



GOVERNMENT OF MALTA
MINISTRY FOR SOCIAL POLICY
AND CHILDREN'S RIGHTS



MALTA V

Fifth Conference on the HCCH Children's Conventions as Bridges between Civil/Common Law and Islamic Law

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Hotel Excelsior, Valletta, Malta

OVERVIEW OF THE HCCH CHILDREN'S CONVENTIONS AND THE IHNJ

The 1980 Child Abduction Convention

This Convention seeks to protect children from the harmful effects of parental abduction and retention across international boundaries by providing their safe return to their country of habitual residence. The underlying premise is that the authorities of the State of the child's habitual residence are best placed to resolve the merits of a custody dispute. The Convention further seeks to ensure that rights of custody and access under the law of one Contracting State are effectively respected in the other Contracting States. The Convention supports Articles 3, 9 to 11 and 35 of the UN Convention on the Rights of the Child (UNCRC).

For more information please see: www.hcch.net, under "Abduction"

The 1996 Child Protection Convention

This Convention provides rules that determine the State whose authorities have jurisdiction to take measures aiming at the protection of children, and the law applicable to such measures; that provide for the recognition and enforcement of such measures; and that establish co-operation between the authorities of the Contracting States. It covers a very wide range of civil measures of protection concerning children, from orders concerning parental responsibility and contact to public measures of protection or care; and from matters of representation to the protection of children's property. The Convention supports Articles 3, 9 to 11 and 35 of the UNCRC.

For more information please see: www.hcch.net, under "Protection of Children"

The 2007 Child Maintenance Convention

The Convention ensures the effective international recovery of child support and other forms of family maintenance through a system of administrative cooperation via Central Authorities. The Convention, which gives effect to Article 27(4) of the UN Convention on the Rights of the Child, pursues its aims by a combination of means: an efficient and responsive system of co-operation between Contracting States in the processing of international applications; a requirement that Contracting States make available applications for establishment and modification, as well as for recognition and enforcement, of maintenance decisions; provisions which ensure effective access to cross-border maintenance procedures; a broadly based system for the recognition and enforcement of maintenance decisions made in Contracting States; expedited and simplified procedures for recognition and enforcement; and a requirement of prompt and effective enforcement. It builds on the strengths of older international instruments, in particular several existing HCCH Conventions,

the New York (United Nations) Convention of 1956 on the Recovery Abroad of Maintenance, as well as several regional and inter-state or inter-provincial instruments and arrangements. The Convention supports Articles 2, 3 and 27 of the UNCRC.

For more information please see: www.hcch.net, under “Maintenance”

The International Hague Network of Judges (IHNJ)

The International Hague Network of Judges (IHNJ) currently consists of 154 judges worldwide. A total of 89 States have now officially designated a judge to the IHNJ, among which four States have legal systems that include Sharia law, namely Kenya, Morocco, Pakistan, and Singapore. States which have designated judges to the network since Malta IV include China, Fiji, Jamaica, Bolivia, and Greece.

The creation of the IHNJ specialising in family matters was first proposed at the 1998 De Ruwenberg Seminar for Judges on the international protection of children. It was recommended that the relevant authorities (e.g., court presidents or other officials as is appropriate within the different legal cultures) in various jurisdictions designate one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their jurisdictions and with judges in other Contracting States, in respect, at least initially, of issues relevant to the 1980 Child Abduction Convention. It is now recognised that there is a broad range of international instruments, both regional and multilateral, in relation to which direct judicial communications can play a role beyond the 1980 Child Abduction Convention.

The role of a member of the IHNJ is to be a link between his or her colleagues at the domestic level and other members of the IHNJ at the international level. There are two main communication functions exercised by members of the IHNJ. The first communication function is of a general nature (*i.e.*, not case specific). It includes the sharing of general information from a member of the IHNJ or the Permanent Bureau with his or her colleagues in the jurisdiction and assisting with the reverse flow of information. It may also encompass participation in international judicial seminars. The second communication function consists of direct judicial communications with regard to specific cases, the objective of such communications being to address any lack of information that the competent judge has about the situation and legal implications in the State of the habitual residence of the child. In this context, members of the IHNJ may be involved in facilitating arrangements for the prompt and safe return of the child, including the establishment of urgent and / or provisional measures of protection and the provision of information about custody or access issues or possible measures for addressing domestic violence or abuse allegations. These communications will often result in considerable time savings and better use of available resources, all in the best interests of the child.

With a view to facilitate the designation of judges to the IHNJ and the conduct of direct judicial communications, States Parties to the 1980 Child Abduction Convention and Members of the HCCH have endorsed in 2012 the “Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges”.

For more information please see: www.hcch.net, under “Abduction”, then “International Hague Network of Judges” and “Direct Judicial Communications”