

QUESTIONNAIRE

décembre / December 2012



**RECONNAISSANCE ET EXÉCUTION DES ORDONNANCES DE PROTECTION RENDUES PAR
DES JURIDICTIONS CIVILES ÉTRANGÈRES :
QUESTIONNAIRE À L'ATTENTION DES ORGANISATIONS NON GOUVERNEMENTALES**

établi par le Bureau Permanent

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**RECOGNITION AND ENFORCEMENT OF FOREIGN CIVIL PROTECTION ORDERS:
QUESTIONNAIRE FOR NON-GOVERNMENTAL ORGANISATIONS**

drawn up by the Permanent Bureau

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INTRODUCTION TO THE QUESTIONNAIRE

In 2011 the topic of “the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases”¹ was added as a new item to the work programme of the Hague Conference on Private International law (< www.hcch.net >). The Permanent Bureau of the Hague Conference has conducted preliminary background research on this topic² with a view to begin an assessment as to whether a new international treaty (*i.e.*, a new Hague Convention) or other instrument should be developed in order to ensure the recognition and enforcement of civil protection orders across international borders. Civil protection orders may include, for example, “no contact” and housing exclusion orders in cases of domestic violence, “stay-away” orders in cases of stalking, and other injunctions to protect victims or potential victims from crime or other harmful interpersonal behaviour.³

The Permanent Bureau has circulated a [Questionnaire](#) to Members of the Organisation in order to obtain further information on legislation and to assess the need for and feasibility of an international instrument in this area. The input of non-governmental organisations which might have experience in this field would also be very beneficial. Your responses to this Questionnaire, sharing any information you may have based on expertise you or your organisation may have, would be a valuable contribution to the current assessment.

The Permanent Bureau kindly requests that your answers be submitted (in either English or French) as soon as possible, but in any case by **1 February 2013**, in order to allow the Permanent Bureau sufficient time to analyse information received for the attention of the governing Council of the Hague Conference that will meet in early April 2013. Responses should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: “NGO Questionnaire concerning the recognition and enforcement of foreign civil protection orders — [name of non-governmental organisation].”

Should you have any questions about this Questionnaire, please do not hesitate to contact Philippe Lortie, First Secretary, or Maja Groff, Senior Legal Officer, at < secretariat@hcch.net >. We are grateful for your time and assistance on this important project.

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2517 KT The Hague • The Netherlands
tel.: +31 (70) 363 3303 • fax: +31 (70) 360 4867
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Identification

Name of your organisation: Uruguayan Institute of Private International Law

Country / Countries where based: Uruguay

Website of organisation, if applicable:

For follow-up purposes:

Name and title of contact person: Prof. Dr. Cecilia Fresnedo de Aguirre

Telephone number: 00598-26221076

E-mail address: ceciliafresnedo@gmail.com

¹ Conclusion and Recommendation No 23 of the 5-7 April 2011 Meeting of the Council on General Affairs and Policy of the Conference (available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “General Affairs”).

² “Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note,” Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference (available on the Hague Conference website at < www.hcch.net > under “Work in Progress,” then “General Affairs”).

³ Please see Prel. Doc. No 7, *ibid.*, for examples of common protection order legal regimes and variations of these regimes in a variety of jurisdictions.

Part I. National protection order legislation

1. Please briefly describe any civil protection order regime(s) in your jurisdiction, and describe, in your view / the view of your organisation, its / their main positive and negative features, as applicable. (Please attach another sheet, if necessary.)

Uruguay is very concerned about preventing Domestic Violence.

Throughout the years, the Government has been taking different steps in order to create an appropriate framework for the topic.

There are 6 specialised courts on domestic violence (Law 18.719) and 2 national offices on public prosecutors specialised on domestic violence (Law 18.046).

There are specialised legal counselors that assist those who need it without charging. Their offices are in the same building where the specialised courts are.

On July 2, 2002, the law number 17.514, named Domestic Violence, was enacted.

The said law declared that the activities of prevention, early detection, treatment and eradication of domestic violence constituted public order and defined a series of manifestations that constituted Domestic Violence:

- A) Physical. Act, omission or pattern of behavior that harm the physical integrity of a person.
- B) Psychological or emotional violence. Any act or omission intended to disrupt, degrade or control the behavior, beliefs or decisions of a person, through humiliation, intimidation, isolation or other means to affect the psychological or emotional stability.
- C) Sexual Violence. Any action that imposes or induce sexual behaviors to a person through the use of: force, intimidation, coercion, manipulation, threat or other means to nullify or impair sexual freedom.
- D) Property violence. Any act or omission that involves damage, loss, transformation, removal, destruction, distraction, concealment or withholding of goods, tools, documents or financial resources, in order to coerce the another person's self-determination.

Apart from that the Law 17.514 set forth a special proceedings in order to protect the victim and allowed that anyone who becomes aware of an act of domestic violence could give notice to the competent judge in this matter. The court, on its own initiative or at the request of the Federal Prosecutors' Office, could bring third party to the trial.

The Supreme Court of Justice shall ensure the legal assistance of the victim, for which it is empowered to enter into agreements with public or private entities specializing in this area.

Uruguayan State is obliged to take all necessary measures to prevent, punish and eradicate violence and to promote comprehensive support to the victims.

The rehabilitation and social reintegration of the aggressor should be part of the policy that pretend to protect everyone involved in a case of Domestic Violence.

A National Advisory Council for Combating Domestic Violence, was created therein with the following purpose:

1. Advise the Executive in this kind of matters.
2. Ensure compliance with this law and its regulations.
3. Design and organize plans to combat domestic violence.
4. Promote coordination and integration of policies to combat domestic violence designed by different public bodies involved in this area.
5. Prepare an annual report on the performance of their tasks and on the national situation of domestic violence.

6. Be heard in the preparation of reports that the State should issue under the existing international conventions related to domestic violence.
7. Participation in the elaboration of bills and programs related to domestic violence.
8. Collaborate with the Supreme Court on the implementation of legal assistance.

The Ministry of Education and Culture will provide the infrastructure for Council meetings.

Law 17.514 was not the only initiative in this regard.

Firstly, on July 12, 1995 law 16.707 was enacted. This law is known as "Ley de Seguridad Ciudadana" and typifies the crime of Domestic Violence.

Secondly on May, 18, 2001 Uruguay ratified INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELEM DO PARA" adopted on June 9, 1994 by Law 16.735 and the Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, Convention adopted by law 15,164 on August 4, 1981

As was set forth in the preamble of the Inter-american Convention, the intention was:

- (i) RECOGNIZE the full respect for human rights established in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;
- (ii) AFFIRM that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;
- (iii) CONCERN that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men;
- (iv) RECALL the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations;
- (v) CONVINCED that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and
- (vi) CONVINCED that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

Moreover according section 10 and 11, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention

Thirdly,- the Convention on the Elimination of all Forms of Discrimination against Women, adopted by law 15,164 on August 4, 1981 obligates signatory states to end all forms of discrimination against women and contains three main elements:

1. affirms women's legal rights,
2. considers that procreation should not be a basis for discrimination

3. addresses measures, according section 5, in order to:
 - (a) modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
 - (b) ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

After Domestic Violence law was passed, Uruguay adopted on November 10, 2003 the Law 17.707 that authorizes the creation of four Courts with specialization in area of domestic violence.

2. Please briefly list any other protection order regimes (*e.g.*, under criminal law, under police laws, etc.) in your jurisdiction which are important in your view / the view of your organisation.

According to Law 18.850, children (domiciled in Uruguay) of people who have died as a result of an act of domestic violence, shall be entitled to obtain a monthly pension.

There is a national telephone number where a multidisciplinary team provides support and orientation to people suffering domestic violence. This service is for free, confidential and anonymous. Calls from a regular phones are not registered in the telephone invoice and can be made from any public telephone cabin without cards or coins.

Law 18.381 is a fundamental tool to combat domestic violence. It recognizes that every person, without any distinction, can ask for information to all public organisms, which is important because (i) clear, complete and true information in the appropriate moment enables domestic victims to take the decision of looking for a solution to their situation; (ii) clear, complete and true information enables the government to design public policies that enables better prevention and combat against domestic violence.

Law 18.315 enables the police to enter into a home, even at night, if one member of the couple allows him to enter, without judicial order. This is a new mechanism of protection to the victim.

Decree N° 494/2006, as amended by decree 299/2009, states that Health Institutions and Services of any nature, both public and private, must assist their women affiliates that are in a situation of domestic violence.

3. Have law reforms in this field been recently conducted or are they planned for the future in your jurisdiction? If so, please briefly describe.

The government announced on November 25th, 2012 new measures to combat domestic violence against women. Social Development Minister said that in 2013 a bill against domestic violence will be sent to Parliament and announced that the Ministry of Interior and the judiciary will be instructed to implement the bracelet system so far "anklets" - the aggressors, to prevent them from approaching the victims.

The Social Development Minister also announced that new services for the assistance of women in a situation of gender violence and houses for temporal stay for women in a situation of jeopardy will be created next year.

4. In the experience of your organisation / in your professional experience, what are the main issues which arise in your jurisdiction with respect to the enforcement of civil protection orders? (e.g., what is being done well in your jurisdiction and what could be improved?)

In practice, when precautionary measures are not fulfilled, the agresor is seldom imprisoned as the law sets forth, on the contrary, he is just required to fulfill the measure.

Files are frequently stored away when the victim accepts to withdraw the accusation or when she does not attend the judicial hearing.

5. Please briefly list the main national or regional support facilities for victims of domestic violence (and / or any crimes or behaviours described in Question 9, below).

There are several organizations in Uruguay that provide support to domestic violence victims. The following are some of them:

Andenes
San José 1436 – Montevideo
Tel./Fax: 903 90 19
andenes@adinet.com.uy

Arco-iris
Canelones 1164 – Montevideo
Tel.: 901 73 06 – Fax: 908 59 59
proarco@adinet.com.uy

Foro Juvenil – Programa El Faro
Luis Alberto de Herrera 3730 – Montevideo
Tels.: 200 52 10 - 209 10 15
infaro@adinet.com.uy
www.forojuvenil.org.uy

IACI – Infancia, Adolescencia Ciudadana
Reconquista 621 - Montevideo
Tel.: 915 54 19
iaciabogadas@gmail.com

Juventud para Cristo – Programa CLAVES
Manuel Acuña 3033 – Montevideo
Tel./Fax: 514 14 14
claves@adinet.com.uy

Somos ONG
18 de Julio 2095 apto. 203 – Montevideo
Tel.: 0800 8110 – Tel./Fax: 408 90 00
somosong@netgate.com.uy

MUJERES

CAMBIOS
Calle 8 esq. D - Balneario Las Toscas -
Canelones
Tel.: 037 28141 Fax: 037 22584
casadelastoscas@gmail.com

Casa de la Mujer de la Unión
Serrato 2613 – Montevideo
Tel./Fax: 506 06 01 – 507 65 02
violencia@casadelamujer.org.uy

www.casadelamujer.org.uy

Centro Interdisciplinario "Caminos"
San José 1280, Oficina 107 - Montevideo
Tel./Fax: 901 99 96
caminos@caminos.org.uy
www.caminos.org.uy

DAKINI
Viña del Mar Manzana 11 Solar 8 -
Canelones
Tel.: 682 85 68
grupodakini@adinet.com.uy

Dimensión Mujer – Casa de la Mujer
de Marindia
Iguazú casi Cahiré – Marindia - Canelones
Tel.: 0376 7523
majocou@adinet.com.uy
raquelcarreiras@adinet.com.uy

Espacio de Desarrollo Personal
Colonia 1543 apto. 603 – Montevideo
Tel.: 401 89 79
espaciop@adinet.com.uy

Gammu Colonia
Damián 619 apto. 4 - Colonia
Tels.: 522 33 69 – 523 02 40
lidiadus@adinet.com.uy

Grupo Mujer Ciudad de la Costa
Magallanes y Avda. Gianattassio Km.
20100 – San José de Carrasco – Canelones
Tel.: 682 36 64 – Fax: 682 01 88
leonores@adinet.com.uy

Instituto Mujer y Sociedad
Juan Manuel Blanes 1231 – Montevideo
Tel./Fax: 409 36 31
insmujer@adinet.com.uy

Mujer Ahora
San José 1436 – Montevideo
Tel./Fax: 903 90 19
mujerahora@adinet.com.uy

Mujeres Las Piedras
Soca 650 – Las Piedras - Canelones
Tel.: 365 10 09
mujerlaspiedras@hotmail.com

PLEMUU – Plenario de Mujeres del
Uruguay
Avda. Uruguay 1555 – Montevideo
Tels.: 401 74 70 – 408 05 56
plemuu@montevideo.com.uy

Part II. Recognition and enforcement of foreign civil protection orders

6. In the experience of your organisation / in your professional experience, have you encountered problems of persons who are protected by a civil protection order in one State having this foreign protection order recognised and / or enforced in another State?
- YES
 NO
 Not in a position to know
- If YES, please describe:

Part III. Views on a potential international convention in this area

7. Are there other situations of which you are aware where a new international Convention, which may include an international co-operation system, may be helpful to victims or potential victims of behaviours commonly covered by civil protection orders (e.g., domestic violence, stalking, etc.), for instance, in order to share information among national authorities across international boundaries, to provide information to at-risk persons regarding international travel, to help ensure a civil protection order will be recognised and enforced abroad, etc.?

- YES
 NO
 Not in a position to know
- Comments:

8. If the Hague Conference were to develop a new international Convention in this area, in your view what would be the most desirable features of this new instrument? (Please check all which apply.)
- Immediate, *prima facie*, enforceability of foreign civil protection orders by enforcement officials
 - An international civil protection order multilingual certificate which must be applied for in the State of origin in order to be internationally enforceable
 - Co-operative mechanisms including an international database registering enforceable civil protection orders
 - A Convention which covers civil protection orders issued by courts and by administrative and other authorities
 - A Convention that provides that enforcement officers have liability protection for good faith actions
 - A Convention which addresses a broad scope of types of civil protection orders (e.g., including those addressing the types of behaviours listed in Question 10, below)
 - Other features. Please specify: benefit of litigating without costs

Further comments:

9. If the Hague Conference were to develop a new international Convention in this area, in your view which behaviours / situations should be covered or targeted by such a Convention? (Please check all which apply.)
- Domestic violence
 - Sexual assault
 - Dating violence
 - Stalking
 - Forced marriage
 - So-called "honour crimes"
 - Human trafficking
 - All of the above
 - Other behaviours / situations. Please specify:

Please provide any comments on your above choices:

10. Are you / is your organisation of the view that the Hague Conference should develop a new international Convention (or other mechanisms) for the recognition and enforcement of foreign civil protection orders (*i.e.*, so that a person protected by a protection order in one State can quickly have that order recognised and enforced in a foreign State)?

YES

NO

Not in a position to know

Comments:

11. If desired, please give any comments the models described in [Preliminary Document No 7](#) (Section 4)⁴ or on any other existing model for a possible future Convention in this field (*e.g.*, based on current national or regional instruments or otherwise):

12. Please attach any other information or resource documents to this Questionnaire which you consider may be useful for the current assessment.

⁴ See Permanent Bureau, Prel. Doc. No 7, *supra*, note 2.