

QUESTIONNAIRE SUR LES OBLIGATIONS ALIMENTAIRES

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QUESTIONNAIRE ON MAINTENANCE OBLIGATIONS

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QUESTIONNAIRE ON MAINTENANCE OBLIGATIONS

PART I – NEW YORK CONVENTION OF 20 JUNE 1956 ON THE RECOVERY ABROAD OF MAINTENANCE

Section A – Questions addressed to States Parties

- 1 Do your authorities treat the New York Convention as complementary to (*i.e.* to be used in combination with) other international instruments such as the 1958 and 1973 Hague Conventions on the Enforcement of Decisions relating to Maintenance Obligations or the Brussels and Lugano Conventions?
- 2 When acting as the requested State, do your authorities require a “decision” from the State of origin before taking steps for the recovery of maintenance?
- 3 What documentation do you require from a transmitting agency? Which documents are required in the original?
- 4 What are your standard procedures following receipt of documentation from a transmitting agency?
- 5 Are there any issues that have arisen concerning the categories of persons eligible to apply as “in need” and “dependent”?
- 6 Do you make use of standard forms, whether acting as a receiving or transmitting agency? (If so, could you please supply copies).
- 7 Do your authorities permit public bodies/agencies to make use of the Convention procedures to recover maintenance payments on behalf of the maintenance creditor or to recover monies already paid by that public body/agency to the creditor, and if so, subject to what conditions (*e.g.* power of attorney)?
- 8 Legal assistance:
 - (a) Do you provide legal assistance to the claimant?
 - (b) What form does this take?
 - (c) Is it subject to any conditions or limitations?
 - (d) Are applications for spousal and child support treated differently?
- 9 What costs incurred by your authorities, when acting as the receiving agency, are charged to the requesting State (or the claimant)?
- 10 What are your requirements with regard to the translation of documents submitted by the transmitting agency?
- 11 Which languages do personnel in your authority (a) use, and (b) accept?
- 12 Does your authority accept any responsibility with regard to the transfer/receipt of maintenance payments on behalf of the creditor?
- 13 What rules/procedures apply with regard to the conversion of maintenance payments into the currency of the creditor’s State?

- 14 What methods of transferring funds are least costly for the maintenance creditor?
- 15 Are you aware of cases in which UN personnel, or personnel of other international organisations or Embassy staff, have claimed immunity under the Convention? If so, how were these cases resolved?
- 16 What powers or procedures are available to your authority to locate the whereabouts or place of work of a maintenance debtor/respondent?
- 17 What is your policy in respect of a maintenance debtor/respondent whose entire income consists of public assistance payments?
- 18 Does your authority have power to take or apply for any provisional or protective measures?
- 19 What powers or procedures are available to your authority to determine the extent of assets of a maintenance debtor/respondent?
- 20 What are the principal problems which you experience in dealing with cases (a) as a transmitting agency, and (b) as a receiving agency?
- 21 Do you have any statistics indicating the number and outcome of cases brought under the New York Convention? If so, could you please supply them. If possible, please distinguish between incoming and outgoing cases, and indicate the other States involved.
- 22 Are there any States with whom you experience chronic difficulties in relation to the operation of the Convention?

Section B – Questions addressed to non-Party States

- 1 Are there particular reasons why your State has not ratified the New York Convention?
- 2 Are there any modifications/improvements to the New York Convention which would make ratification by your State a more attractive proposition?
- 3 In relation to the negotiation of any bilateral or other arrangements to which your State is, or is to become Party, which of the issues raised in Section A have been of significance? Are there other issues not raised in Section A which have been significant?

PART II – HAGUE CONVENTIONS OF 1958 AND 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

Section A – Questions addressed to States Party to one or both Conventions

- 1 Does a limitation period operate in respect of an action for the enforcement of a maintenance obligation? Which law governs any such limitation period?
- 2 Does a limitation period operate in respect of the execution of a writ for the recovery of maintenance? Which law governs any such limitation period?
- 3 Do your procedures for enforcement permit the debtor to claim inability to pay?
- 4 Do your procedures allow for the possibility of modifying the content of a decision registered in application of the 1973 Convention?
- 5 Is the debtor entitled to bring modification proceedings in respect of the foreign decision? If so, on what jurisdictional basis and on what grounds?

Section B – Questions addressed to non-Party States

- 1 Are there any particular reasons why your State has not ratified/acceded to either of the Hague Conventions?
- 2 Are there any modifications/improvements to the Hague Conventions which would make ratification / accession a more attractive proposition for your State?

PART III – HAGUE CONVENTIONS OF 1956 AND 1973 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

Section A – Questions addressed to States Party to one or both Conventions

- 1 Which law is applied by your courts to incidental/preliminary questions (e.g., as to the paternity of a child) arising in the course of maintenance proceedings within the scope of the Hague Conventions?
- 2 In a decision of 21 February 1997 (Nederlandse Jurisprudentie 1998, No 416), the Netherlands Supreme Court ruled that Article 8 of the Hague Convention of 1973, in the light of its history and that of the Convention as a whole, was not incompatible with the admission of a choice by divorced spouses of the governing law, the law chosen being that of the country of their common habitual residence for a long period and of the forum. (Dutch law, chosen by the parties, was applied rather than Iranian Law which governed the divorce.)

Is this decision consistent with the manner in which Article 8 has been interpreted by your courts? If not, do you think that an amendment of Article 8 would be desirable to allow expressly for a choice of law by the spouses?

- 3 Do your courts interpret the Hague Convention of 1973 as applying to maintenance obligations of one spouse in respect of children of the other spouse to whom she/he is *in loco parentis*?
- 4 Have any particular difficulties arisen in applying/interpreting either the 1956 or the 1973 Conventions?

Section B – Questions addressed to non-Party States

- 1 Are there any particular reasons why your State has not ratified the 1956 or 1973 Conventions?
- 2 Are there any modifications/improvements to the 1956 or 1973 Conventions which would make their ratification/accession a more attractive proposition for your State?
- 3 Are spouses (or any other category of persons) free under your system to choose the law which will govern their maintenance obligations?

PART IV – GENERAL

- 1 To what extent has the assessment and enforcement of maintenance obligations in your State become an administrative rather than a judicial activity?
- 2 (If relevant) Has the movement towards an administrative approach had implications for international cases?
- 3 Please list the methods for enforcing maintenance obligations in your State. Is any distinction drawn between the methods of enforcement available in domestic and international cases?
- 4 Please comment on any other matters you consider relevant which are not covered by the Questionnaire.