic context**, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:

(a) maintenance applications (*i.e.* for the establishment, recovery, modification or enforcement of maintenance);

NO (original signature and documents required)

(b) public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,

NO (original signature and documents required)

(c) other types of requests?

YES (only informal requests for information)

If so, please explain subject to what requirements (for example, identification, authentication, confidentiality, integrity, non-repudiation and availability (retrievable)).

8 **In the international context**, are cross-border arrangements in place in your country, **as requested State**, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:

(a) maintenance applications (see Question 7(a));

NO

(b) public documents (see Question 7(b)); and,

NO

(c) other types of requests?

YES (only informal requests for information/answer to a request for information)

If so, please explain subject to what requirements (see Question 7 *in fine*).

9 **In the international context**, are cross-border arrangements in place in your

country, **as requesting State**, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:

(a) maintenance applications (same as Question 7(a));

NO

(b) public documents (same as Question 7(b)); and,

NO

(c) other types of requests?

YES (only informal requests for information/ answer to a request of information)

If so, please provide examples.

- 10 With regard to Questions 7 and 8, does your country apply a "functional equivalent" approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

NO

- 11 Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

NO, original signatures are required.

- 12 Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

a. No, but the Netherlands intends to introduce general provisions based on this Model Law.
 b. No. However, a Bill regulating electronic communication between public bodies and between public bodies and individuals is about to be adopted. This legislation will apply to communication in a domestic context only. In principle, communication by electronic means is permitted, provided communication in this form is accepted by the addressee (whether a public body or a private individual). This principle might appropriately serve as a yardstick for communication between public bodies or between public bodies and individuals in the international context.

Note: Respondents are also invited to comment on any other matter that they consider material in relation to the electronic transfer of funds and the use of information technology in the context of child support and other forms of family maintenance.

RESPONSE FROM NORWAY

OBLIGATIONS ALIMENTAIRES
MAINTENANCE OBLIGATIONS

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Février / February 2004



QUESTIONNAIRE SUPPLEMENTAIRE CONCERNANT UN NOUVEL INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL DES ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE

établi par Philippe Lortie
Premier Secrétaire

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ADDITIONAL QUESTIONNAIRE CONCERNING A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

drawn up by Philippe Lortie
First Secretary

*Document préliminaire No 6 du février 2004
à l'intention de la Commission spéciale de juin 2004
sur le recouvrement international des aliments
envers les enfants et d'autres membres de la famille*

*Preliminary Document No 6 of February 2004
for the attention of the Special Commission of June 2004
on the International Recovery of Child Support
and other Forms of Family Maintenance*

**QUESTIONNAIRE SUPPLEMENTAIRE CONCERNANT UN NOUVEL
INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL DES
ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE**

établi par Philippe Lortie
Premier Secrétaire

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**ADDITIONAL QUESTIONNAIRE CONCERNING A NEW
GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF
CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

drawn up by Philippe Lortie
First Secretary

THE ADDITIONAL QUESTIONNAIRE

During the Special Commission of May 2003 on the International Recovery of Child Support and other Forms of Family Maintenance, the Permanent Bureau of the Hague Conference announced that it would continue its study of the electronic transfer of funds and the use of information technology in coordination with the experts and also with central banks and international organisations involved. It was noted, in this respect, that it would be interesting to know from the experts the total number and amounts of the transfers involved in maintenance cases in order to convince the banks to work on this issue (see the "Report of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance of 5-16 May 2003", drawn up by the Permanent Bureau, Preliminary Document No 5 of October 2003, paragraph 51).

In order to gather relevant information in relation to electronic transfer of funds and the use of information technology, the Permanent Bureau has devised a Questionnaire, which is set out below. This Questionnaire is additional to the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 1 of June 2002. This document is being sent out to all Member States of the Hague Conference, to States Parties to the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, to other States invited to the June 2004 Special Commission and to relevant international governmental and non-governmental organisations. It is also being posted on the Hague Conference website at: <<http://www.hcch.net>>, under "Work in Progress". Other background documents concerning the maintenance project are available at the same website address.

The Questionnaire falls into three parts that concern, first, collection and transfer arrangements (Questions 25, 26, 29 and 30 of Preliminary Document No 1 of June 2002), second, statistics concerning the cross-border transfer of funds in your country, and third, the use of information technology.

The project to establish a new instrument on maintenance obligations has the potential to benefit hundreds of thousands of persons, children and adults, in many States around the world, and to contribute to the reduction of welfare / social security dependency. The States and organisations to whom the Questionnaire is addressed are kindly asked to provide their responses to the Permanent Bureau, if possible, **by 16 April 2004**.

PART I COLLECTION AND TRANSFER ARRANGEMENTS - PRELIMINARY DOCUMENT NO 1 OF JUNE 2002

Questions 25, 26, 29 and 30 of the "Information Note and Questionnaire concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance", drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 1 of June 2002, deal with the collection and transfer arrangements of child support and maintenance for other family members. These Questions are copied below.

States and organisations that responded to Preliminary Document No 1 of June 2002 are requested only to supply supplementary responses to those questions, covering any relevant developments since they responded the first time.

States and organisations that were not able to respond to Preliminary Document No 1 are asked to provide full responses.

- 25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?
- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?
- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?
- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

In relation to Question 30, see, for examples, "The use of Information Technology with respect to the Recovery of Maintenance – The International Transfer of Funds at a Low Cost", Information Document, Presented by the Permanent Bureau, 16 May 2003, for the attention of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance (5-16 May 2003), attached to this Questionnaire.

~~***In respect of these questions, reference is made to the answers previously provided.***~~

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

- 1 Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.

Answer: NO

- 2 What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.

Answer:

- **The total number of outgoing cross-border transfers in 2003 was 8000.**
- **The total incoming cross-border transfers in the same period was 14000.**
- **We do not yet have the exact number because the Norwegian Maintenance Enforcement Centre does not collect maintenance for spouses.**

- 3 What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.

Answer: (1 Euro = 8,23 Norwegian Kroner (by 27. April 2004))

- **The total amount paid out to creditors abroad is 5,56 Million Euros**
- **We received in the same period 4,860 Million Euros from abroad.**

- 4 What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.

Answer:

As regards child support the following was handled:

- **Minimum =73 Eurocents**
- **Maximum 60 946 Euros**
- **The annual average is 608 Euros**

- 5 What is the typical frequency of your cross-border collection and transfer of maintenance payments?

Answer:

- (a) **100% Weekly for out going payments**
- (d) **100% daily for incoming payments**

If possible, it would be appreciated if you could make a distinction between (i) outgoing and (ii) incoming cross-border payments.

- 6 What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:
- (a) Paper-based (check, bank note, etc.) transfers

Answer:

- **An incoming check costs app. 12 Euros**
- **An outgoing check costs between 12-36 Euros**

- (b) Electronic transfers (SWIFT or other (please specify))

Answer:

- **Incoming transfers cost app. 5 Euros**
- **Outgoing transfers cost app. 6,70 Euros**

Please provide amounts in € (Euros) or \$ (US dollars) for Questions 3, 4 and 6.

PART III THE USE OF INFORMATION TECHNOLOGY

- 7 **In a purely domestic context**, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:
- (a) maintenance applications (*i.e.* for the establishment, recovery, modification or enforcement of maintenance);

Answer:

Yes, we may accept such applications pr fax or e-mail. To collect on the basis of a foreign decision, we do need a valid copy of the foreign decision. We think we may accept a scanned decision by e-mail, but we have not experienced such a method so far.

In Hague-convention cases for collecting support payments, the courts still must approve of the validity of documents. We think that the courts will need the original document to regard it as valid.

- (b) public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,

Answer: Same answer as a) above

- (c) other types of requests?

If so, please explain subject to what requirements (for example, identification, authentication, confidentiality, integrity, non-repudiation and availability (retrievable)).

Answer: These are problems which we are working on. Electronic security is vital but we may not at the administrative level refuse to accept an application on e-mail or fax on these grounds. In the end, all the steps necessary in the legal proceedings should secure the right result. We will still

demand sufficient legal documentation according to Norwegian legislation. For instance, an E-mail may be considered as sufficient to start a case for determining support payments, but diverse forms of documentation may be required at later stages.

- 8 **In the international context**, are cross-border arrangements in place in your country, **as requested State**, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:
- (a) maintenance applications (see Question 7(a));
 - (b) public documents (see Question 7(b)); and,
 - (c) other types of requests?

If so, please explain subject to what requirements (see Question 7 *in fine*).

Answer: See 7) above.

- 9 **In the international context**, are cross-border arrangements in place in your country, **as requesting State**, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:
- (a) maintenance applications (same as Question 7(a));
 - (b) public documents (same as Question 7(b)); and,
 - (c) other types of requests?

Answer: NO

If so, please provide examples.

- 10 With regard to Questions 7 and 8, does your country apply a "functional equivalent" approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

Answer: If we understand the question right, if Norway is willing to go into cooperation in order to obtain the maximum efficiency, the answer is yes. At the moment bilateral or regional cooperation seems to be the most realistic way.

Nevertheless we still don't have routines to practice full "electronical cooperation", neither domestic nor international.

- 11 Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

Answer: NO. As stated above, electronic signature will come in two or three years on a general basis. We don't yet know to what extent foreign signatures will be accepted, but Norway certainly will be cooperating in this field.

- 12 Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

Answer: NO

However, Electronic Signature regarding certain certificates in Norway and EU are accepted according to legislation.

Furthermore, the Norwegian Administration Act permits domestic exchange of electronic signature if certain demands on security are fulfilled.

We are not sure how far the international cooperation has come and Norway's position so far in the process.

Note: Respondents are also invited to comment on any other matter that they consider material in relation to the electronic transfer of funds and the use of information technology in the context of child support and other forms of family maintenance.



**Response to the additional questionnaire concerning a new
global instrument on the international recovery of child
support and other forms of family maintenance**

20 April 2004

NEW ZEALAND

Part I

Collection and Transfer Arrangements – Preliminary Document 1 of June 2002

- 25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?**

Additional comments – All payments must be made to Inland Revenue Child Support (IRCS) which passes the money on to the custodian/spouse. IRCS does not recognize or give credit for any payments made direct to the custodian/spouse.

- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?**

Additional comments – Under the Reciprocal Agreement with Australia, where a case has been forwarded to Australia for it to collect on our behalf, all payments must be made to the Australian Child Support Agency. That agency remits the payments to New Zealand by telegraphic transfer around the 20th of the following month.

- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?**

Additional comments – Where the payments are made direct to IRCS from a debtor residing overseas, the debtor has to bear all costs associated with arranging the payment. This would be approximately US\$16 per month plus any exchange rate losses.

Where payments are made to the Australian Child Support Agency there is no cost to the debtor but the Child Support Agency would incur bank fees in remitting the payments to New Zealand.

Where IRCS sends payments to custodians/spouses who reside overseas we bear the bank fee which is only the cost of a cheque. The costs amount to approximately US\$0.15 per case per month.

Where IRCS remits payments to the Australian Child Support Agency under the Reciprocal Agreement we incur bank costs of approximately US\$34,000 annually.

- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?**

Additional comments – We are continuing to explore the possibility of having an organization in Australia accept payments on an agency basis for those customers paying voluntarily and who are not referred to the Australian CSA for collection.

Later this year we will also trial the payment by credit card facility for customers living in Australia. The trial will only involve Australia because of the close ties between the banks in Australia and New Zealand.

Part II

Statistics Concerning the Cross-Border Transfer of Funds

- 1 Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.**

Yes. We are able to monitor the number of outgoing payments and amounts but cannot distinguish between child support and spousal maintenance. While we can monitor the number and amount of incoming payments we cannot readily determine which country the payment came from or whether it was for child support or spousal maintenance.

- 2 What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.**

Outgoing: During 2003 we sent 406 cases, all to Australia.

Incoming: During 2003 we received 833 cases, all from Australia.

A case is an individual case sent for collection and includes any ongoing liabilities and any arrears. As noted in our answer to 1 we cannot readily distinguish between child support and spousal maintenance.

- 3 What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.**

Outgoing: During 2003 we sent US\$1.6 million to Australia and US\$288,000 to other countries.

Incoming: During 2003 we received US\$1.37 million from Australia. We are unable to readily ascertain at this time the amount received from other countries.

- 4 What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.**

We are unable to determine the estimated cost per individual case.

5 What is the typical frequency of your cross-border collection and transfer of maintenance payments?

98% Monthly and 2% Quarterly.

If possible, it would be appreciated if you could make a distinction between (i) outgoing and (ii) incoming cross-border payments.

Outgoing: In general, all transfer of maintenance payments is carried out monthly, either by electronic transfer (to the Australian Child Support Agency) or manual cheque. For those cases that receive payment by way of a manual cheque, it is paid monthly only where the payment exceeds US\$200. Where the monthly payment is less than US\$200, the cheques are sent the month the total exceeds US\$200 or every 6 months, whichever is the earlier.

Incoming: We receive maintenance payments from cases being administered by the Australian Child Support Agency on a monthly basis. Maintenance payments for cases where the payee has had an order registered in an overseas jurisdiction are made direct to the payee. We have no knowledge of how often the payments are remitted.

6 What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:

- (a) Paper-based (check, bank note, etc.) transfers**
- (b) Electronic transfers (SWIFT or other (please specify))**

Where IRCS sends payments to custodians/spouses who reside overseas we bear all costs such as bank fees and postage. The costs, including overheads, amount to approximately US\$3.50 per case per month and US\$10,000 per annum.

We transmit payments to the Australian Child Support Agency electronically. The annual cost to us amounts to US\$34,000. We are unable to determine an estimated cost on a per case basis.

**Part III
The use of Information Technology**

7 In a purely domestic context, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:

The requirements differ depending on whether the application relates to child support or spousal maintenance.

- (a) **Maintenance applications (*i.e.* for the establishment, recovery, modification or enforcement of maintenance);**

Child support

These forms can be faxed but not emailed.

Spousal maintenance

Applications for maintenance of spouses or de facto partners (including same-sex partners) are considered by the Family Court under the Family Proceedings Act. The Family Court Rules 2002 require documents to be filed in person or sent to the Court in prepaid post. Under the Rules, the Court is unable to accept documents by fax or email.

- (b) **Public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,**

Child support

These forms can be faxed provided the original has been sighted by an officer of IRCS or the form is a certified copy. They cannot be emailed.

Spousal maintenance

See answer to 7(a).

- (c) **Other types of requests?**

Child support

All forms and letters can be faxed and requests which do not have to be on an approved form can be emailed. We have developed a website to receive these emails. The emails are sent through this web-site and not directly to staff.

Users of this system must register and they are allocated a user identification and a password.

- 8 In the international context, are cross-border arrangements in place in your country, as requested State, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:**

- (a) **maintenance applications (see Question 7(a));**
(b) **public documents (see Question 7(b)); and,**
(c) **other types of requests?**

If so, please explain subject to what requirements (see Question 7 *in fine*).

Documents and forms cannot be faxed or emailed (both child support and spousal maintenance).

In terms of child support under our reciprocal agreement with Australia, New Zealand and Australia are looking at developing an email encryption system or web interface system.

9 In the international context, are cross-border arrangements in place in your country, as requesting State, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:

- (a) maintenance applications (same as Question 7(a));**
- (b) public documents (same as Question 7(b)); and,**
- (c) other types of requests?**

If so, please provide examples.

Documents or requests are posted. They may be faxed initially, but will always follow in the post. The means of transmission depends on the requirements of the requested jurisdiction.

10 With regard to Questions 7 and 8, does your country apply a “functional equivalent” approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

As noted above, New Zealand does not at this stage accept electronic documents or applications relating to child support or spousal maintenance.

11 Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

No. This is because documents relating to child support or spousal maintenance cannot be sent electronically.

12 Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

Yes. New Zealand enacted the Electronic Transactions Act in 2002. Section 6 of that Act provides that the UNCITRAL Model Law on Electronic Commerce can be referred to when interpreting the Act.

This Act has no impact on maintenance matters because documents relating to child support or spousal maintenance cannot be sent electronically. Even if applications or other documents could be sent electronically, the Act would only apply to Family Court procedures if rules provided for its use. In addition, the Act does not apply if information is required to be given in writing either in person or by registered post, or to affidavits, statutory declarations or other documents given on oath or affirmation.

**REPLY TO ADDITIONAL QUESTIONNAIRE CONCERNING A NEW
GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD
SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

**Part I. Collection and Transfer Arrangements-Preliminary Document
No.1 of June 2002**

25. Payments are usually sent through the beneficiary's bank account.

26. Fund transfer through commercial banks

29. \$US20.00

30. None

Part II. Statistics Concerning the Cross-Border Transfer of Funds

1. None

2. No available estimate. The beneficiaries no longer report to the government regarding the amount of support they received.

3. No available data

4. \$US 6,000.00 Maximum

\$US 1,440.00 Minimum

5. Monthly

6.

a. \$US 10.00

b. \$US 20.00

7. a. No. Application is through a verified Petition for Support to be filed before the Regional Trial Courts. If a foreign jurisdiction has already rendered judgment, it shall be through a Petition for Enforcement of Foreign Judgment.

b. Yes. These documents can be considered as electronic evidence. However, before an electronic document can be received as evidence, its authenticity must be proved by any of the following means:

1. by evidence that it had been digitally signed by the person purported to have signed the same,
2. by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the documents; or
3. by other evidence showing integrity and reliability to the satisfaction of the judge

(Sec. 2, Rule 5, Rules on Electronic Evidence)

c. Yes. Same rules on admissibility will apply.

8. Yes. Maintenance Applications, Public Documents and other types of requests may be acted upon by the local Authority subject to the same rule on admissibility.

9. a) Maintenance Applications are usually submitted through written requests course through the Embassy of the requested State which usually advises the Office of the Solicitor General to send it through appropriate Receiving Authority or forward the request to the appropriate Receiving Authority.

b) and c.) Electronic evidence may be send to the Receiving Authority, but this is seldom resorted to since all the documentary requirements are sent through parcel services (e.g. Fedex, DHL). In my experience then as Solicitor who is trying to enforce the Treaty obligation of a parent, usually the receiving Authority will send additional instructions usually on additional documentary evidence through e-mail correspondence, but these documents which requires authentication are sent through the parcel services.

10. Yes. Under the Rules on Electronic Evidence, electronic documents are considered as functional equivalent of paper-based documents. Thus, whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document. The Rule applies to both domestic and international context.

11. Yes. Electronic Signatures are allowed in our jurisdiction regardless whether the context is domestic or international.
12. Yes. On July 26, 1999, the Philippine Legislature has enacted "The Electronic Commerce Act". The said law gives legal recognition to Electronic Data Message, Electronic Documents and Electronic Signatures. The Sphere of the Application is broad enough that it applies to any kind of electronic data message and electronic document used in the context of commercial and non-commercial activities to include *domestic and international dealings*, transactions, arrangement, agreements, contracts and exchanges and storage of information. The said law is applicable to maintenance matters.

Submitted by:

SALLY D. ESCUTIN
Director, Legal Services
Department of Social Welfare
and Development
REPUBLIC OF THE PHILIPPINES

PART I COLLECTION AND TRANSFER ARRANGEMENTS - PRELIMINARY DOCUMENT NO 1 OF JUNE 2002

25. The law is not very strict about the means of payment possible for both child support and maintenance for a spouse or other family member. Any mean is deemed appropriate if agreed upon by the parties. If an agreement is not possible the court will decide in the most practical and least onerous way for both parties involved. The most common means of payment are the following: in person with cash, bank transfer, bank deposit, check or postal money order.

The judicial decision or the agreement may be enforced by way of a special judicial procedure if payment is not made within ten days following the date established by the court or agreed upon by the parties for the payment of the child support or of the maintenance for a spouse or other family member.

26. The same procedure applies.

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

1. No.
2. Official estimates are not available.
3. Official estimates are not available.
4. Official estimates are not available.
5. Payments are usually made on a monthly basis.
6. The costs involved for a cross border transfer in Portugal are established by each bank, and therefore may differ from bank to bank.

As an example, please find hereunder the costs charged for cross-border transfers in one of our banks:

- (a) Costs for check transfers fluctuate between 14,96 € and 35 €.

(b) Electronic transfers in **EURO countries:**

= 1 000 €:

- With Swift code or IBAN - 3 €
- Without - 25 €

> 1 000 – 12 5000 €:

- With Swift code or IBAN - 3,5 €
- Without - 25 €

> 12 500 €:

- With Swift code or IBAN- 0,2% of the total amount transferred
- Without - 0,24% of the total amount transferred

Other countries:

- With Swift code or IBAN - 0,2% of the total amount transferred
- Without - 0,24% of the total amount transferred

PART III THE USE OF INFORMATION TECHNOLOGY

7. Under Portuguese Law documents may be received and sent by way of fax or e-mail under certain requirements: documents must be represented in text format and hold an electronic signature certified by an authorized authority (" the certification service provider"); official documents must clearly identify the entity and the person responsible for the document. Regarding the certification service provider, he must have financial, human and technical resources, be trustworthy and have a civil insurance.

8. Documents may be received by way of fax or e-mail under the same requirements as those applicable in the domestic context.

For certificates issued by another authority in the EU the same requirements necessary in the domestic context are applicable.

For certificates issued by an authorized authority established outside the EU, the following conditions must apply:

- The certification service provider must be in compliance with the Directive n.º 1999/93/CE, December 13, and be certified in a EU member state.
- The certificate must be guaranteed by a certification service provider established in the EU that complies with the above mentioned directive.
- The certificate or the certification service provider must be recognized by an international agreement.

9. V. answer to questions 7-8.

10. Electronic documents and communications have the same value as other documents. No distinction is drawn between the domestic and international context.

11. Electronic signatures are accepted as long as they comply with the requirements established by law (v. question n.º 7-8). No distinction is drawn between the domestic and international context.

12. Yes. Portugal has enacted legislation in compliance with (a) and (b) (DL 7/2004, de 7 de Janeiro and DL 62/2003, de 3 de Abril). This legislation is applicable to maintenance matters and doesn't distinguish between the domestic and international context.



REGERINGSKANSLIET

Memorandum

Ju2004/2575/DOM

16 April 2004

**Ministry of Justice
Stockholm, Sweden**

*Division for Procedural Law and Court Issues
Legal Adviser
Charlotta Arvidsson
Telephone +46 8 405 43 74
Fax +46 8 791 76 95*

Hague Conference on Private International
Law
Permanent Bureau of the Conference
Att. Mr Philippe Lortie
Scheveningseweg 6
2517 KT The Hague
Netherlands

**Comments on the additional questionnaire concerning a
new global instrument on the international recovery of
child support and other forms of family maintenance**

On behalf of the Ministry of Justice of Sweden I have the pleasure of providing you with the Swedish comments on the additional questionnaire.

**PART I
COLLECTION AND TRANSFER ARRANGEMENTS –
PRELIMINARY DOCUMENT NO 1 OF JUNE 2002**

The Swedish answers on the questionnaire of June 2002 are still accurate.

**PART II
STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF
FUNDS**

1. Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.

Only in respect of incoming cross-border transfers.

2. What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.

- (a) No records available. Voluntary payments are made directly by the liable person to the dependant. The collection procedure is decentralised and payments are made by the relevant Enforcement Officer directly to the dependant or to the relevant authority overseas.

- (b) 31.000 incoming payments in total. These incoming payments are almost exclusively made in respect of child support. We receive only occasional incoming payments in respect of maintenance for a spouse.

3. What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.

- (a) Please see our response in paragraphs 1 and 2 above.

- (b) SEK 64 million (approx €6.9 million)

4. What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.

Minimum amount = SEK 0.40 (approx €0.04)

Maximum amount = SEK 180,000 (approx €19,272)

Average amount = SEK 2,065 (approx €21)

5. What is the typical frequency of your cross-border collection and transfer of maintenance payments?

- (a) _____% Weekly
 (b) _____% Monthly
 (c) _____% Quarterly
 (d) _____% Other (please specify)

If possible, it would be appreciated if you could make a distinction between (i) outgoing and (ii) incoming cross-border payments.

No records available.

6. What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:

- (a) Paper-based (check, bank note, etc.) transfers
 (b) Electronic transfers (SWIFT or other (please specify))

Please provide amounts in €(Euros) or \$ (US dollars) for Questions 3, 4 and 6.

The Social Insurance Office has entered into an agreement with the Swedish bank *Nordea* with the effect that the liable person, who is paying through *Nordea*, is not charged any banking fees. In the event payments are made through another bank in Sweden the liable person may have to pay banking fees in the region of SEK 30-90 (€3.21-9.64). These fees are deducted by the bank from the payment made by the liable person.

In addition to the banking fees, which (with the exception of *Nordea*) reduce the payment made, the Social Insurance Office deducts the following fees from each payment:

- (a) Outgoing cross-border transfers: SEK 30 (€3.21) per cheque
Incoming cross-border transfers: SEK 90 (€9.64) per cheque
- (b) Payments by SWIFT: SEK 15 (€1.61)
Payments by SWIFT within the EU: Between SEK 2 and 2.75 (€0.30)

The Social Insurance Office has opened a bank account in Finland for payments of maintenance allowances and is in the process of opening similar bank accounts in Norway, Poland, Spain, Great Britain and Germany.

PART III ***THE USE OF INFORMATION TECHNOLOGY***

7. In a purely domestic context, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:

- (a) maintenance applications (i.e. for the establishment, recovery, modification or enforcement of maintenance);**
- (b) public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,**
- (c) other types of requests?**

If so, please explain subject to what requirements (for example, identification, authentication, confidentiality, integrity, non-repudiation and availability (retrievable)).

- (a) Applications for the assessment of maintenance allowance and the variation of any previous maintenance orders has to be signed by the applicant and can therefore not be made by way of fax or e-mail.

The signature by the applicant is also necessary where the application relates to the collection of maintenance allowance, which is dealt with by the Enforcement Service.

Applications for maintenance support cannot be made by way of fax or e-mail since they require the completion of an application form signed by the applicant. When maintenance support is granted and the National Social Insurance Board applies to the Enforcement Service for the collection of the amount repayable, as assessed by the Social Insurance Office, the application is dealt with by way of electronic transfer between the National Social Insurance Board and the Tax Agency. In the event maintenance support is granted in relation to any maintenance order, the application for the collection and any information about the debt is dealt with by way of electronic transfer between the National Social Insurance Board and the Tax Agency. The Social Insurance Office must however forward any public document regarding the maintenance allowance by way of post to the Enforcement Service.

- (b) Please see our response under a) above.

8. In the international context, are cross-border arrangements in place in your country, as requested State, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:

- (a) maintenance applications (see Question 7(a));
 (b) public documents (see Question 7(b)); and,
 (c) other types of requests?

If so, please explain subject to what requirements (see Question 7 in fine).

- (a) We do not accept applications sent by way of fax or e-mail. We only accept original paper-based applications, signed by the applicant and sent by way of post. Generally we cannot communicate by way of e-mail in any private matters for reasons of confidentiality.
- (b) No, please see our response in (a) above.
- (c) General correspondence with central authorities overseas may occur by way of fax. We may also receive messages by way of e-mail, however we are not permitted to send e-mails for reasons of confidentiality.

9. In the international context, are cross-border arrangements in place in your country, as requesting State, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:

- (a) maintenance applications (same as Question 7(a));
 (b) public documents (same as Question 7(b)); and,
 (c) other types of requests?

If so, please provide examples.

Please see our response in paragraph 8 above.

10. With regard to Questions 7 and 8, does your country apply a “functional equivalent” approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

For the time being electronic communications have not replaced paper-based applications for the collection of maintenance allowances and public documents (court documents, birth certificates etc.) in respect of our arrangements for cross-border collection of maintenance allowances.

11. Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

Electronic signatures can not be used in Sweden to sign agreements on maintenance allowances. To be enforceable, these agreements have to be in written and witnessed by two persons. The on-line way to complete agreements on maintenance is not in demand.

Maintenance payments, and repayments of maintenance support from public funds, can be done using ordinary electronic payment systems available on the market, including systems for electronic signatures. This also applies to international payments.

12. Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

The Swedish legislation on electronic commerce and electronic signatures is based on the EC directives on this subject.

Yours sincerely

Charlotta Arvidsson

RESPONSES TO THE ADDITIONAL QUESTIONNAIRE CONCERNING A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

PART I - COLLECTION AND TRANSFERS ARRANGEMENTS

25. According to Article 123 of the Marriage and Family Relations Act, the parents are liable to support their children until they attain their majority (18 years); if children are attending school regularly, the parents are liable to support them even after they have come of age. When parents do not live together, the amount of child support is determined by a court decision or through an agreement with the Centre of Social Work. Since 1 May 2004, the determination of this amount has been entrusted to the courts exclusively. If one of the parents does not contribute/pay the child support, a temporary substitution of such support until the age of 18 is ensured on the basis of the Public Guarantee and Maintenance Fund of the Republic of Slovenia Act, however, the paid amounts are later recovered from the maintenance respondent.

In Articles 81 and 85, the Marriage and Family Relations Act further regulates the payment of maintenance for a dependant spouse following a divorce. The divorced partners can also sign an agreement on maintenance, or else the court decides on the maintenance.

26. In compliance with the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, maintenance claimants may apply to the competent authorities for the recovery of maintenance by submitting the required documents. In Slovenia, the receiving and transmitting agency is the Ministry of Labour, Family, and Social Affairs, which receives and transmits the applications for recovery abroad of maintenance. The Ministry of Labour, Family, and Social Affairs undertakes the necessary measures to have a foreign court decision or judgement recognised by Slovenia and then transmits the entire documentation to the Attorney-General's Office of the Republic of Slovenia, which proposes the proceedings for the recovery of maintenance to be carried out by the competent local court. The recovered amounts are transferred directly to the accounts abroad indicated by the claimants.

29. And 30. When a claim for recovery of maintenance is addressed to the Republic of Slovenia, the legal proceedings are free of charge as they are implemented by the Attorney-General's Office of the Republic of Slovenia, however, the respondents pay only the cost of enforcement (enforcement officer or bailiff) and the usual banking costs related to the transfer of payment. The claimants in Slovenia have to cover the cost of translations of the documents enclosed to the application addressed to the foreign Receiving Agency, while the cost of the translation of the application itself is borne by the Ministry of Labour, Family, and Social Affairs.

Part II - STATISTICS CONCERNING THE CROSS-BORDER TRANSFERS OF FUNDS

1. NO.

2. In 2003, the Ministry of Labour, Family, and Social Affairs resolved the total of 120 incoming applications for the recovery of maintenance, out of which 90 % were from former Yugoslav republics (mostly child support payments).

3. In 2003 the average monthly maintenance in Slovenia amounts to about 100 Euros. The average monthly maintenance from the former Yugoslav republics was lower.
4. And 5. In the Ministry of Labour, Family, and Social Affairs there are currently 400 applications for the recovery of maintenance. However, we can estimate that in the next years this number will be reduced.
6. We cannot give you an estimate of the material cost for the performing activity.

PART III – THE USE OF INFORMATIONAL TECHNOLOGY

7. Forms of child support or family maintenance can be also received or send by fax or e-mail.
8. At the moment, all business transaction in a domestic context is taking place via post office, while electronic transactions would have to be harmonizing with the Electronic Business Management Act.

Dear Mr. Philippe Lortie,

We are sending you herewith responses to your Additional Questionnaire concerning a new global instrument on the international recovery of child support and other forms of family maintenance. Please be informed our Centre for the International Legal Protection of Children and Youth (further as „the Centre“) is the Central Authority appointed to enforce child support from abroad. We are not eligible to collect or enforce maintenance for a spouse or other family members. Therefore all following responses are connected only with child support for children or youth.

**PART I COLLECTION AND TRANSFER ARRANGEMENTS – PRELIMINARY DOCUMENT
NO 1 OF JUNE 2002**

- 25 We transfer child support to custodial parents in the Slovak Republic through bank by SWIFT or by a postal order to the addresses of the custodial parents. We always receive payments from abroad by SWIFT through our Slovak bank. Until September 30, 2003 we had received payments from the USA and Australia by checks. From October 01, 2003 are payments from the USA sent to the custodial parents directly, payments from Australia are sent by SWIFT.
- 26 There exists Agreement between our Centre and the Slovak bank – Všeobecná úverová banka (further as „VUB“) on foreign currency accounts and this agreement is applied when payments are made or collected from or to our country.
- 29 Receiving child support payments from abroad to our foreign exchange account by SWIFT is free of charge. When disbursing payments to custodial parents living in the Slovak Republic from VUB to custodial parents` s bank accounts, the custodial parent is responsible for paying costs connected with funds transfer. Every Slovak bank has its own paying list and therefore all costs differ from bank to bank.
When transferring funds abroad by SWIFT or checks, the Centre is free of charge. All costs are covered by recipient living abroad.
- 30 We do not know about any arrangements developed in our country.

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

- 1 No
- 2 Our estimate of the total number of incoming cross-border transfers in year 2003 is 1611. The estimate of the total number of out-going cross-border transfers in 2003 is 631. As it is mentioned above, our Centre transfer only child support.
- 3 Our estimate of total amount of incoming cross-border child support payments in 2003 is 170.455,- EUR. Our estimate of total amount of incoming cross-border child support payments in 2003 is 51.732,- EUR.
- 4 Our estimation of the **annual minimum amount** per case handled in 2003 is 4 EUR.
Our estimation of the **annual maximum amount** per case handled in 2003 is 3.049,- EUR.
Our estimation of the **annual average amount** per case handled in 2003 is 99,10 EUR.
- 5 Typical frequency of our cross-border collection and transfer of child support payments regarding incoming funds:
a) 0%
b) January 28%, February 46%, March 26%, April 42%, May 14%, June 44%, July 18%, August 17%, September 65%, October 46%, November 15%, December 39%.
c) the first quarterl – 22%, the second quarterl – 28%, the third quarterl – 23%, the fourth quarterl – 27%.
d) 52% to the Czech Republic – every two months;
19% to Germany - every two months;

2% to Hungary – quartelry;
27 % to the other countries – irregularly.

The typical frequency of our cross-border collection and transfer of child support payments regarding out-going funds is every two months: February 2003 – 19%, April 2003 – 17%, June 2003 – 17%, August 2003 – 17%, October 2003 – 16%, December 2003 – 14%.

- 6 When the Centre receives payments from abroad by **SWIFT** on the foreign exchange account in our bank (VUB) – the Centre does not pay any costs. However when forwarding these payments from VUB to the custodial parents`s accounts, the custodial parent covers bank fees in amount of 7,20 EUR when the payment received is until amount of 1.205,- EUR. When the payment is higher than 1.205,- EUR till amount of 12.050 EUR, the bank fee is in amount of 14,50 EUR.

Until September 30, 2003 the Centre received payments from the USA and Australia by **checks** and we were free of charged. Since October 01, 2003 costs conected with cashing of checks are 1% from the amount transfered, minimally 4,80 EUR, maximally 48 EUR and therefore we do not accept checks anymore.

When transfering child support payments from our bank account to the cusodial parents in the Slovak Republic from our Centre by **postal order**, costs are as follows:

AMOUNT TRANSFERD	COST
till 12 EUR	0,45 EUR
till 24,10 EUR	0,50 EUR
till 120,50 EUR	0,60 EUR
till 241 EUR	0,70 EUR

PART III THE USE OF INFORMATION TECHNOLOGY

- 7 In a purely domestic context when our Centre communicates with the Slovak court in matters of child support, it is possible to send all documents mentioned under letters a, b, c by fax. However according to the Slovak law it is an obligation to send all these documents in its original to a competent court in three days.
- 8 In the international context, Slovakia follows international conventions on recovery of maintenance as well as arrangements of reciprocity in matters of enforcement of child support with some countries (the United States of Amercia, Australia).
- 9 See response to question 8.
- 10 We do not understand the term "functional equivalent".
- 11 No
- 12 No

**RESPONSE OF THE UNITED STATES OF AMERICA
TO THE ADDITIONAL QUESTIONNAIRE CONCERNING A NEW GLOBAL INSTRUMENT
ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF
FAMILY MAINTENANCE**

PART I COLLECTION AND TRANSFER ARRANGEMENTS - PRELIMINARY DOCUMENT NO 1 OF JUNE 2002

In response to part one of the additional questionnaire, the U.S. would add at the end of question 30 "Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to/from abroad?" an additional paragraph to its prior responses to Preliminary Document No 1 of June 2002:

"During Spring 2004, the U.S. has undertaken development and implementation of a series of pilot projects between certain U.S. state child support agencies and foreign reciprocating countries to deploy cost-effective, efficient, and secure child support payment and case data transmittal solutions utilizing electronic means to the maximum extent feasible. Procedures identified as best practices will be offered as models for broader adoption amongst the child support community."

PART II STATISTICS CONCERNING THE CROSS-BORDER TRANSFER OF FUNDS

- 1 Does your country have any means of monitoring / tracking / estimating (a) cross-border child support payments or (b) cross-border maintenance payments for a spouse or other family member? Please respond by YES or NO.

Yes, but only based on voluntary reporting by states.

- 2 What is your estimate of the total number of (a) outgoing and (b) incoming cross-border transfers in 2003? If possible, it would be appreciated if you could make a distinction between transfers for (i) child support and (ii) maintenance for a spouse or other family member.

The U.S. government does not require state child support agencies to report data on international payment volume at this time. There is no way for us to identify how many cases have payments or how frequently such payments are made (see total amount estimate in 3 below). All cases upon which states collect data concern maintenance either for children and former spouse or only for children; there is no way for us to distinguish between numbers of payments made on behalf of a spouse versus those sums paid solely for child support. State child support agencies do not enforce obligations owed to other family members.

- 3 What is your estimate of the total amount of (a) outgoing and (b) incoming cross-border maintenance payments in 2003? If possible, it would be appreciated if you could make a distinction between payments for (i) child support and (ii) maintenance for a spouse or other family member.

Extrapolation of data received from a small number of states (for 2002), which used both automated and manual extraction methods, would yield a national estimate of approximately \$8 million incoming collections and \$12 million outgoing collections. All of these cases concern maintenance either for children and former spouse or only for children; there is no way for us to distinguish between numbers of payments made on behalf of a

spouse versus those sums paid solely for child support. All sums are stated in U.S. dollar denominations.

- 4 What is your estimation of the annual minimum, maximum and average amount per case handled in 2003? If possible, it would be appreciated if you could make a distinction between payments for (a) child support and (b) maintenance for a spouse or other family member.

Based on our estimate of \$12 million in outgoing collections and 6,720 outgoing cases, the average amount collected per case is approximately \$1,786/case. Please note that this average would include all cases, including cases for which no money has been collected. Other than a minimum collection of \$0, we do not know the maximum amount collected.

- 5 What is the typical frequency of your cross-border collection and transfer of maintenance payments?
- (a) ___% Weekly
 - (b) ___% Monthly (a higher percentage of incoming payments are monthly)
 - (c) ___% Quarterly
 - (d) ___% Other (bi-weekly)

The U.S. government does not require state child support agencies to report information on frequency of payments; however, most child support is collected through wage withholding and is done on a monthly or bi-weekly basis.

- 6 What is the approximate cost involved (for example, processing fee, administrative cost, currency conversion) for a cross-border transfer in your country for:
- (a) Paper-based (check, bank note, etc.) transfers – costs reported for processing incoming foreign denomination checks range from a low of \$2.10 to \$25 or more per transaction, not including costs involved in currency conversion.
 - (b) Electronic transfers (SWIFT or other (please specify)) – costs reported for processing outgoing electronic transfers ranged from a low of \$.05 for use of U.S. Federal Reserve Bank international clearinghouse gateway services to a high of \$25 (discounted) to \$40 for an individual SWIFT transaction.

PART III THE USE OF INFORMATION TECHNOLOGY

- 7 **In a purely domestic context**, may the competent Authority responsible for child support and other forms of family maintenance in your country receive or send by way of fax or e-mail:
- (a) maintenance applications (*i.e.* for the establishment, recovery, modification or enforcement of maintenance);
 - (b) public documents (for example, court or tribunal documents, administrative documents, notarial acts, official certificates such as birth or marriage certificates); and,
 - (c) other types of requests?

Yes. State child support agencies generally may receive such documents by e-mail or fax, but they are not required to do so, and the practice varies by jurisdiction. Child support tribunals may not exclude from evidence "Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, or other means that do not provide

an original writing" based on the means of transmission. See U.S. Uniform Interstate Family Support Act section 316(e). However, even when an e-mail or fax copy of a document is acceptable to a tribunal, other State evidentiary rules may apply and practical obstacles (e.g., lack of fax machine or e-mail access in a courtroom) may exist.

8 **In the international context**, are cross-border arrangements in place in your country, **as requested State**, according to which the competent Authority responsible for child support and other forms of family maintenance may accept by way of fax or e-mail from abroad:

- (a) maintenance applications (see Question 7(a));
- (b) public documents (see Question 7(b)); and,
- (c) other types of requests?

No such cross-border arrangements are currently in place with reciprocating countries. However, domestic law provides that requests for child support services from a Federally-declared foreign reciprocal country are to be treated as if they were requests from another U.S. state. Thus, at least where there is a reciprocal arrangement in place, a U.S. state acting as a requested party should treat fax and e-mail documents in an international case as it would in a domestic case.

9 **In the international context**, are cross-border arrangements in place in your country, **as requesting State**, according to which the competent Authority responsible for child support and other forms of family maintenance can use e-mail and fax to forward:

- (a) maintenance applications (same as Question 7(a));
- (b) public documents (same as Question 7(b)); and,
- (c) other types of requests?

No such cross-border arrangements are currently in place with reciprocating countries. However, State child support enforcement agencies and tribunals may forward documents by e-mail or fax to other countries if the requested country is willing to accept them.

10 With regard to Questions 7 and 8, does your country apply a "functional equivalent" approach in relation to electronic documents and electronic communications, covering documents listed under (a), (b) and (c), that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

Yes, in both domestic and international child support cases, electronic communications may be treated as functional equivalents, depending on the rules of the particular state. Proposed Federal legislation would require states to treat electronic transmissions and signatures in child support matters as functional equivalents.

11 Are electronic signatures used in your country in relation to electronic documents and electronic communications that would apply to child support or other maintenance matters? Please respond by YES or NO. If YES, please distinguish between the domestic and international context. If NO, please explain.

Yes. Electronic signatures in relation to child support or other matters are used by some states, but there is no Federal requirement that they do so, and whether such procedures would be the same in international case situations would be determined by the state laws

under which each state's tribunal operates. Some individual states that have implemented the U.S. Uniform Electronic Transactions Act [see #12(b) below] may be moving towards acceptance of properly executed electronic signatures; however, there must be a clear indication of the intent to "sign" the record rather than merely a signature being a part of an electronic record. As discussed above, child support procedures should apply consistently in international reciprocal and domestic contexts.

12 Has your country enacted legislation based on (a) the UNCITRAL Model Law on Electronic Commerce, and (b) the UNCITRAL Model on Electronic Signatures? Please respond by YES or NO. If YES, please indicate if they apply to maintenance matters and distinguish between the domestic and international context. If NO, please explain.

(a) Yes. In June 2000, the United States enacted the "Electronic Signatures in Global and National Commerce Act" covering electronic records and signatures relating to a transaction, defined as those interactions between people relating to business, commercial and governmental affairs. However, the Act's provisions specifically exclude coverage of "a contract or other record to the extent it is governed by ... a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law." [section103(a)(2)]. This federal law does not apply to maintenance matters.

(b) Yes. While it was enacted in 1999 before completion of the UNCITRAL Model Law on Electronic Signatures, the U.S. Uniform Electronic Transactions Act is a model law which was developed in the U.S. for adoption by the states. However, at this time, this model law has been adopted by only a handful of states.

Hague Conference on International Private Law
Special Commission
on the Recovery of Child Support
and Other Forms of Family Maintenance
Additional Questionnaire

REPLY
OF SERBIA AND MONTENEGRO

The issues raised in the Additional Questionnaire cannot be addressed comprehensively since the matter relative to those issues has been regulated in Serbia and Montenegro only partially.

PART I

Only arrangements for collecting data relative to the socio-economic conditions of providers of child support and other forms of family maintenance and for advising them of, and calling upon them to carry out, those obligations have been worked out in Serbia and Montenegro. The most frequent cases concern child support and the maintenance of the spouse. During 2003, the competent Ministry of Serbia and Montenegro registered 68 cases of support and/or maintenance requests from abroad, 67 of them relative to child support and 1 to spouse maintenance. There were 46 cases relative to the collection of socio-economic conditions of the support/maintenance provider living abroad.

PART II

Under the Law on Foreign Currency Transactions, cross-border transfers of funds, including those relative to child support and other forms of family maintenance, are effected in Serbia and Montenegro by way of payment of dinar equivalents to a commercial bank in the place of residence of the support/maintenance provider. As no means of monitoring international payments towards child support and other forms of family maintenance has been provided in Serbia and Montenegro, no records relative to this matter are kept and the relevant data are therefore unavailable.

PART III

Sending of messages and/or documents by fax or e-mail has become ever more frequent, although it is expected that they also be sent by regular mail. In practice requests for support/maintenance are by and large made through e-mail, while relevant documents are dispatched through regular mail.

The Republic of Montenegro adopted the Law on Electronic Signature in September 2003, while the adoption of such a Law is still pending in the Republic of Serbia.