

Application of the Hague Children Conventions to Families on the Move Including Bicultural Families

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Families on the move – Some context



- **Formation of the family in a foreign State for at least one partner**
 - a) Two persons of the same culture form a family in a foreign State
 - b) Two persons of different cultures form a family in the State of one of the partners
 - c) Two persons of different cultures form a family in a third State
- **Move of the family to a foreign State for at least one parent**
 - d) Single culture family moves to another State
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HCCH Children's Conventions – Common features

- HCCH Children's Conventions implement core provisions of the UN Convention on the Rights of the Child
 - Art. 3 – Best interests of the child
 - Arts 9 & 10 – Right to have contact with both parents
 - Arts 11 & 35 – Combatting child abduction and child trafficking
 - Art. 12 – Right of the child to be heard
 - Arts 20 & 21 – Alternative care and adoption
 - Art. 22 – Refugee children
 - Art. 27 – Recovery of child support
- HCCH Children's Conventions are supported by Central Authorities
- HCCH Children's Conventions benefit from post-Conventions services
 - Explanatory Reports
 - Guides to Good Practice, Practical Handbooks, Implementation Checklists
 - Mandatory and Recommended Forms
 - IT Tools: INCADAT, e-Country Profiles, case management system: iSupport



1980 Child Abduction Convention

➤ 103 Contracting States

Summary: 1980 Convention seeks to protect children from the harmful effects of **wrongful removal or retention** (i.e., **child abduction**) across international borders by providing a procedure for their **safe return** to their **State of habitual residence** - the abduction of a child is wrongful when in breach of rights of custody

Underlying premise: the authorities of the State of the habitual residence of the child are best placed to resolve the merits of custody disputes



1980 Child Abduction Convention (cont.)

1980 Convention provides remedies at the international level **when rights of custody are breached**:

- Primary remedy to address the **wrongful removal** of a child
=> Remedy is to **order the return** of the child
- Remedy to address the **wrongful retention** of a child in the case of cross-border contact / visit
=> Remedy is to **order the return** of the child

1980 Convention seeks to ensure that **rights of custody and access** under the law of one Contracting State are **effectively respected** in the other Contracting State (Art. 21)

Possible **direct judicial communications** in specific cases between members of the International Hague Network of Judges (IHNJ)



1980 Child Abduction Convention (cont.)

Article 3 UNCRC

In all actions concerning children, the best interests of the child shall be a primary consideration, and States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being

Article 9(3) UNCRC

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests

Article 10(2) UNCRC

A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11 UNCRC

States Parties shall take measures to combat the illicit transfer and non-return of children abroad (promotes conclusion of bilateral or multilateral agreements or accession to existing agreements)

Article 35 UNCRC

States Parties shall prevent abduction of, sale of, or traffic in children (requiring all appropriate national, bilateral and multilateral measures to be taken)



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1980 Child Abduction Convention (cont.)

➤ Available post-Convention services

- Explanatory Report
- Meetings of the Special Commission (SC) to review the operation of the 1980 and 1996 Conventions
- Recommended Model Return & Access Request Forms
- Guides to Good Practice (GGP): CAs; Implementing Measures; Preventive Measures; Enforcement; Mediation; Contact; Art. 13(1)(b)
- IHNJ; Direct Judicial Communications; Judges' Newsletter
- IT Tools: INCADAT; e-Country Profile; IHNJ Secure Platform
- Malta Process; judicial and other Seminars



1996 Child Protection Convention

➤ 58 Contracting States

Summary: 1996 Convention provides rules that:

- Determine the State whose authorities have jurisdiction to take measures for the protection of children
- Determine the law applicable to such measures
- Provide recognition and enforcement of such measures
- Establish co-operation between the authorities of the Contracting Parties regarding such measures

1996 covers a **wide range of civil measures of protection**, from orders concerning parental responsibility, **contact** and **relocation** to public measures of protection or care



1996 Child Protection Convention (cont.)

Article 3 UNCRC

In all actions concerning children, the best interests of the child shall be a primary consideration, and States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.

Articles 9(3) & 10(2) UNCRC

States Parties shall respect the right of the child who is separated from one or both parents, or whose parents reside in different States, to maintain personal relations and direct contact with both parents, except if contrary to child's best interests.

Articles 11 & 35 UNCRC

States Parties shall prevent abduction of, sale of, or traffic in children (requiring all appropriate national, bilateral and multilateral measures to be taken).

Article 12(2) UNCRC

[...] the child shall [...] be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 20 UNCRC

States Parties shall in accordance with their national laws ensure alternative care for a child in need of care (*i.e.*, foster placement, *kafala*, or, if necessary, placement in suitable institutions for the care of children).

Article 22 UNCRC

States Parties shall ensure that a child seeking refugee status / considered a refugee (whether unaccompanied or accompanied) shall receive protection and humanitarian assistance in the enjoyment of all rights enshrined in the UNCRC and other applicable international instruments.



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1996 Child Protection Convention (cont.)

➤ Available post-Convention services

- Explanatory Report
- Meetings of the SC to review the operation of the 1996 Convention
- Recommended Model Request Form
- Practical Handbook; Practitioners' Tool (R&E of agreements); the application of the 1996 Convention to Unaccompanied and Separated Children; Implementation Checklist
- IHNJ; Direct Judicial Communications; Judges' Newsletter
- IT Tools: e-Country Profile; IHNJ Secure Platform
- Malta Process; judicial and other Seminars

➤ Future Post-Convention services

- Art. 33 Placement Request Model Form & Guide to Art. 33 Requests



2007 Child Support Convention

➤ 56 Contracting States

Summary: 2007 Convention ensures the effective international recovery of child support and other forms of family maintenance through a system of **administrative co-operation** via **Central Authorities** by a combination of means:

- **Cooperation** between States to process applications
- Availability of applications for **recognition** and / or **enforcement, establishment** and **modification** of maintenance decisions
- Effective **access to** maintenance **procedures**
- **Broadly based R&E** of maintenance decisions system
- **Expedited** and **simplified** procedures for R&E
- Requirement of **prompt** and **effective enforcement**



2007 Child Support Convention (cont.)

Article 3 UNCRC

In all actions concerning children, the best interests of the child shall be a primary consideration, and States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.

Article 27 UNCRC

1. States Parties recognize **the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.**
2. The **parent(s)** or others responsible for the child **have the primary responsibility to secure**, within their abilities and financial capacities, **the conditions of living necessary for the child's development.**
3. **States Parties**, in accordance with national conditions and within their means, shall take appropriate measures to **assist parents** and others responsible for the child **to implement this right** and shall **in case of need** provide material **assistance** and support programmes, particularly with regard to **nutrition, clothing and housing.**
4. **States Parties shall** take all appropriate measures to **secure the recovery of maintenance for the child** from the parents or other persons having financial responsibility for the child, **both within the State Party and from abroad.** In particular, where the person having financial responsibility for the child lives in a State different from that of the child, **States Parties shall promote the accession to international agreements or the conclusion of such agreements,** as well as the making of **other appropriate arrangements.**



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2007 Child Support Convention (cont.)

➤ Available post-Convention services

- Explanatory Reports (Convention & Protocol)
- Meeting of the SC to review the operation of the 2007 Convention
- Mandatory and Recommended Model Forms & Guidance
- Practical Handbooks; Practitioners' Tool (R&E of agreements); Implementation Checklist
- International Transfer of Maintenance Funds Good Practices
- IT Tools: e-Country Profile; iSupport (case management and secure communication system)
- Malta Process; NCSEA Int'l Sub-committee online monthly meetings

➤ Future Post-Convention services

- Additional Recommended Forms



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