



Global Conference on the Recovery of Child Support and Family Maintenance in Asia Pacific and Worldwide: National and Regional Systems and the Hague 2007 Convention and Protocol

Hong Kong, 9 to 11 November 2015
Faculty of Law, Cheng Yu Tung Tower, Centennial Campus, University of Hong Kong

CONCLUSIONS AND RECOMMENDATIONS

From 9 to 11 November 2015, more than 155 experts from Australia, Brazil, Cambodia, Canada, Chile, the People's Republic of China (including Hong Kong SAR and Macau SAR), Croatia, Germany, India, Indonesia, Japan, Korea (Republic of), Malaysia, Malta, New Zealand, Nigeria, Norway, the Philippines, Poland, Portugal, Singapore, Sri Lanka, South Africa, Switzerland, Tunisia, the United Kingdom, the United States of America, the Hague Conference on Private International Law (HCCH), and the HCCH Asia Pacific Regional Office gathered in Hong Kong to discuss the recovery of child support and other forms of family maintenance in Asia Pacific and worldwide, in the context of national and regional systems and the Hague 2007 Maintenance Convention and Protocol.¹

WHEREAS the conference recognises:

- *the great importance of child support and family maintenance to the well-being of children, other family members and vulnerable persons worldwide;*
- *the reality of cross-border movement of persons, transnational marriages, and globalisation which require effective solutions for the international recovery of child support and other forms of family maintenance;*
- *the need to improve national child support and family maintenance systems, and the need to strengthen regional and international co-operation to this end;*
- *the importance of the 2007 Maintenance Convention as a universal instrument for the effective cross-border recovery of child support and family maintenance (implementing Art. 27(4) of the 1989 UN Convention on the Rights of the Child, the "UNCRC"), and as a vehicle to catalyse national reforms and best practices; and,*
- *the excellent contributions of the HCCH Asia Pacific Regional Office in promoting the work of the Hague Conference and building a network in the region.*

The conference reached the following Conclusions and Recommendations:

Promotion and Operation of the 2007 Maintenance Convention

1. There is need for a uniform approach towards the cross-border recovery of maintenance. The 2007 Maintenance Convention has the advantage of providing a uniform approach, while still allowing for flexibility to accommodate variations in legal systems in different countries.
2. When carrying out a cost-benefit analysis, one should have regard to the potentially large savings from having the 2007 Maintenance Convention in place. For instance, with efficient

¹ The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

cross-border collection of maintenance, a State would be able to save on or recover social benefits which it may otherwise pay in respect of a child and other persons.

3. Consideration should be given by States to ensuring that there is widespread awareness and education as to the right of a child to maintenance, in both domestic and cross-border situations. This will assist in encouraging parents or others on behalf of a child to pursue child support – in particular in international cases.

4. General information about the enforcement of child support and other forms of family maintenance should be provided to members of the public. Informing parents about their rights and duties as well as about administrative and judicial proceedings for the recovery of maintenance is crucial to achieve their engagement and the fulfilment of their responsibilities.

5. Minimum standards should be developed for Central Authorities under the 2007 Maintenance Convention and the 2009 EU Maintenance Regulation.² These could include a minimum number of personnel for a certain number of maintenance applications, including qualified lawyers and IT infrastructure.

6. Central Authorities under the 2007 Maintenance Convention should ensure that they are in a position to help maintenance creditors obtain provisional measures to secure interim payments and prevent assets leaving a country, as well as helping to enforce final maintenance orders. Minimum standards and best practice guidelines on the operation of Articles 6 and 7 of the Convention should be developed.

7. The cost of transferring funds due to high banking charges may be reduced by consolidated collections by Central Authorities, through negotiation of lower fees with banks and / or through the development of Phase II of iSupport.³ Article 35 of the 2007 Maintenance Convention provides a framework for encouraging cost-effective and efficient methods for the cross-border transfer of funds payable as maintenance. Methods of transfer of funds other than cheques should be encouraged, such as electronic transfers.

Regional and international co-operation

8. The establishment, further development and enhancement of international and regional networks of professionals in the field of child support and family maintenance will be useful for greater understanding of other systems and for the exchange of ideas and information. This may improve current systems, as well as assist jurisdictions in the recovery of maintenance across borders.

9. It is recommended that the HCCH Asia Pacific Regional Office continue its efforts in building an Asia Pacific network among the relevant stakeholders in the region in the field of child support and family maintenance, including organising similar events in the future.

10. Use of modern technology, such as electronic case management and secure communication systems, electronic databases and e-banking (e.g., the iSupport system), can be very useful in facilitating recovery of maintenance, especially in international cases.

11. It is important to identify stakeholders and partners, both local and overseas, for collaboration in maintenance cases. Collaboration with parents and others owing support for voluntary payment in maintenance cases should be encouraged. Administrative co-operation with overseas counterparts should also be encouraged and the 2007 Maintenance Convention provides for an excellent platform for such collaboration.

² Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

³ iSupport is an electronic case management and secure communication system currently under development, which will facilitate the cross-border recovery of maintenance obligations under the 2007 Maintenance Convention and the 2009 EU Maintenance Regulation.

12. Good practices in debtor “arrear prevention” (in order to encourage higher compliance rates with maintenance obligations), and best practices in the modification of child support and family maintenance decisions, for example, regularly scheduled review of maintenance amounts (in the interests of both debtors and children), should be compiled and shared at the international level.

13. There should be recognition of the great legal and cultural diversity in family patterns and in maintenance owed as a result of recognised family relationships (across regions and countries), including care for the elderly and vulnerable adults, relationships arising from advances in bio-technology (e.g., surrogacy arrangements) and from changing patterns in shared custody and visitation arrangements.

Capacity-building and research

14. The implementation of the 2007 Maintenance Convention at the national level will need co-ordination and preparation. Thus, there should be consultation among stakeholders (academics, governmental, judicial, legal practitioners and others). In some jurisdictions there may be a need for capacity-building, including translation of the Convention text, handbooks and guides into the local language. Attention will also have to be paid to the development of an IT structure to supplement the operation of the Convention (i.e., the iSupport system). However, the basic elements required to implement the Convention can readily be put in place at relatively minimal cost and time. It may be better to implement the Convention as soon as possible, even though not every element (for example, an IT structure) is in place initially.

15. Child support and family maintenance research needs to better take into account the complexities of changing family patterns and the reality of modern families. Some areas to consider for data collection include information about children who are not receiving child support because the system does not currently provide a realistic way for them or their caregivers to access the family maintenance system.

16. Evidence-based policy development is important for successful maintenance programmes. Research concerning the effectiveness of ancillary programmes (such as employment programmes or parenting time) is important in helping States to design appropriate legislative and policy schemes. Academic research and the participation of academics in conferences on maintenance should be encouraged, and should include the publication of conference proceedings.

National law reform and domestic systems

17. Given international and national human right obligations (e.g., the UNCRC and the 1966 *International Covenant on Civil and Political Rights*), as well as strong policy commitments of governments to protect children, vulnerable family members and address disproportionate child poverty, States should be aware of the benefits of creating effective national child support and family maintenance laws and programmes, which should include timely enforcement of maintenance obligations and access to procedures.

18. The adoption of the 2007 Maintenance Convention will require at a minimum the examination of existing national processes. It may lead to legislative reforms in some cases.

19. Possible use of an administrative system, including an administrative formula or assessment, could be considered for swift and efficient recovery of maintenance. Consideration may be given to decisions on maintenance being made by administrative agencies with courts only being involved in rare cases.

20. Coercing compliance often fails to solve problems in family conflicts. Courts and other institutions that address barriers to payment in non-adversarial proceedings improve the chances to remove such barriers, for the benefit of a child with separated parents.

21. It is important that child support and other family maintenance orders or assessments be realistic, according to circumstances in each jurisdiction. There is a correlation between appropriate orders and consistency of payment and between inappropriate orders and delinquency in payments.

22. Factors that play a part in making a realistic order or assessment include the actual income of the debtor, incentivising parents to spend time with the child, frequent review of maintenance orders, and empirically-based research on best practices. Other good practices are promoting consensual orders (private agreements) and the use of automation in support. One must not lose sight of equity and fairness. Guidelines to establish maintenance amounts are valuable but there is a danger of guidelines becoming too complex or being mechanically applied.

23. Encouraging voluntary payments is an important way to increase the likelihood of payment of child support and other forms of family maintenance. Processes that encourage absent parents to continue to be part of their children's lives, including assistance in the location of children for the purpose of contact where appropriate, are an important component of policy development in this area.

24. Practice should take advantage of the potential of the 2007 Maintenance Convention to support and promote mediation in cross-border cases. Mediation should only be used if it does not impose obstacles on the path to recovery of child support and family maintenance.

Enforcement

25. Effective and non-discriminatory enforcement mechanisms as provided under the 2007 Maintenance Convention are encouraged (*e.g.*, under Arts 32-34 of the Convention).

26. While there is diversity in national systems across the Asia Pacific and worldwide, there are commonalities among them, such as a duty to support children and common challenges in international cases for recognition and enforcement of foreign decisions (including maintenance arrangements, per Arts 3(e) and 30 of the 2007 Maintenance Convention). The latter challenges may include the requirement of reciprocity and the need for final and conclusive foreign decisions. There are also concerns about the extent of free legal assistance.

27. The 2007 Maintenance Convention can address most, if not all, of these common challenges. For example, the Convention does away with the traditional requirements of reciprocity and "finality" of decisions. It also provides for a swift and efficient enforcement mechanism, as well as free legal assistance. All governments in the Asia Pacific region and throughout the world are therefore encouraged to consider joining the Convention.

iSupport

28. Progress made on the development of iSupport was welcomed and further funding is encouraged.

Acknowledgements

29. Gratitude is extended to the People's Republic of China, including the Hong Kong Special Administrative Region, and in particular the Department of Justice of the Hong Kong Special Administrative Region, for their generosity in hosting and financially enabling this conference. Thanks are also extended to the University of Hong Kong for providing facilities conducive to a successful conference, and to the range of partners for their valuable contributions to the conference.

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