

**SYNTHÈSE ET COMPILATION DES RÉPONSES AU QUESTIONNAIRE SUR LA FAISABILITÉ
D'UN PROTOCOLE À LA CONVENTION DE LA HAYE DU 23 NOVEMBRE 2007
SUR LE RECOUVREMENT INTERNATIONAL DES ALIMENTS DESTINÉS AUX ENFANTS
ET À D'AUTRES MEMBRES DE LA FAMILLE CONSACRÉ AU RECOUVREMENT INTERNATIONAL
DES ALIMENTS DESTINÉS AUX PERSONNES VULNÉRABLES**

établi par le Bureau Permanent

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**SUMMARY AND COMPILATION OF RESPONSES TO THE QUESTIONNAIRE ON THE
FEASIBILITY OF DEVELOPING A PROTOCOL TO THE HAGUE CONVENTION OF
23 NOVEMBER 2007 ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER
FORMS OF FAMILY MAINTENANCE TO DEAL WITH THE INTERNATIONAL RECOVERY OF
MAINTENANCE IN RESPECT OF VULNERABLE PERSONS**

drawn up by the Permanent Bureau

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de la Commission spéciale de novembre 2009 sur la mise en œuvre de
la Convention de 2007 sur le recouvrement des aliments et
du Protocole de 2007 sur la loi applicable aux obligations alimentaires*

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of the Special Commission of November 2009 on the implementation of
the 2007 Child Support Convention and of
the 2007 Protocol on the Law Applicable to Maintenance Obligations*

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Introduction

1. The issue of the application of the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* ("the 2007 Child Support Convention") to vulnerable persons was raised during the Twenty-First Session of the Hague Conference on Private International Law. According to some delegations, the 2007 Child Support Convention should have been applicable in its entirety on a mandatory basis to maintenance in respect of vulnerable persons. However, other delegations were not ready to accept this proposal without examining its full implications. There was not enough time to do so during the Session; which explains Recommendation No 9 of the Final Act of the Twenty-First Session.¹

2. In light of this recommendation, the 2008 Council on General Affairs and Policy of the Hague Conference invited the Permanent Bureau to prepare a questionnaire on the feasibility of developing a protocol to the 2007 Child Support Convention to deal with the international recovery of maintenance in respect of vulnerable persons.² It was recommended and concluded that the responses should be submitted for discussion to the 2009 Special Commission on the implementation of that Convention and a report made to the Council for its meeting of 2010.

3. Before providing a summary of the responses, it is appropriate to recall the definition of "vulnerable person" under the 2007 Child Support Convention. Article 3 *f*) states that " 'vulnerable person' means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself".

4. The summary will follow the order of the questionnaire and start by analysing the replies regarding (A) maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention, followed by (B) maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States and ending with (C) maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention.

(A) Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention

Persons under 21 (or 18) years

5. A clear majority of responses³ indicated that the respective laws do not provide specifically for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 (or 18) years. The main reason given is that the

¹ Recommendation No 9 of the Final Act of the Twenty-First Session of the Hague Conference on Private International Law, 23 November 2007, provides that: "The Twenty-First Session [...] [r]ecommends that the Council on General Affairs and Policy should consider as a matter of priority the feasibility of developing a Protocol to the *Hague Convention [of 23 November 2007] on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the international recovery of maintenance in respect of vulnerable persons. Such a Protocol would complement and build upon the *Hague Convention of 13 January 2000 on the International Protection of Adults*."

² See "Questionnaire on the Feasibility of Developing a Protocol to the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* to deal with the International Recovery of Maintenance in Respect of Vulnerable Adults", Prel. Doc. No 1 of May 2009 for the attention of the Special Commission of November 2009 on the Implementation of the 2007 Child Support Convention and of the 2007 Protocol on Applicable Law.

³ This study is based on answers received up to 22 October 2009 from Albania, Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, China, China (Hong Kong SAR), China (Macao SAR), Croatia, Cyprus, Czech Republic, Dominican Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Israel, Ireland, Japan, Latvia, Lithuania, Malaysia, Mexico, Monaco, The Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America, and the European Commission (for questions 3, 8, 11 and 14).

laws provide for maintenance obligations for every person under the age of majority, regardless of whether the person is vulnerable or not.

6. When asked whether any special rule should be added to the 2007 Child Support Convention by way of protocol with regard to maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 (or 18) years, the majority of responding States explained that no special rule could be identified. However, one jurisdiction expressed concern about differentiating between minors and persons who are subject to a regime of legal incapacity.⁴

Spouses

7. A significant majority of responding States reported that their laws do not provide specifically for maintenance obligations for a spouse towards a vulnerable spouse.

8. States that developed further their answers explained that their legislation provides for mutual spousal support regardless of the vulnerability of the spouses during the marriage.⁵

9. In case of dissolution of marriage, the situation appears to be different. Some States only require that the need for maintenance be proven regardless of vulnerability.⁶ One State requires a link between the vulnerability and the failure of the marriage.⁷ Another State explained that maintenance for a vulnerable spouse is granted only in exceptional cases.⁸ Finally, another State indicated that after the dissolution of marriage, the ex-spouse does not have an obligation to support the vulnerable ex-spouse as the responsibility to support vulnerable persons is one that belongs to the State.⁹

10. When asked whether any special rule should be added to the 2007 Child Support Convention by way of protocol with regard to maintenance obligations for a spouse towards a vulnerable spouse, the majority of responding States explained that no special rule could be identified. One State thought it would be beneficial to add a rule to provide assistance to a vulnerable spouse during divorce proceedings in order to ensure equality of financial strength between the divorcing spouses.¹⁰ Another State added that the question of non-married partners could also be addressed.¹¹

(B) Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States

11. The majority of responding States reported that their laws do not provide specifically for maintenance obligations for vulnerable persons arising from family relationships, parentage, marriage or affinity. More than half of the responding States indicated that there is no specific rule for all of these four categories under their laws. On the other hand, four States answered positively for all four categories.¹²

12. Where maintenance obligations exist in these cases, the reason given for not providing a specific rule for vulnerable persons is that maintenance obligations are

⁴ China (Macao SAR).

⁵ Unless otherwise specified, please note that any reference to "marriage" (and other related terminology such as "married") also includes reference to civil union and cohabitation.

⁶ Argentina, Australia, Brazil and Switzerland.

⁷ Canada (Quebec).

⁸ Slovakia.

⁹ New Zealand.

¹⁰ South Africa.

¹¹ Canada (Manitoba).

¹² Albania, Croatia, Malaysia and Paraguay.

regulated regardless of a person's capacity. The right to maintenance is based on the needs and means of a person.

13. One obligation recognised in a number of countries is that of a person to provide support for his or her parents when the latter are unable to do support themselves.

14. The clear majority of States that responded to the questionnaire have not yet determined whether they intend to extend the application of the whole or any part of the 2007 Child Support Convention to maintenance obligations in respect of vulnerable persons arising from a family relationship, parentage, marriage or affinity. Only two responding States indicated that they would not extend the application accordingly¹³ while five States indicated that they would do so.¹⁴ Among the latter States, three specified that they would extend the whole 2007 Child Support Convention to all four categories,¹⁵ one indicated that it would also extend the whole 2007 Child Support Convention to all categories save affinity¹⁶ and one would extend it for family relationship and parentage only.¹⁷

15. When asked whether any special rule should be added to the 2007 Child Support Convention by way of protocol with regard to maintenance obligations for vulnerable persons arising from family relationships, parentage, marriage or affinity, not many States replied. The majority of those that replied said that there was no need for a protocol since the Convention itself was flexible giving the possibility to extend its protection to vulnerable persons. Two States¹⁸ indicated that a rule could be added regarding maintenance obligations of a parent towards a child over the age of majority where the latter suffers from an impairment even when the impairment occurs after the age of majority.

16. One jurisdiction, without providing an answer to the question, expressed concern once more about differentiating between persons who are subject to a regime of legal incapacity.¹⁹

(C) Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention

17. The vast majority of responding States reported that their laws do not provide specifically for maintenance obligations which do not arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons.

18. When asked to identify categories of maintenance obligations towards vulnerable persons which at the moment cannot be brought within the scope of the 2007 Child Support Convention, half of the responding States replied. A few States indicated that no such category could be identified in their State.²⁰ A dozen responding States named the following categories: parties to a paternity dispute,²¹ parties of a stable relationship (including same-sex relationships),²² pregnant women,²³ guardians responsible towards orphaned children or incapacitated adults,²⁴ State assistance to persons with

¹³ Monaco and the United States of America.

¹⁴ Argentina, Brazil, Chile, Paraguay and South Africa.

¹⁵ Argentina, Brazil and Paraguay.

¹⁶ South Africa.

¹⁷ Chile.

¹⁸ Chile and Greece.

¹⁹ China (Macao SAR)

²⁰ Finland, France, the Netherlands, Slovenia, Sweden, the United Kingdom and the United States of America.

²¹ South Africa.

²² Brazil.

²³ Brazil.

²⁴ Spain.

disabilities,²⁵ and debtors of non-contractual obligations where the creditor sustained bodily injuries from an unlawful act and cannot support him / herself.²⁶

19. When asked whether any special rule should be added to the 2007 Child Support Convention by way of protocol with regard to maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the 2007 Child Support Convention, only a few States replied and indicated that no special rule could be added by way of protocol. Only one State observed that child support should be extended to children above the age of majority where the child is attending school at tertiary level and to disabled persons over the age of majority.²⁷

(D) General questions

20. A great majority of responding States do not have bilateral, regional or international agreements in place that deal specifically with maintenance obligations in respect of vulnerable persons but do have instruments which apply to them incidentally and within the limits of each instrument's scope. For the few States²⁸ which indicated that they do have such agreements, the categories of maintenance obligations towards vulnerable persons which fall within the relevant agreements are: spousal support, child support for persons over the age of majority and support for parents from their child.

Conclusion

21. Out of the 46 responses to the questionnaire, eight²⁹ are to the effect that there is a need to develop a protocol to deal with the international recovery of maintenance in respect of a vulnerable person. Overall, the objective would be to protect the dependent child over the age of majority, the vulnerable spouse and the incapacitated adult. On the other hand, 38 responses to the questionnaire are to the effect that there is no need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons. It is the view of most States that the Convention already contains sufficient flexibility, particularly within its existing provisions on scope, to allow coverage of maintenance obligations in respect of vulnerable persons.

²⁵ Brazil, Cyprus and Switzerland.

²⁶ Latvia.

²⁷ South Africa.

²⁸ Canada, Croatia, Mexico and Paraguay.

²⁹ Albania, Brazil, Canada (Nova Scotia and Saskatchewan), Chile, China (Macao SAR), Croatia, Dominican Republic and South Africa.

ANNEXE / ANNEX

(A) <u>Obligations alimentaires à l'égard des personnes vulnérables relevant du champ d'application obligatoire de la Convention</u>	(A) <u>Maintenance obligations in respect of vulnerable persons which come within the compulsory scope of the Convention</u>
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1) <u>Le droit de votre État / Organisation prévoit-il <u>expressément</u> des obligations alimentaires découlant de relations parent-enfant envers une personne vulnérable âgée de moins de 21 ans (ou 18 ans) ?</u>	1) Does the law of your State / Organisation provide <u>specifically</u> for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years)?
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		OUI / YES	NON / NO
<i>Afrique du Sud / South Africa</i>		X	
<i>Albanie / Albania</i>		X	
<i>Allemagne / Germany</i>			X
<i>Argentine / Argentina</i>	* ¹		X
<i>Australie / Australia</i>			X
<i>Belgique / Belgium</i>			X
<i>Brésil / Brazil</i>	*		X
<i>Bulgarie / Bulgaria</i>			X
<i>Canada / Canada</i>	*	X ²	X ³
<i>Chili / Chile</i>		X	
<i>Chine / China</i>			X
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>			X
<i>Chine RAS Macao / China SAR Macao</i>	*		X
<i>Chypre / Cyprus</i>			X
<i>Croatie / Croatia</i>		X	
<i>Danemark / Denmark</i>			X
<i>Espagne / Spain</i>			X ⁴
<i>Estonie / Estonia</i>			X
<i>États-Unis d'Amérique / United States of America</i>	*	X	
<i>Finlande / Finland</i>			X
<i>France / France</i>	*		X
<i>Grèce / Greece</i>			X
<i>Hongrie / Hungary</i>		X	
<i>Irlande / Ireland</i>			X
<i>Israël / Israel</i>			X
<i>Japon / Japan</i>			X
<i>Lettonie / Latvia</i>	*		X
<i>Lituanie / Lithuania</i>			X
<i>Malaisie / Malaysia</i>	*	X	
<i>Mexique / Mexico</i>		X	
<i>Monaco / Monaco</i>		X	
<i>Norvège / Norway</i>			X
<i>Nouvelle-Zélande / New Zealand</i>	*	X	
<i>Paraguay / Paraguay</i>		X	
<i>Pays-Bas / the Netherlands</i>			X
<i>Pologne / Poland</i>			X

¹ Un astérisque (*) indique que de plus amples informations se trouvent dans l'appendice de cette annexe. An asterisk (*) indicates that further information is provided in the appendix to this annex.

² *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario, Québec / Quebec.*

³ *Nouvelle Écosse / Nova Scotia, Saskatchewan / Saskatchewan.*

⁴ But in cases of guardianship.

<i>Portugal / Portugal</i>	*		X
<i>République dominicaine / Dominican Republic</i>	*	X	
<i>République tchèque / Czech Republic</i>	*		X
<i>Roumanie / Romania</i>		X	
<i>Royaume-Uni / United Kingdom</i>	*		X
<i>Slovaquie / Slovakia</i>			X
<i>Slovénie / Slovenia</i>	*		X
<i>Suède / Sweden</i>			X
<i>Suisse / Switzerland</i>	*		X
<i>Turquie / Turkey</i>			X

2) <i>Le droit de votre État / Organisation prévoit-il <u>expressément</u> des obligations alimentaires d'un conjoint envers un conjoint vulnérable ?</i>	2) Does the law of your State / Organisation provide <u>specifically</u> for maintenance obligations for a spouse towards a vulnerable spouse?
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		OUI / YES	NON / NO
<i>Afrique du Sud / South Africa</i>		X	
<i>Albanie / Albania</i>		X	
<i>Allemagne / Germany</i>			X
<i>Argentine / Argentina</i>	*		X
<i>Australie / Australia</i>			X
<i>Belgique / Belgium</i>			X
<i>Brésil / Brazil</i>	*		X
<i>Bulgarie / Bulgaria</i>			X
<i>Canada / Canada</i>	*	X ⁵	X ⁶
<i>Chili / Chile</i>			X
<i>Chine / China</i>			X
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>			X
<i>Chine RAS Macao / China SAR Macao</i>	*		X
<i>Chypre / Cyprus</i>			X
<i>Croatie / Croatia</i>		X	
<i>Danemark / Denmark</i>			X
<i>Espagne / Spain</i>			X ⁷
<i>Estonie / Estonia</i>		X	
<i>États-Unis d'Amérique / United States of America</i>	*	X	
<i>Finlande / Finland</i>	*		X ⁸
<i>France / France</i>	*		X
<i>Grèce / Greece</i>			X
<i>Hongrie / Hungary</i>		X	
<i>Irlande / Ireland</i>			X
<i>Israël / Israel</i>			X
<i>Japon / Japan</i>			X
<i>Lettonie / Latvia</i>			X
<i>Lituanie / Lithuania</i>		X	
<i>Malaisie / Malaysia</i>	*	X	
<i>Mexique / Mexico</i>		X	
<i>Monaco / Monaco</i>		X	
<i>Norvège / Norway</i>			X
<i>Nouvelle-Zélande / New Zealand</i>	*	X	

⁵ *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario, Québec / Quebec.*

⁶ *Nouvelle Écosse / Nova Scotia, Saskatchewan / Saskatchewan.*

⁷ But in cases of guardianship.

⁸ Not specifically.

<i>Paraguay / Paraguay</i>		X	
<i>Pays-Bas / the Netherlands</i>			X
<i>Pologne / Poland</i>			X
<i>Portugal /Portugal</i>			X
<i>République dominicaine / Dominican Republic</i>			X
<i>République tchèque / Czech Republic</i>			X
<i>Roumanie / Romania</i>		X	
<i>Royaume-Uni / United Kingdom</i>	*		X
<i>Slovaquie / Slovakia</i>	*		X
<i>Slovénie / Slovenia</i>	*		X
<i>Suède / Sweden</i>			X
<i>Suisse / Switzerland</i>	*		X
<i>Turquie /Turkey</i>			X

<p>3) <i>Veillez indiquer toute règle spécifique qu'il faudrait éventuellement ajouter à la Convention de 2007 sur le recouvrement des aliments au moyen d'un protocole, en ce qui concerne les obligations alimentaires : a) découlant d'une relation parent-enfant à l'égard d'une personne vulnérable âgée de moins de 21 ans (ou 18 ans) ; ou b) d'un conjoint envers un conjoint vulnérable⁹ :</i></p>	<p>3) Can you please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to maintenance obligations: a) arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years); or, b) for a spouse towards a vulnerable spouse¹⁰:</p>
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Afrique du Sud / South Africa

a) In the Republic of South Africa the maintenance obligation arising from a parent –child relationship towards a vulnerable person applies to a child of 18 years and/or beyond the age of 18 years. It extends until the person maintained is self-supportive and is further dependent on the need for further support based on evidence or motivation for maintenance support.

b) It might be necessary to add an equivalent or similar section providing for the maintenance of spouse in terms of the Spousal Maintenance legislation and /or the equivalent rule to Rule 43 of the Uniform Rules of the High Court in relation to maintenance of a spouse pending litigation of divorce to provide for allowance and assistance to vulnerable spouse to litigate at the same strength as the spouse with financial strength.

Australie / Australia

a) Australia would not need any special rules to be established by way of a protocol in regard to the maintenance of a vulnerable person under 21 years of age. In Australia, maintenance obligations for children are treated in the same way whether or not the child is vulnerable.

An Australian Child Support Assessment may be departed from in certain special circumstances, including where the child has special needs due to a disability or other vulnerability. Such a departure decision will simply override the assessment – the new assessment will have the same effect and enforceability as the preceding assessment. In

⁹ Les États suivants n'ont pas répondu à cette question: l'Albanie, l'Argentine, la Chine, la Chine RAS Hong Kong, Chypre, la Croatie, le Japon, la Malaisie, le Mexique, Monaco, la Norvège, la Suisse et la Turquie.

¹⁰ The following States did not answer this question: Albania, Argentina, China, China SAR Hong Kong, Cyprus, Croatia, Japan, Malaysia, Mexico, Monaco, Norway, Switzerland and Turkey.

our view, the departure decision, taking account of the disability or vulnerability, should be enforceable by other contracting states.

b) Australia would not need any special rules to be established by way of a protocol in regard to the maintenance of a vulnerable spouse. In Australia, spousal maintenance obligations are treated in the same way whether or not the spouse is vulnerable.

In Australia, spousal maintenance obligations are determined by a court. A court may take the spouses vulnerability into account when making the order and determining the amount payable, however, once the order is made, it is treated similarly to any other spousal maintenance order, and is therefore enforceable both domestically and under the Convention.

Brésil / Brazil

We were not able to identify any special rule which should be added to the 2007 Child Support Convention with regard to maintenance obligations in these cases.

Canada / Canada

[*Manitoba / Manitoba*]

a) *relation parent – enfant : la « personne vulnérable » doit être :*
 i) *à la charge du parent qui cherche à obtenir ou faire exécuter une obligation alimentaire;*
 ii) *ne pas pouvoir, pour cause notamment de maladie ou d'invalidité, cesser d'être à la charge du parent ou subvenir à ses propres besoins.*
(tiré de l'art. 35.1 de la Loi sur l'obligation alimentaire du Manitoba et de l'art. 2 de la Loi sur le divorce du Canada)

b) *obligation envers un époux vulnérable :*
 - *prendre en compte la situation des « conjoints » de fait;*
 - *relier le statut de « personne vulnérable » du créancier de l'obligation alimentaire au mariage ou à la relation ainsi qu'à son état de dépendance financière continue.*

a) parent-child relationship: the "vulnerable person" must be:
 i) under the charge of the parent seeking to enforce or establish a maintenance obligation; and
 ii) unable to withdraw from the charge of this parent or to obtain the necessities of life by reason of illness, disability, or other cause.
(derived from s. 35.1 Family Maintenance Act of Manitoba and s. 2 of the Divorce Act of Canada)

b) obligation towards a vulnerable spouse:
 - address whether "spouse" includes non-married partners
 - link between the creditor's "vulnerable" status and the marriage/relationship and a continuing financial dependence.

[*Ontario / Ontario*]

a) *L'article 31 de la Loi sur le droit de la famille de l'Ontario est libellé de la façon suivante :*

Obligation alimentaire du père et de la mère

31. (1) Le père et la mère sont tenus de fournir des aliments à leur enfant non marié qui est mineur ou qui suit un programme d'études à temps plein, dans la mesure de leurs capacités. L.R.O. 1990, chap. F.3, par. 31 (1); 1997, chap. 20, art. 2.

(2) L'obligation prévue au paragraphe (1) ne s'applique pas à l'enfant de seize ans ou plus qui s'est soustrait à l'autorité parentale. L.R.O. 1990, chap. F.3, par. 31 (2).

En Ontario, aux fins d'application de l'article 31(1) de la Loi sur le droit de la famille, la majorité est atteinte à l'âge de 18 ans.

L'article 2 de la Loi sur le Divorce du Canada est libellé de la façon suivante :

« enfant à charge » *Enfant des deux époux ou ex-époux qui, à l'époque considérée, se trouve dans une des situations suivantes :*

a) il n'est pas majeur et est à leur charge;

b) il est majeur et est à leur charge, sans pouvoir, pour cause notamment de maladie ou d'invalidité, cesser d'être à leur charge ou subvenir à ses propres besoins.

En Ontario, aux fins d'application de la Loi sur le divorce, la majorité est atteinte à l'âge de 18 ans.

b) L'article 30 de la Loi sur le droit de la famille de l'Ontario est libellé de la façon suivante :

Obligation alimentaire des conjoints

30. Chaque conjoint est tenu de subvenir à ses propres besoins et à ceux de son conjoint, dans la mesure de ses capacités et des besoins.

Sont reconnues comme étant des conjoints au sens de la Loi sur le droit de la famille, deux personnes qui sont mariées ensemble ou encore, deux personnes qui ne sont pas mariées ensemble et qui ont cohabité, selon le cas :

a) de façon continue pendant au moins trois ans;

b) dans une relation d'une certaine permanence, si elles sont les parents naturels ou adoptifs d'un enfant.

(tiré de l'article 29 de la Loi sur le droit de la famille de l'Ontario)

a) arising from a parent-child relationship towards a vulnerable person under the age of 21 years (or 18 years); or, b) for a spouse towards a vulnerable spouse:

a) Section 31 of the *Family Law Act* of Ontario provides as follows:

Obligation of parent to support child

31. (1) Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so. R.S.O. 1990, c. F.3, s. 31 (1); 1997, c. 20, s. 2.

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. R.S.O. 1990, c. F.3, s. 31 (2).

The age of majority in Ontario for the purposes of subsection 31(1) is 18.

Section 2 of the *Divorce Act* of Canada provides as follows:

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

(a) is under the age of majority and who has not withdrawn from their charge, or

(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life

The age of majority in Ontario for the purposes of the *Divorce Act* is 18.

b) Section 30 of the *Family Law Act* of Ontario provides as follows:

Obligation of spouses for support

30. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

The definition of spouse for the purposes of spousal support in the *Family Law Act* is two persons who are married to each other, and in addition, includes either of two persons who are not married to each other and have cohabited,

- (a) continuously for a period of not less than three years, or
- (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

(derived from Section 29 of the *Family Law Act* of Ontario)

Chili / Chile

- a) The child support or maintenance must enable the beneficiary to subsist modestly according to his or her social status. The child support or maintenance is owed only in the part that the beneficiary's means unable him or her to subsist by his or her own.
- b) The child support or maintenance owed by provision of the law, is meant to be granted for the whole life of the beneficiary or creditor, if the circumstances that founded the claim continue. The child support granted by a sentence to the descendants is granted beyond the age of 21 years if they are affected by a physical or mental impairment or inability that impedes them to subsist by their own.

Chine RAS Macao / China SAR Macao

- a) From the view point of the Macao SAR legal system, the interest of adding rules to the Convention on maintenance obligations arising from a parent–child relationship towards vulnerable persons under the age of 21/18 years seems reduced.

Nevertheless, it could be of interest to consider rules on maintenance obligations towards vulnerable persons, regardless of their age and of the relationship from which such obligations derive (or, at least, not just from parent–child relationships).

Indeed, strictly within the scope of maintenance obligations, we fail to perceive reasons to differentiate between children and persons who, in numerous jurisdictions (if not in most of them), are subject to a regime of legal incapacity analogous to that of children, or to make distinctions between vulnerable persons on the basis of the source of their right to maintenance.

We are aware of some of the entailed difficulties, in particular, the necessity to overcome the problems connected to the internal rules of competence – that the preconized Protocol may solve –, and to reach a common understanding on which relationships are to be covered and on the specific treatment to be given to the recovery of maintenance towards vulnerable persons.

On the issue of the relationships, we are of the opinion that it should be left as open as possible, presuming the acceptance of at least the same latitude as the Convention. However, recalling that some delegations during the negotiations of the Convention mentioned that, in their States, maintenance towards vulnerable adults is a duty of the State (or of a State body or a specific entity), and having in mind that in some other States maintenance obligations may fall upon individuals with no family, parentage, marriage or affinity relationship with the vulnerable person, it seems necessary to add a rule by means of which those legal relationships would be treated in an equivalent manner. One way of achieving that result, without changing the object/delimited relationships, would be to adjust the definition of debtor.

On the issue of the specific treatment, our perspective is that all the Convention rules applicable to children should be made applicable to vulnerable persons, as the underlying reasons of protection are the same. Therefore, the set rules providing a beneficial treatment as well as those determining restrictions to the autonomy of the parties should be adapted and included.

b) *Idem*.

Communauté européenne / European Community¹¹

As regards **questions 3, 8, 11, and 14** the answer is "no" since the Community cannot identify any special rules which might need to be added to the 2007 Child Support Convention and does not therefore consider a protocol necessary. As explained in the background note of the Questionnaire, maintenance obligations in respect of vulnerable persons come partly within the compulsory scope of the Convention and may be brought within the scope by a declaration if they arise from a family relationship, parentage, marriage or affinity. The Community does not see a need to extend this solution by a protocol at this stage taking into account that the Convention has not yet been ratified by any state.

Danemark / Denmark

The Danish delegation shares the opinion expressed by the European Community in its response of 20 July 2009 to the questionnaire.

États-Unis d'Amérique / United States of America

- a) We are not aware of any.
- b) We are not aware of any.

Mexique / Mexico

No

Nouvelle-Zélande / New Zealand

No, we have not identified any.

Paraguay / Paraguay

Our national legislation explicitly states that "the obligation to provide food that is born of family relationships includes necessary for subsistence, housing and clothing, as indispensable to the assistance of the disease". As people age receive education include the need for these things. In the same vein, the law provides that "the requesting food must, unless otherwise provided by law, which is unable to provide."

République dominicaine / Dominican Republic

a) If the forced one is an adolescent person, their parents are shared in common responsible for this obligation, and like such, they can be demanded.

¹¹ La réponse de la Communauté européenne représente la position des tous ses États membres excepté le Danemark, i.e. l'Allemagne, l'Autriche, la Belgique, la Bulgarie, Chypre, l'Espagne, l'Estonie, la Finlande, la France, la Grèce, la Hongrie, l'Irlande, l'Italie, la Lettonie, la Lituanie, le Luxembourg, la Malaisie, Malte, les Pays-Bas, la Pologne, le Portugal, la République tchèque, la Roumanie, le Royaume-Uni, la Slovaquie, la Slovénie et la Suède.

The answer of the EC represents the position of all of its Members except Denmark, i.e. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malaysia, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Si el obligado es una persona adolescente, sus padres son solidariamente responsables de dicha obligación, y como tales, pueden ser demandados.

b) In the cases of children's and adolescents with special necessities, physical or mental, the nourishing obligation of the father and the mother beneficiary must stay until as much the person can maintain economically by itself, has even reached most of age.

En los casos de niños, niñas y adolescentes con necesidades especiales, físicas o mentales, la obligación alimentaria del padre y la madre debe mantenerse hasta tanto la persona beneficiaria pueda sostenerse económicamente por si misma, aun haya alcanzado la mayoría de edad.

c) Are forced to provide foods of subsidiary way, in case of death of the father, mother or person in charge, the brothers or sisters of legal age, ascending by collateral order of proximity and until the third degree or, in its defect, the State, until the fulfillment of the eighteen (18) years.

Están obligados a proporcionar alimentos de manera subsidiaria, en caso de muerte del padre, madre o responsable, los hermanos o hermanas mayores de edad, ascendientes por orden de proximidad y colaterales hasta el tercer grado o, en su defecto, el Estado, hasta el cumplimiento de los dieciocho (18) años.

d) The pregnant woman will be able to demand foods with respect to the son or daughter who this to be born. It will have to provide to the gestante mother the expenses to him of pregnancy, childbirth and post-childbirth until the third month from the lighting.

La mujer embarazada podrá reclamar alimentos respecto al hijo o hija que esta por nacer. Deberá proporcionarle a la madre gestante los gastos de embarazo, parto y post-parto hasta el tercer mes a partir del alumbramiento.

Royaume-Uni / United Kingdom

a) The UK does not consider a protocol necessary.

b) The UK does not consider a protocol necessary.

<p>(B) <u>Obligations alimentaires à l'égard des personnes vulnérables auxquelles les États contractants peuvent étendre le champ d'application de la Convention</u></p>	<p>(B) <u>Maintenance obligations in respect of vulnerable persons which may be brought within the scope of the Convention by Contracting States</u></p>
<p>4) <u>Le droit de votre État / Organisation prévoit-il <u>expressément</u> des obligations alimentaires à l'égard des personnes vulnérables découlant :</u></p>	<p>4) Does the law of your State / Organisation provide <u>specifically</u>, in respect of vulnerable persons, for maintenance obligations arising from:</p>

		<i>Relations de Famille / Family Relationship</i>	<i>Filiation / Parentage</i>	<i>Marriage / Marriage</i>	<i>Aliance / Affinity</i>
<i>Afrique du Sud / South Africa</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Albanie / Albania</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>
<i>Allemagne / Germany</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Argentine / Argentina</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Australie / Australia</i>		<i>Non / No</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Belgique / Belgium</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Brésil / Brazil</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Bulgarie / Bulgaria</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Canada / Canada</i>	*	<i>Oui / Yes</i> ¹² <i>Non / No</i> ¹³	<i>Oui / Yes</i> ¹⁴ <i>Non / No</i> ¹⁵	<i>Oui / Yes</i> ¹⁶ <i>Non / No</i> ¹⁷	<i>Non / No</i> ¹⁸
<i>Chili / Chile</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Chine / China</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Chine RAS Macao / China SAR Macao</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Chypre / Cyprus</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Croatie / Croatia</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>
<i>Danemark / Denmark</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Espagne / Spain</i>		<i>Non / No</i> ¹⁹	<i>Non / No</i> ¹⁹	<i>Non / No</i> ¹⁹	<i>Non / No</i> ¹⁹
<i>Estonie / Estonia</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>États-Unis d'Amérique / United States of America</i>	*	<i>Non / No</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Finlande / Finland</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>

¹² *Manitoba/ Manitoba, Ontario / Ontario, Nouvelle Écosse / Nova Scotia.*

¹³ *Alberta / Alberta, Québec / Quebec, Saskatchewan / Saskatchewan.*

¹⁴ *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario, Québec / Quebec.*

¹⁵ *Saskatchewan / Saskatchewan.*

¹⁶ *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario, Québec / Quebec.*

¹⁷ *Saskatchewan / Saskatchewan.*

¹⁸ *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario, Québec / Quebec, Saskatchewan / Saskatchewan.*

¹⁹ But in cases of guardianship.

<i>France / France</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Grèce / Greece</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Hongrie / Hungary</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Irlande / Ireland</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Israël / Israel</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Oui / Yes</i>
<i>Japon / Japan</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Lettonie / Latvia</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Lituanie / Lithuania</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Malaisie / Malaysia</i>	*	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>
<i>Mexique / Mexico</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Monaco / Monaco</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Norvège / Norway</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Nouvelle-Zélande / New Zealand</i>	*	<i>Non / No</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Paraguay / Paraguay</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i> ²⁰
<i>Pays-Bas / the Netherlands</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Pologne / Poland</i>	*	<i>Non / No</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Portugal / Portugal</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>République dominicaine / Dominican Republic</i>	*	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>République tchèque / Czech Republic</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Roumanie / Romania</i>		<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Oui / Yes</i>	<i>Non / No</i>
<i>Royaume-Uni / United Kingdom</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Slovaquie / Slovakia</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Slovénie / Slovenia</i>	*	<i>Non / No</i>	<i>Oui / Yes</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Suède / Sweden</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>

²⁰ Fathers-in-law, daughter and son-in-law.

<i>Suisse / Switzerland</i>	*	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>
<i>Turquie / Turkey</i>		<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>	<i>Non / No</i>

<i>5) Votre État / Organisation prévoit-il / elle d'étendre tout ou partie de la Convention à des obligations alimentaires découlant de relations de famille, de filiation, de mariage ou d'alliance qui comprendraient les personnes vulnérables ?</i>	<i>5) Does your State / Organisation intend to extend the application of the whole or any part of the Convention to maintenance obligations arising from a family relationship, parentage, marriage or affinity which would include vulnerable persons?</i>
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		<i>OUI / YES</i>	<i>NON / NO</i>	<i>Reste à déterminer / Not yet determined</i>
<i>Afrique du Sud / South Africa</i>		X		
<i>Albanie / Albania</i>				X
<i>Argentine / Argentina</i>		X		
<i>Australie / Australia</i>				X
<i>Brésil / Brazil</i>		X		
<i>Canada / Canada</i>	*			X ²¹
<i>Chili / Chile</i>		X		
<i>Chine / China</i>				X
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>				X
<i>Chine RAS Macao / China SAR Macao</i>	*			X
<i>Communauté européenne / European Community</i>	*			X
<i>Croatie / Croatia</i>				X
<i>Danemark / Denmark</i>	*			X
<i>États-Unis d'Amérique / United States of America</i>			X	
<i>Israël / Israel</i>			X	
<i>Japon / Japan</i>				X
<i>Malaisie / Malaysia</i>				X
<i>Mexique / Mexico</i>				X
<i>Monaco / Monaco</i>			X	
<i>Norvège / Norway</i>				X
<i>Nouvelle-Zélande / New Zealand</i>				X
<i>République dominicaine / Dominican Republic</i>				X
<i>Paraguay / Paraguay</i>		X		
<i>Suisse / Switzerland</i>				X
<i>Turquie / Turkey</i>				X

²¹ *Alberta / Alberta, Manitoba / Manitoba, Nouvelle Écosse / Nova Scotia, Ontario / Ontario, Québec / Quebec, Saskatchewan / Saskatchewan.*

<p>6) Si vous avez répondu OUI à la Question 5), veuillez indiquer la ou les relations qui comprendraient les personnes vulnérables et auxquelles vous étendriez la Convention :</p>	<p>6) If you replied YES to Question 5), please indicate the relationship(s), which would include vulnerable persons, to which you would extend the Convention:</p>
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		<i>Relations de Famille / Family Relationship</i>	<i>Filiation / Parentage</i>	<i>Marriage / Marriage</i>	<i>Aliance / Affinity</i>
<i>Afrique du Sud / South Africa</i>		X	X	X	
<i>Albanie / Albania</i>		N.A.			
<i>Argentine / Argentina</i>		X	X	X	X
<i>Brésil / Brazil</i>		X	X	X	X
<i>Canada / Canada</i>	*		X ²²		
<i>Chili / Chile</i>		X	X		
<i>Chine / China</i>		N.A.			
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>		N.A.			
<i>Chine RAS Macao / China SAR Macao</i>	*	X	X	X	X
<i>Communauté européenne / European Community</i>		N.A.			
<i>Croatie / Croatia</i>		N.A.			
<i>Danemark / Denmark</i>		N.A.			
<i>États-Unis d'Amérique / United States of America</i>		N.A.			
<i>Japon / Japan</i>		N.A.			
<i>Malaisie / Malaysia</i>		N.A.			
<i>Mexique / Mexico</i>		N.A.			
<i>Monaco / Monaco</i>		N.A.			
<i>Norvège / Norway</i>		N.A.			
<i>Nouvelle- Zélande / New Zealand</i>		N.A.			
<i>Paraguay / Paraguay</i>		X	X	X	X
<i>Suisse / Switzerland</i>		N.A.			
<i>Turquie / Turkey</i>		N.A.			

²² Québec / Quebec.

<p>7) Si vous avez répondu OUI à la Question 5), veuillez indiquer les parties de la Convention auxquelles vous étendriez les relations indiquées à la Question 6) :</p>	<p>7) If you replied YES to Question 5), please indicate the parts of the Convention to which you would extend the relationship(s) identified in Question 6):</p>
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	<i>La Convention en son intégralité / the whole Convention</i>	<i>La Convention en son intégralité, à l'exception des Chapitres II et III / The whole Convention, with the exception of Chapters II and III</i>	<i>Autre / Other</i>
<i>Afrique du Sud / South Africa</i>	X		
<i>Albanie / Albania</i>	N.A.		
<i>Argentine / Argentina</i>	X		
<i>Brésil / Brazil</i>	X		
<i>Canada / Canada</i>	X ²³		
<i>Chili / Chile</i>	X		
<i>Chine / China</i>	N.A.		
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>	N.A.		
<i>Chine RAS Macao / China SAR Macao</i>	"Not yet determined."		
<i>Communauté européenne / European Community</i>	N.A.		
<i>Croatie / Croatia</i>	N.A.		
<i>Danemark / Denmark</i>	N.A.		
<i>États-Unis d'Amérique / United States of America</i>	N.A.		
<i>Japon / Japan</i>	N.A.		
<i>Malaisie / Malaysia</i>	N.A.		
<i>Mexique / Mexico</i>	N.A.		
<i>Monaco / Monaco</i>	N.A.		
<i>Norvège / Norway</i>	N.A.		
<i>Nouvelle-Zélande / New Zealand</i>	N.A.		
<i>Paraguay / Paraguay</i>	X		
<i>Suisse / Switzerland</i>	N.A.		
<i>Turquie / Turkey</i>	N.A.		

²³ Québec / Quebec.

8) *Veillez identifier toute règle spécifique qu'il faudrait éventuellement ajouter à la Convention de 2007 sur le recouvrement des aliments au moyen d'un protocole, en ce qui concerne les obligations alimentaires envers les personnes vulnérables auxquelles le champ d'application de la Convention peut être étendu²⁴ :*

8) Please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to those maintenance obligations in respect of vulnerable persons which are capable of being brought within the scope of the Convention²⁵:

Afrique du Sud / South Africa

There would be a need to extend the rules on vulnerable children over the age of 21 years who require maintenance support where the need to be supported exists. The rule should cover persons whose physical disability renders them perpetually dependant to their parents due to the nature of their disability. This should include persons with mental health difficulty.

Australie / Australia

In respect to Australia, it is unlikely that, for the purposes of the Convention, we will be expanding our domestic legislation specifically regarding vulnerable persons. Any maintenance orders made for vulnerable persons will be made under the legislation that applies to child support and spousal maintenance generally. The court may simply take into account the fact that the child or spouse is vulnerable when determining the amount payable under the order. In respect to children over the age of 18, the court may take into account the fact the child is vulnerable when determining that child support should continue to be payable beyond the child's birthday (otherwise child support will cease when the child turns 18).

It is unknown as yet whether Australia intends to extend the scope of the Convention to specifically address vulnerable persons, so it is difficult to comment on what would be required in a protocol. In our view, those States that are intending to specifically address vulnerable persons, and extend the scope of the Convention to include such persons, would be better suited to comment on this issue.

It is also possible that, if Australia was to extend the scope of the Convention, that extension could be quite limited. For example, Australia might extend the scope of the Convention to maintenance obligations for vulnerable persons arising from parentage relationships. If that were to occur it is likely that the whole Convention might apply, for the reason that once the registration is accepted, we would treat the liability in the same way as other maintenance liabilities.

Chili / Chile

The child support or maintenance must enable the beneficiary to subsist modestly according to his or her social status.

The child support or maintenance is owed only in the part that the beneficiary's means unable him or her to subsist by his or her own.

The child support or maintenance owed by provision of the law, is meant to be granted for the whole life of the beneficiary or creditor, if the circumstances that founded the claim continue.

²⁴ Les États suivants n'ont pas répondu à cette question: l'Albanie, l'Argentine, le Canada, la Chine, la Chine RAS Hong Kong, la Croatie, le Japon, la Malaisie, le Mexique, Monaco, la Norvège, la Nouvelle-Zélande, la Suisse et la Turquie.

²⁵ The following States did not answer this question: Albania, Argentina, Canada, China, China SAR Hong Kong, Croatia, Japan, Malaysia, Mexico, Monaco, Norway, New Zealand, Switzerland and Turkey.

The child support or maintenance granted to the descendants or to a brother or sister is granted beyond the age of 21 years if they are affected by a physical or mental impairment or inability that impedes them to subsist by their own or a judge considers it essential for the beneficiary's subsistence.

Child support or maintenance should be granted, at least, to descendants or between spouses, even if the reason of impairment was caused after the beneficiary reaches the age of 21 years.

Chine RAS Macao / China SAR Macao

Please refer to the response to question 3/a).

Communauté européenne / European Community

As regards **questions 3, 8, 11, and 14** the answer is "no" since the Community cannot identify any special rules which might need to be added to the 2007 Child Support Convention and does not therefore consider a protocol necessary. As explained in the background note of the Questionnaire, maintenance obligations in respect of vulnerable persons come partly within the compulsory scope of the Convention and may be brought within the scope by a declaration if they arise from a family relationship, parentage, marriage or affinity. The Community does not see a need to extend this solution by a protocol at this stage taking into account that the Convention has not yet been ratified by any state.

Danemark / Denmark

See the response to question 3.

États-Unis d'Amérique / United States of America

Article 2(3) states that a Contracting State may declare that it will extend the application of "the whole or any part" of the Convention to other maintenance obligations. Given this flexibility, we do not believe that any additional special rules are needed.

Grèce / Greece

An obligation of a parent towards a child over the age of 18 years where an impairment and an obligation arise before that age in cases other than those covered by Article 37(3).

Israël / Israel

In our view, the scope of the convention should include a maintenance obligation toward a vulnerable child over the age of 21 and an obligation arising from a spousal relationship with the parent of a vulnerable child that lived together with them, regardless if the child was vulnerable before the establishment of the spousal relationship.

Paraguay / Paraguay

You should add the categories to which would be taken into account in determining what is considered "food". In this sense, Paraguayan law to be covered include everything necessary for subsistence, food and clothing, as essential to assist in disease, for persons in age of receive education, you need to include these costs.

Royaume-Uni / United Kingdom

- a) The UK does not consider a protocol necessary.
b) The UK does not consider a protocol necessary.

(C) <u>Obligations alimentaires à l'égard des personnes vulnérables auxquelles le champ d'application de la Convention ne peut être étendu</u>	(C) <u>Maintenance obligations in respect of vulnerable persons which cannot be brought within the scope of the Convention</u>
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9) <u>Le droit de votre État / Organisation prévoit-il expressément des obligations alimentaires ne découlant pas de relations de famille, de filiation, de mariage ou d'alliance à l'égard des personnes vulnérables ?</u>	9) Does the law of your State / Organisation provide <u>specifically</u> for maintenance obligations which do not arise from a family relationship, parentage, marriage or affinity in respect of vulnerable persons?
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	OUI / YES	NON / NO
<i>Afrique du Sud / South Africa</i>		X
<i>Albanie / Albania</i>		X
<i>Allemagne / Germany</i>		X
<i>Argentine / Argentina</i>	*	X
<i>Australie / Australia</i>		X
<i>Belgique / Belgium</i>		X
<i>Brésil / Brazil</i>		X
<i>Bulgarie / Bulgaria</i>		X
<i>Canada / Canada</i>		X ²⁶
<i>Chili / Chile</i>		X
<i>Chine / China</i>		X
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>		X
<i>Chine RAS Macao / China SAR Macao</i>	*	X
<i>Chypre / Cyprus</i>	X	
<i>Croatie / Croatia</i>	X	
<i>Danemark / Denmark</i>		X
<i>Espagne / Spain</i>	X	
<i>Estonie / Estonia</i>		X
<i>États-Unis d'Amérique / United States of America</i>		X
<i>Finlande / Finland</i>		X
<i>France / France</i>	*	X
<i>Grèce / Greece</i>	X	
<i>Hongrie / Hungary</i>		X
<i>Irlande / Ireland</i>		X
<i>Israël / Israel</i>		X
<i>Japon / Japan</i>		X
<i>Lettonie / Latvia</i>	*	X
<i>Lituanie / Lithuania</i>		X
<i>Malaisie / Malaysia</i>	*	X
<i>Mexique / Mexico</i>		X
<i>Monaco / Monaco</i>		X
<i>Norvège / Norway</i>		X

²⁶ *Alberta / Alberta, Manitoba / Manitoba, Nouvelle Écosse / Nova Scotia, Ontario / Ontario, Québec / Quebec, Saskatchewan / Saskatchewan.*

<i>Nouvelle-Zélande / New Zealand</i>			X
<i>Paraguay / Paraguay</i>			X
<i>Pays-Bas / the Netherlands</i>			X
<i>Pologne / Poland</i>			X
<i>Portugal /Portugal</i>	*		X
<i>République dominicaine / Dominican Republic</i>			X
<i>République tchèque / Czech Republic</i>			X
<i>Roumanie / Romania</i>		X	
<i>Royaume-Uni / United Kingdom</i>	*		X
<i>Slovaquie / Slovakia</i>			X
<i>Slovénie / Slovenia</i>			X
<i>Suède / Sweden</i>			X
<i>Suisse / Switzerland</i>	*		X
<i>Turquie /Turkey</i>			X

<p>10) <i>Veillez identifier toute catégorie éventuelle dans votre État / Organisation d'obligation alimentaire envers les personnes vulnérables auxquelles le champ d'application de la Convention ne peut pas être étendu actuellement²⁷ :</i></p>	<p>10) Please identify any categories within your State / Organisation of maintenance obligations towards vulnerable persons which at the moment cannot be brought within the scope of the Convention²⁸:</p>
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Afrique du Sud / South Africa

Where parties to maintenance dispute paternity to a child to be supported/maintained rules must be developed within the Convention to regulate the submission to scientific paternity testing.

Allemagne / Germany

There are no categories, which cannot be brought within the scope of the convention.

Brésil / Brazil

Even though there is no specific rule on vulnerable persons, the Brazilian legislation provides that maintenance obligations are owed on several situations that do not arise from a family relationship, parentage or affinity.

- 1) Maintenance obligations arising from contact (articles 538 and 557, IV, of the Civil Code);
- 2) Maintenance obligations arising from an illicit act (articles 948m subsection II, 950 and 951 of the Civil Code)
- 3) Maintenance obligations arising from a stable relationship 9art. 7 of the Law 9.278/96)
- 4) Maintenance obligations towards a pregnant woman (Law 11.804/2008)
- 5) Maintenance obligations arising from a same-sex stable relationship (Normative Instruction 25/2000, of the National Institute for Social Security – INSS)

The following category refers to maintenance obligations that arise from a condition of vulnerability. It refers to a specific rule on behalf of the vulnerable person:

- 1) Maintenance obligation paid for by the State on behalf of persons with disabilities (art. 2, V, of the Law No. 8.742/93).

²⁷ *Les États suivants n'ont pas répondu à cette question : l'Albanie, l'Argentine, la Belgique, le Canada, le Chili, la Chine, la Chine RAS Hong Kong, la Grèce, la Hongrie, l'Irlande, le Japon, la Lituanie, la Mexique, Monaco, la Norvège, la Nouvelle-Zélande, la Pologne, la République tchèque et la Turquie.*

²⁸ The following States did not answer this question: Albania, Argentina, Belgium, Canada, Chili, China, China SAR Hong Kong, the Czech Republic, Greece, Hungary, Ireland, Japan, Lithuania, Mexico, Monaco, Norway, New Zealand, Poland and Turkey.

Bulgarie / Bulgaria

The Bulgarian legislation does not provide any provisions concerning maintenance obligations towards vulnerable persons.

Chine RAS Macao / China SAR Macao

Please refer to the responses to questions 1 and first part of 3/a).

Chypre / Cyprus

Maintenance obligations in Cyprus may be categorized to: a) public assistance in the form of money and / or services, b) foster home protection or institution for children, c) disability allowance, and d) Court order for payment of maintenance.

Croatie / Croatia

Persons in the need of guardianship for with parents have maintenance obligations.

Danemark / Denmark

See the answer to question 9.

Espagne / Spain

In cases of minors without parents taking care of them and of adults who lack legal capacity a guardian is appointed, being its main obligation that of providing maintenance.

Estonie / Estonia

Maintenance obligations arising from a parent-child relationship towards a vulnerable person over the age of 18 years; Maintenance obligations for a former spouse towards a vulnerable spouse.

États-Unis d'Amérique / United States of America

We are not aware of any.

Finlande / Finland

There is no such category.

France / France

Dans la mesure où le droit français ne tient pas compte de la vulnérabilité de la personne pour déterminer s'il existe ou non une obligation alimentaire à l'égard du demandeur d'aliments, il n'existe pas de catégorie d'obligations alimentaires auxquelles le champ d'application de la convention ne puisse être étendu actuellement.

Lettonie / Latvia

Please see the answer to Question 9.

Please see also the answer of the European Community on this question.

Malaisie / Malaysia

(i) In the questionnaire, by virtue of the inclusion of affinity the scope is extended to illegitimate child, adopted child of heterosexual parents who are not married to each

other or homosexual parents or children born out of rape. It is important to note that according to *Hukum Syarak*, where it involves a relationship that does not fall under the definition of family relationships from the Syariah perspective for reasons of illegitimacy, adoption, cohabitation or marriage which are not recognized by *Hukum Syarak*, the original rulings on maintenance obligations would not be applicable.

(ii) Under Islamic law, unlike the civil law, there is no obligation on the wife to provide maintenance to a vulnerable husband but as stated in section 60 of Act 303, the Syariah Court may order any person liable thereto according to *Hukum Syarak*, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order.

Paraguay / Paraguay

The father, the mother in law, the daughter and son-in-law, resulting from the relationship of affinity. These are currently included in national legislation, but can be held liable for its compliance to other states, must be included in the Protocol category

Pays-Bas / the Netherlands

None.

Portugal /Portugal

Please verify answer to question 9).

Roumanie / Romania

Les obligations alimentaire qui découlent de la conclusion d'un contrat de vente-achat (avec une clause d'entretien, avec un droit d'habitation etc.) d'un immeuble entre un adulte vulnérable et une personne physique ou morale.

Royaume-Uni / United Kingdom

There are no such maintenance obligations specifically towards vulnerable persons.

Slovénie / Slovenia

Under Slovenian legislation there are no categories of maintenance obligations towards vulnerable persons that could not be brought within the scope of the Convention.

Suède / Sweden

We cannot identify any categories of maintenance obligations towards vulnerable persons, which at the moment could not be brought within the scope of the Convention.

Suisse / Switzerland

Les prestations prévues au titre des assurances ou de l'aide sociale.

<p>11) Veuillez identifier toute règle spécifique qu'il faudrait éventuellement ajouter à la Convention de 2007 sur le recouvrement des aliments au moyen d'un protocole, en ce qui concerne les obligations alimentaires envers les personnes vulnérables auxquelles le champ d'application de la Convention ne peut pas être étendu actuellement²⁹ :</p>	<p>11) Please identify any special rules which may need to be added to the 2007 Child Support Convention, by way of a protocol, with regard to those maintenance obligations in respect of vulnerable persons which at the moment cannot be brought within the scope of the Convention³⁰:</p>
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Afrique du Sud / South Africa

The child support need to be extended to children above the age of 18 or 21 where the need exists more particularly if the child is still attending school at tertiary level or persons with disability over the age of 21 years as a result of their state of health.

Chine RAS Macao / China SAR Macao

Please refer to our comment to question 3/a).

Communauté européenne / European Community

As regards **questions 3, 8, 11, and 14** the answer is "no" since the Community cannot identify any special rules which might need to be added to the 2007 Child Support Convention and does not therefore consider a protocol necessary. As explained in the background note of the Questionnaire, maintenance obligations in respect of vulnerable persons come partly within the compulsory scope of the Convention and may be brought within the scope by a declaration if they arise from a family relationship, parentage, marriage or affinity. The Community does not see a need to extend this solution by a protocol at this stage taking into account that the Convention has not yet been ratified by any state.

Danemark / Denmark

See the answer to question 9.

États-Unis d'Amérique / United States of America

No special rules are necessary.

France / France

Dans la mesure où le droit français ne tient pas compte de la vulnérabilité de la personne pour déterminer s'il existe ou non une obligation alimentaire à l'égard du demandeur d'aliments, aucune règle spécifique n'est nécessaire.

Mexique / Mexico

No

²⁹ Les États suivants n'ont pas répondu à cette question: l'Albanie, l'Argentine, le Canada, le Chili, la Chine, la Chine RAS Hong Kong, la Croatie, le Japon, la Malaisie, Monaco, la Norvège, la Nouvelle-Zélande, le Paraguay, la Suisse et la Turquie.

³⁰ The following States did not answer this question: Albania, Argentina, Canada, Chili, China, China SAR Hong Kong, Croatia, Japan, Malaysia, Monaco, Norway, New Zealand, Paraguay, Switzerland and Turkey.

Royaume-Uni / United Kingdom

The UK does not consider a protocol necessary.

<u>Questions générales</u>	<u>General questions</u>
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12) <i>Votre État / Organisation a-t-il / elle mis(e) en place des accords bilatéraux, régionaux ou multilatéraux traitant <u>expressément</u> des obligations alimentaires à l'égard des personnes vulnérables ?</i>	12) Does your State / Organisation have bilateral, regional or international agreements in place that deal <u>specifically</u> with maintenance obligations in respect of vulnerable persons?
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		OUI / YES	NON / NO
<i>Afrique du Sud / South Africa</i>			X
<i>Albanie / Albania</i>			X
<i>Allemagne / Germany</i>			X
<i>Argentine / Argentina</i>			X
<i>Australie / Australia</i>			X
<i>Belgique / Belgium</i>			X
<i>Bésil / Brazil</i>			X
<i>Bulgarie / Bulgaria</i>			X
<i>Canada / Canada</i>	*	X ³¹	X ³²
<i>Chili / Chile</i>			X
<i>Chine / China</i>			X
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>			X
<i>Chine RAS Macao / China SAR Macao</i>			X
<i>Chypre / Cyprus</i>			X
<i>Communauté européenne / European Community</i>	*	X	
<i>Croatie / Croatia</i>		X	
<i>Danemark / Denmark</i>	*	X	
<i>Espagne / Spain</i>		<i>Pas de réponse/ No answer</i>	
<i>Estonie / Estonia</i>			X
<i>États-Unis d'Amérique / United States of America</i>			X
<i>Finlande / Finland</i>			X
<i>France / France</i>			X
<i>Grèce / Greece</i>			X
<i>Hongrie / Hungary</i>			X
<i>Irlande / Ireland</i>			X
<i>Israël / Israel</i>			X
<i>Japon / Japan</i>			X
<i>Lettonie / Latvia</i>			X
<i>Lituanie / Lithuania</i>			X
<i>Malaisie / Malaysia</i>	*		X
<i>Mexique / Mexico</i>		X	
<i>Monaco / Monaco</i>			X
<i>Norvège / Norway</i>			X
<i>Nouvelle-Zélande / New Zealand</i>			X
<i>Paraguay / Paraguay</i>		X	

³¹ *Alberta / Alberta, Manitoba / Manitoba, Ontario / Ontario.*

³² *Nouvelle-Écosse / Nova Scotia, Québec / Quebec, Saskatchewan / Saskatchewan.*

<i>Pologne / Poland</i>		<i>Pas de réponse/ No answer</i>	
<i>Portugal /Portugal</i>			X
<i>République dominicaine / Dominican Republic</i>		X	
<i>République tchèque / Czech Republic</i>			X
<i>Roumanie / Romania</i>			X
<i>Royaume-Uni / United Kingdom</i>			X
<i>Slovaquie / Slovakia</i>	*		X
<i>Slovénie / Slovenia</i>	*		X
<i>Suède / Sweden</i>			X
<i>Suisse / Switzerland</i>			X
<i>Turquie /Turkey</i>			X

<p>13) Si vous avez répondu OUI à la Question 12), veuillez identifier les catégories d'obligations alimentaires envers les personnes vulnérables qui relèvent du champ d'application des accords bilatéraux, régionaux ou multilatéraux qui y sont mentionnées :</p>	<p>13) If you replied YES to Question 12), please identify the categories of maintenance obligations towards vulnerable persons which fall within the scope of the bilateral, regional or international agreements referred to therein:</p>
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Afrique du Sud / South Africa

The Reciprocal Enforcement of the Maintenance Orders Act, 1963 provides for specific obligations to contracting states and non-contracting state.

Canada / Canada

[*Alberta / Alberta*]

Obligation alimentaire envers l'époux / Spousal support

[*Manitoba / Manitoba*]

Certains accords bilatéraux permettent aux enfants âgés de plus de 18 ou 20 ans qui ne sont pas indépendants sur le plan financier et certains autres accords s'appliquent aux ordonnances alimentaires au profit d'un conjoint qui n'a pas la garde d'un enfant. Ces accords peuvent ne pas mentionner précisément qu'ils s'appliquent aux obligations alimentaires à l'égard de personnes vulnérables, mais les critères servant à déterminer la dépendance financière continue permettent de conclure que le créancier de l'obligation alimentaire est une personne vulnérable au sens de la loi en vertu de laquelle l'obligation alimentaire est créée.

Some bilateral arrangements include child support for children over the age of 18 or 21 that continue to be dependent and some include spousal support alone orders. These arrangements may not specify that they include maintenance obligations for vulnerable persons but the bases for the continuing dependency may imply that the creditor is a vulnerable person in accordance with the law under which the obligation was established.

[*Ontario / Ontario*]

En vertu de la Loi de 2002 sur les ordonnances alimentaires d'exécution réciproque de l'Ontario, certains accords bilatéraux permettent aux enfants âgés de plus de 18 ans ou de plus de 20 ans qui ne sont pas indépendants sur le plan financier et certains autres accords s'appliquent aux ordonnances alimentaires au profit d'un conjoint qui n'a pas la garde d'un enfant. Ces accords peuvent ne pas mentionner précisément qu'ils

s'appliquent aux obligations alimentaires à l'égard de personnes vulnérables, mais les critères servant à déterminer la dépendance financière continue permettent de conclure que le créancier de l'obligation alimentaire est une personne vulnérable au sens de la loi dont est issue l'obligation alimentaire.

Some bilateral arrangements under the Interjurisdictional Support Orders Act, 2002 of Ontario include child support for children over the age of 18 or 21 that continue to be dependent as defined in the legislation under which the order was made and some include spousal support alone orders. These arrangements may not specifically indicate that they include these obligations for vulnerable persons; however, the obligation to provide support is determined in accordance with the law under which the obligation was established.

Croatie / Croatia

Children and parents, spouse

Danemark / Denmark

See the response to question 12

Mexique/ Mexico

Inter-American Convention on Maintenance Obligations OAS adopted in Montevideo, Uruguay on July 15, 1989, current number of countries that have ratified it, 10 for Mexico ratified the October 5, 1994.

Convention on the Rights of the Child, General Assembly of the United Nations (UNICEF) of 20 November 1989, ratified by Mexico on 21 September 1990.

Paraguay / Paraguay

The Inter-American Convention on Maintenance Obligations, ratified by Paraguay, applies to minors as such and those arising from the marital relations between spouses or those who have been such.

République dominicaine / Dominican Republic

Parents – Child and adolescence.

14) Voyez-vous la nécessité de l'élaboration d'un protocole pour traiter du recouvrement international des aliments à l'égard des personnes vulnérables ?	14) Do you see the need for the development of a protocol to deal with the international recovery of maintenance in respect of vulnerable persons?
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		OUI / YES	NON / NO	Reste à Déterminer / Not Yet Determined
<i>Afrique du Sud / South Africa</i>		X		
<i>Albanie / Albania</i>		X		
<i>Argentine / Argentina</i>			X	
<i>Australie / Australia</i>				X
<i>Brésil / Brazil</i>		X		
<i>Canada / Canada</i>	*	X ³³		X ³⁴
<i>Chili / Chile</i>		X		
<i>Chine / China</i>		<i>Pas de réponse / No answer</i>		
<i>Chine RAS Hong Kong / China SAR Hong Kong</i>		<i>"No particular views."</i>		
<i>Chine RAS Macao / China SAR Macao</i>		X		
<i>Communauté européenne / European Community</i>	*		X	
<i>Croatie / Croatia</i>		X		
<i>Danemark / Denmark</i>			X	
<i>États-Unis d'Amérique / United States of America</i>			X	
<i>Israël / Israel</i>			X	
<i>Japon / Japan</i>			X	
<i>Malaisie / Malaysia</i>			X ³⁵	
<i>Mexique / Mexico</i>			X	
<i>Monaco / Monaco</i>			X	
<i>Norvège / Norway</i>			X	
<i>Nouvelle-Zélande / New Zealand</i>	*		X	
<i>Paraguay / Paraguay</i>			X	
<i>République dominicaine / Dominican Republic</i>	*	X		
<i>Suisse / Switzerland</i>			X	
<i>Turquie / Turkey</i>		<i>Pas de réponse / No answer</i>		

³³ *Nouvelle Écosse / Nova Scotia, Saskatchewan / Saskatchewan.*

³⁴ *Québec / Quebec.*

³⁵ *Not at the moment.*

15) <i>Autres remarques</i> ³⁶ :	15) Any other remarks ³⁷ :
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Afrique du Sud / South Africa

The UN Convention on the Rights of the Child and the RSA's Constitution provides for a definition of a child as a person below the age of 18 years. If the Convention cannot be extended to cover persons over the age of 18, there might be a need to develop a separate legislation which addresses, spousal maintenance, maintenance pending litigations when divorce proceedings are instituted, persons with disability and cannot maintain themselves due to the nature of their disability and persons who are still pursuing qualification that will make them suitable for employment or entrance in the job market.

Bulgarie / Bulgaria

The development of a Protocol concerning the international recovery of maintenance in respect of vulnerable persons is not a priority for the Republic of Bulgaria at this stage.

Chine RAS Macao / China SAR Macao

Equal treatment of all maintenance creditors should be enhanced.

Irlande / Ireland

Irish law provides that a dependent child must be maintained by a parent. "Dependent" child is defined in the legislation to include a child who is over the age of eighteen and is suffering from mental or physical disability to such extent that it is not reasonably possible for the child to maintain herself or himself fully. The relevant legislation is

Family Law (Maintenance of Spouses and Children) Act 1976, as amended;

Family Law Act 1995;

Family Law (Divorce) Act 1996.

Maintenance orders for the benefit of a dependent child are usually available only as ancillary relief on the separation or divorce of the parents.

Lituanie / Lithuania

The European Community, to which the Republic of Lithuania is a Member State, will provide answers to questions 3, 5, 6, 7, 8, 11, and 14 and together with the Member States — to questions 4, 10, 12, 13, and 15.

Mexique / Mexico

It is believed that the 2007 Convention on International Recovery of food is fully applicable to obliagtoria a maintenance obligations for vulnerable people.

³⁶ *Les États suivants n'ont pas répondu à cette question: l'Albanie, l'Allemagne, l'Argentine, la Belgique, le Canada, le Chili, la Chine, la Chine RAS Hong Kong, Chypre, la Croatie, le Danemark, l'Espagne, l'Estonie, les États-Unis d'Amérique, la Finlande, la France, la Grèce, la Hongrie, le Japon, La Lettonie, la Nouvelle-Zélande, la Malaisie, le Paraguay, la Pologne, le Portugal, la République tchèque, le Royaume-Uni, la Slovénie, la Suisse et la Turquie.*

³⁷ The following States did not answer this question: Albania, Argentina, Belgium, Canada, Chile, China, China SAR Hong Kong, Cyprus, the Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Japan, Latvia, Malaysia, New Zealand, Paraguay, Poland, Portugal, Slovenia, Spain, Switzerland, Turkey, the United Kingdom and the United States of America.

Monaco / Monaco

Comme cela apparaît nettement dans les réponses fournies au questionnaire, il n'existe pas, en droit monégasque, de disposition spéciale relative aux obligations alimentaires à l'égard des personnes vulnérables, hormis les règles ci-après spécifiées.

Ce constat ne signifie pas pour autant qu'elles ne bénéficient pas d'une protection. En effet, elles le sont, mais le droit commun leur assure une protection adaptée.

C'est ainsi que, tout d'abord, dans le cadre du mariage, l'article 181 du code civil dispose que « Les époux se doivent mutuellement fidélité, secours et assistance ». Le devoir d'assistance se développe dans le cadre des relations de couple normales. Dans l'hypothèse de vulnérabilité de l'un des époux, par perte de capacités intellectuelles ou physiques par exemple, il va se transformer en devoir de secours. Si les obligations alimentaires dues au conjoint vulnérable ne sont donc pas détaillées, il n'en reste pas moins que leur caractère implicite dans le devoir de secours permet de couvrir tous les besoins de la personne vulnérable.

De même, pour ce qui concerne les obligations alimentaires parentales, si les enfants sont placés sous l'autorité des pères et mères jusqu'à leur majorité ou émancipation et que les parents contribuent à leurs entretien et éducation (article 300 alinéa 1 et 2 du code civil), pour autant « cette obligation ne cesse pas de plein droit lorsque l'enfant est majeur » (alinéa 3). L'enfant demeuré vulnérable après sa majorité, la fin théorique de ses droits, ne sera donc pas dépourvu d'aide et les obligations alimentaires de ses parents subsisteront, même si cela n'est pas expressément prévu par les textes en vigueur.

Enfin, les enfants doivent également des aliments à leurs père et mère ou autres ascendants qui sont dans le besoin (article 174 du code civil) et des dispositions sont également prévues pour la succession de l'époux prédécédé, les gendres et les belles-filles. La personne vulnérable devra donc être, conformément au droit commun, assumée par sa famille.

En pratique, le droit commun des obligations alimentaires est donc suffisamment général pour recouvrir toute la problématique de protection des personnes vulnérables et leur garantir une protection adaptée.

Norvège / Norway

Under Norwegian law the needs of vulnerable adult persons are taken care of under the social security legislation, which means that there is no need for imposing maintenance obligations beyond the ordinary age limits for being considered a child under the Convention. However, we realize that the situation may be different in other states, and are as mentioned considering a limited opening for the collection of maintenance.

Roumanie / Romania

Le droit d'aliment en faveur d'un adulte vulnérable devrait être établi jusqu'à la cessation de l'état d'incapacité (pour toute la vie, s'il y a le cas).

A l'établissement d'aliments on devrait tenir compte des déductions des aides sociales offert par l'Etat ou des assurances privés.

On devrait être régleménté la possibilité d'établir la pension alimentaire en faveur d'un adulte vulnérable comme un une demande accessoire à la demande de transfert de la compétence d'institution de la tutelle ou curatelle.

Slovaquie / Slovakia

In our opinion the feasibility of any protocol should be examined irrespective of the fact whether certain obligations may be brought into the scope by a declaration under Art.2(3) of the Convention or not. A potential protocol should be seen (also) as a possibility to extent the core scope of the Convention as between the Parties to the Protocol in particular in cases of children where they continue to be dependant on maintenance beyond the cut off age of 21 (or 18) for reasons of impairment.

APPENDICE À L'ANNEXE / APPENDIX TO THE ANNEX

Question 1

Argentine / Argentina

No. Our legal system expressly provides that minor children are entitled to support until they reach the age of majority (21), regardless of the extent of their legal capacity. If incapacitated upon reaching the age of majority, the beneficiary will be entitled to recover support, provided that he or she is adjudged insane by a court of law. The declaration of insanity may be obtained only once the age of majority is reached, because prior to that time protection is afforded by the law on account of minority.

Brésil / Brazil

Even though there is no specific rule on vulnerable persons, the Brazilian legislation provides that each and every person under 18 years old has the right to child support, regardless of his/her vulnerability.

Canada / Canada

[Alberta / Alberta]

Pensions alimentaires pour enfants / Child support

[Manitoba / Manitoba]

Pensions alimentaires pour enfants / Child support

[Ontario / Ontario]

Pensions alimentaires pour enfants / Child support

[Québec / Quebec]

"Enfant à charge", tel que défini par l'art. 2(1) de la Loi sur le divorce.

Chine RAS Macao / China SAR Macao

With regard to maintenance obligations, the Macao SAR law does not distinguish in terms of vulnerable persons *per se*.

Non-contractual maintenance obligations arise from marriage, parentage in the direct line, and – to a lesser extent – parentage in the collateral line and affinity. The underlying main principle being that of "*ubi est emolumentum successionis, ibi et onus alimentorum*". Nevertheless, there are some other relationships that by law produce similar effects that also give rise to maintenance obligations, as for *e.g. more uxorio* (both partners), *concubinatus* (only towards the mother of a child born out of wedlock during the first year of the child), annulled marriage (towards the parties in good faith) *etc.*

In what concerns the maintenance creditor, the requirements for the existence of maintenance obligations are: (i) the creditor's lack of means to subsist; and (ii) the creditor's impossibility – total or partial – to provide for his/her subsistence.

Concretely in respect to parent-child relationships, in principle, maintenance obligations exist until the majority (i.e., the age of 18 years) or emancipation of the child, or, after that, until the completion of the child's scholar or vocational education (if it is reasonable to require the parents to fulfil the obligation and for the time normally required for the completion of such education).

On the other hand, the definition of vulnerable person for the purposes of the Convention is not known in the Macao SAR law. **The most similar institutes are those of**

interdiction and 'inability', but they apply only to persons above the age of majority (or emancipated). Though, in case of minors, the relevant judicial proceedings can be instituted during the year before the minor reaches the age of majority, the relevant decision produces effects in the day in which the minor attains majority. If in that day the judicial proceedings are still pending, the regime of parental power is prolonged until the decision is final.

The only case that can be of interest in connection with maintenance obligations towards 'vulnerable persons' consists of the possibility of provisional maintenance towards minors and interdicted persons being requested also *ex officio*.

États-Unis d'Amérique / United States of America

All U.S. states provide specifically for maintenance obligations arising from a parent-child relationship with respect to a child under the age of 21 years (or in some states 18 years), and such obligations include those towards vulnerable persons.

Lettonie / Latvia

However Latvian Civil Law provides for general provisions as regards the obligations arising from a parent-child relationship towards a child. According to Article 179 of Latvian Civil Law parents have an obligation to maintain the child. According to Article 177 of Latvian Civil Law the maintenance includes also the health care.

Malaisie / Malaysia

We note that the definition provided under footnote number 5 in the Background paper, defines 'vulnerable person' to mean a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself. Although the term 'vulnerable person' is not found and defined under Malaysian law, there are other terms used in some statutes to refer to 'vulnerable person' such as 'persons with disabilities', 'mental or physical disability' and 'incapacitated'. The relevant laws are as follows—

(a) Persons with Disabilities Act 2008 [Act 685]

Reference is made to section 2 of Act 685, where the meaning of the term "persons with disabilities" include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society. Act 685 is "an Act to provide for the registration, protection, rehabilitation, development and well being of persons with disabilities, the establishment of the National Council for Persons with Disabilities, and for matters connected therewith". There are no specific provisions under Act 685 regarding maintenance obligations arising from parent-child relationship.

(b) Law Reform (Marriage and Divorce) Act 1976 [Act 164]

Act 164 is an Act to provide for monogamous marriages and the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto. Act 164 also provides for general maintenance obligations for spouse and children.

In the case of the maintenance of "a child who is under physical or mental disability", section 95 of Act 164 provides as follows:

"Except where an order for custody or maintenance of a child is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the child of the age of eighteen years or where the child is under physical or mental disability, on the ceasing of such disability, whichever is the later."

Under this provision, it is clear that the maintenance of a child who is under physical or mental disability can be extended even after he has attained the age of eighteen years.

In addition thereto, the following Sections 2, 87, 92, 93 and 94 of Act 164 are also relevant and are referred to:

Section 2 of Act 164 defines "child of the marriage" as-

"a child of both parties to the marriage in question or a child of one party to the marriage accepted as one of the family by the other party; and "child" in this context includes an illegitimate child of, and a child adopted by, either of the parties to the marriage in pursuance of an adoption order made under any written law relating to adoption."

The meaning of "child" is provided under section 87 of Act 164, which states the following:

"In this Part, wherever the context so requires, "child" has the meaning of "child of the marriage" as defined in section 2 who is under the age of eighteen years."

Section 92: Duty to maintain children.

"Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof."

Section 93: Power for court to order maintenance for children.

"(1) The court may at any time order a man to pay maintenance for the benefit of his child -

- (a) if he has refused or neglected reasonably to provide for the child;
- (b) if he has deserted his wife and the child is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

(2) The court shall have the corresponding power to order a woman to pay or contribute towards the maintenance of her child where it is satisfied that having regard to her means it is reasonable so to order.

(3) An order under subsection (1) or (2) may direct payment to the person having custody or care and control of the child or trustees for the child."

Based on sections 92 and 93 of Act 164, it is apparent that it is always the duty of a parent to maintain his/her children, including his or her 'vulnerable children'. Therefore, the rights of vulnerable children to maintenance are guaranteed and protected under Act 164.

(c) Islamic Family Law (Federal Territory) Act 1984 (Act 303)

In Malaysia, Islamic family law matters are governed by the respective State Islamic Family Law Act/Enactments. For the purpose of this questionnaire, reference will be made to the Islamic Family Law (Federal Territories) Act 1984 (Act 303).

Section 72. Duty to maintain children.

"(1) Except where an agreement or order of Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof.

(2) Except as aforesaid, it shall be the duty of a person liable under Hukum Syara', to maintain or contribute to the maintenance of children if their father is dead or his whereabouts are unknown or if and so far as he is unable to maintain them."

Section 73. Power of Court to order maintenance for children.

(1) The Court may at any time order a man to pay maintenance for the benefit of any child of his-

- (a) if he has refused or neglected to provide reasonably for his child;
- (b) if he has deserted his wife and the child is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

(2) The Court shall have the corresponding power to order a person liable under Hukum Syara', to pay or contribute towards the maintenance of a child where it is satisfied that having regard to his means it is reasonable so to order.

(3) An order under subsection (1) or (2) may direct payment to the person having custody or care and control of the child or to the trustee for the child.

Under Act 303, there are few provisions that give protection to 'vulnerable person' and they are extensive in nature.

For example, under section 60 of Act 303, the court can order 'any person' liable according to Hukum Syarak, to pay maintenance to 'another person', who is incapacitated by reason of mental or physical injury or ill-health. Section 60 of Act 303 reads as follows:

"The Court may order any person liable thereto according to Hukum Syarak, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order."

The words 'any person liable according to Hukum Syarak' in this provision would include the paternal grandfather, male siblings and paternal uncles. By virtue of section 3 of the Interpretation Acts 1948 And 1967 [Act 388], it may also include the Baitulmal (Baitulmal is the Treasury for tithes). The phrase 'another person' in this provision is wide enough to include a child.

Maintenance of a child who has a mental or physical disability is also recognized under paragraph 79(c) (i) and (ii) of Act 303. Under these provisions, the maintenance period even can go beyond the age of 18. Section 79 of Act 303 reads as follows:

“Except—

(a) where an order for maintenance of a child is expressed to be for any shorter period; or

(b) where any such order has been rescinded; or

(c) where any such order is made in favour of—

(i) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;

(ii) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

the order for maintenance shall expire on the attainment by the child of the age of eighteen years, but the Court may, on application by the child or any other person, extend the order for maintenance to cover such further period as it thinks reasonable, to enable the child to pursue further or higher education or training.”.

Unlike Act 164, under sections 72 and 73 of Act 303, the responsibility to maintain the children, including ‘vulnerable children’ is always on the father. In his absence or inability, the duty will shift to ‘a person liable under Hukum Syarak’ such as the paternal grandfather, male siblings, paternal uncles and the Baitulmal, as the case may be. This is provided for under subsections 72(2) and 73(2) of Act 303.

However in the case of illegitimate children, including ‘vulnerable illegitimate children’, it is always the duty of the mother to maintain the children. This is provided for under section 80 of Act 303. In her absence or inability, the duty will shift to the maternal grandfather, maternal uncles and the Baitulmal, as the case may be.

In light of the above, although Malaysian law does not specifically provide for maintenance obligations arising from a parent-child relationship towards a vulnerable person under the age of 18 years and/or until such further period as the court thinks reasonable, to enable the child to pursue further or higher education or training (in the case of Malaysia) but by virtue of sections 92 – 94 of Act 164, and sections 72, 73 and 79 of Act 303, maintenance obligations towards the child arises regardless whether the child is vulnerable or not as long as the provision of Acts 164 and 303 are satisfied and the child is below the age of 18 and/or until such further period as the court thinks reasonable, to enable the child to pursue further or higher education or training. Section 94 of Act 164 and section 79 of Act 303 even go further by extending the maintenance period to go beyond the age of 18 for a child who is under a physical or mental disability until such disability ceases. In addition thereto, the Islamic law provides for an indefinite duration for the maintenance obligation for a disabled child by virtue of section 79 of Act 303.

[NOTE: Since both Act 164 and Act 303 are enacted by Parliament, they have equal status]

Nouvelle-Zélande / New Zealand

There are obligations on parents to maintain their children (irrespective of any disability the child may have) until they are 18 years of age. If children have identified specific needs they may also qualify for State assistance.

Portugal /Portugal

The Portuguese Civil Code provides for maintenance obligations arising from a parent-child relationship towards all persons under 18, vulnerable or not. Nevertheless, the existence of an impairment or insufficiency of his or her personal faculties is taken in consideration in the determination of the amount of the maintenance obligation (articles 2004, 2009 (1 c) (1 f) and 1986 of the Portuguese Civil Code).

République dominicaine / Dominican Republic

Our national law establishes that all children's or adolescents until the eighteen (18) years of age must right to receive foods from his father or mother or responsible person.

In the cases of children's and adolescents with special necessities, physical or mental, the nourishing obligation of the father and the mother beneficiary must stay until as much the person can maintain economically by itself, has even reached most of age.

Are forced to provide foods of subsidiary way, in case of death of the father, mother or person in charge, the brothers or sisters of legal age, ascending by collateral order of proximity and until the third degree or, in its defect, the State, until the fulfillment of the eighteen (18) years.

If the forced one is an adolescent person, their parents are shared in common responsible for this obligation, and like such, they can be demanded.

Texto en Español:

Nuestra ley nacional establece que todo niño, niña o adolescente hasta los dieciocho (18) años de edad tiene derecho a recibir alimentos de parte de su padre o madre o persona responsable.

En los casos de niños, niñas y adolescentes con necesidades especiales, físicas o mentales, la obligación alimentaria del padre y la madre debe mantenerse hasta tanto la persona beneficiaria pueda sostenerse económicamente por si misma, aun haya alcanzado la mayoría de edad.

Están obligados a proporcionar alimentos de manera subsidiaria, en caso de muerte del padre, madre o responsable, los hermanos o hermanas mayores de edad, ascendientes por orden de proximidad y colaterales hasta el tercer grado o, en su defecto, el Estado, hasta el cumplimiento de los dieciocho (18) años.

Si el obligado es una persona adolescente, sus padres son solidariamente responsables de dicha obligación, y como tales, pueden ser demandados.

Royaume-Uni / United Kingdom

The law of the UK does not lay down specific maintenance obligations towards a vulnerable person under the age of 19. Parents have obligations towards all children under the age of 19 whether or not they are vulnerable.

Comment: The child support limit is 19 years of age. This differs from the age limit the questionnaire suggests.

Slovénie / Slovenia

Slovenian Marriage and Family Relations Act does not deal specifically with maintenance obligation in respect of vulnerable persons under the age of 18 years but applies to them

in the limits of the scope of the Articles referring to the maintenance obligation of parents towards children.

Suisse / Switzerland

Les dispositions de la législation suisse concernant le droit aux aliments s'appliquent à toutes les personnes à l'égard desquelles il existe des obligations alimentaires, que ces personnes soient vulnérables ou non. En outre, le droit suisse en matière d'assurances sociales, notamment, contient des dispositions régissant les prestations destinées aux personnes vulnérables, en particulier celles qui sont handicapées.

Question 2

Argentine / Argentina

Our legislation expressly provides for spousal maintenance and the reciprocal duty of support between spouses regardless of their health status (pursuant to Section 198 of the Argentine Civil Code).

It refers to health status only in the case of legal separation. Section 203 of the Argentine Civil Code provides that "one of the spouses may apply for legal separation on grounds of permanent and serious mental condition, alcoholism or drug addiction of the other spouse, if these cause such conduct disorder as to make it impossible for both spouses to live together or for the affected spouse to live with their children.

When legal separation is decreed on any of these grounds, the spouse applying for legal separation must provide support to the affected spouse and is required to provide the necessary means for the latter's treatment and recovery in accordance with both spouses' needs and resources (pursuant to Section 208 of the Argentine Civil Code).

If the supporting spouse dies, the law provides that the support obligation passes to the decedent's estate, even if divorce has been obtained, with the heirs having to arrange, before the partition, how they are going to continue complying with the obligation. Although it refers only to heirs, this provision is construed to be binding on legatees as well, because the support obligation is a charge imposed on the estate.

Brésil / Brazil

The Brazilian legislation provides that the former spouse who proves his/her need has the right to maintenance, regardless of his/her vulnerability.

Canada / Canada

[*Alberta / Alberta*]

Pensions alimentaires pour époux / Spousal support

[*Manitoba / Manitoba*]

Pensions alimentaires pour époux / Spousal support

[*Ontario / Ontario*]

Pensions alimentaires pour enfants / Child support

[*Québec / Quebec*]

En cas de divorce, lorsqu'il existe un lien entre le besoin d'aliments du conjoint vulnérable et l'échec du mariage (jurisprudence).

Chine RAS Macao / China SAR Macao

Please refer to the previous response.

If a spouse has no means to support himself/herself and is not able to do so, he/she may be entitled to maintenance. Spouses have reciprocal matrimonial obligations of respect, fidelity, cohabitation, cooperation and assistance. The duty of assistance covers obligations of maintenance and of assuming family burden in line with their respective capability.

In case of mutual consensual divorce (non-fault divorce), both spouses have the right to maintenance.

In case of litigious divorce, only the non-guilty spouse has the right to maintenance. If both are guilty, only the spouse whose fault is less important has such right. However, there are some exceptions to this rule. **One of such exceptions is precisely the right to maintenance of the defendant-spouse in a divorce on the grounds of serious alterations of his/her mental faculties** (subject to the above-mentioned general requisites).

États-Unis d'Amérique / United States of America

The law on spousal support varies from state to state, but states generally do provide for such an obligation.

Malaisie / Malaysia

The obligation for maintenance for a spouse towards a vulnerable spouse is specifically provided under Malaysian Civil law. Under Islamic Law, it is always the duty of the husband to maintain the wife at all times while the wife owes no obligation at all towards the husband.

(a) Law Reform (Marriage and Divorce) Act 1976 [Act 164]

In the case of 'incapacitated husband or former husband', the court may order a woman to pay maintenance to her incapacitated husband or former husband by virtue of subsection 77(2) of Act 164. Subsection 77(2) reads as follows:

"The court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order."

(b) Islamic Family Law (Federal Territories) Act 1984 (Act 303)

Reference is made to sections 59 and 60 of Act 303.

Section 59. Power of Court to order maintenance of wife, and the effect of nusyuz.

"(1) The Court may, subject to Hukum Syarak, order a man to pay maintenance to his wife or former wife.

(2) Subject to Hukum Syarak and confirmation by the Court, a wife shall not be entitled to maintenance when she is nusyuz, or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, inter alia—

- (a) when she withholds her association with her husband;
- (b) when she leaves her husband's home against his will; or

(c) when she refuses to move with him to another home or place, without any valid reason according to *Hukum Syarak*.

(3) As soon as the wife repents and obeys the lawful wishes and commands of her husband, she ceases to be *nusyuz*.”

Section 60. Power of Court to order maintenance of certain persons.

“The Court may order any person liable thereto according to *Hukum Syarak*, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order.”

Under Islamic law, it is always the duty of a husband to maintain a wife, whether she is vulnerable or not. Subsection 59(1) of Act 303 covers both situations. This duty will lapse only in the case where the wife is *nusyuz* (subsection 59(2) of Act 303).

Thus, there is no obligation on the wife to provide maintenance to a vulnerable husband but as stated in section 60 of Act 303, the *Syariah* Court may order any person liable thereto according to *Hukum Syarak*, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health, and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order.

The term ‘any person’ in section 60 does not apply to the former husband or the wife or the former wife, but instead the father, paternal grandfather, male siblings, paternal uncles and the *Baitulmal*, as the case may be.

In other words, under Islamic law, the obligation to pay maintenance is only for men and not for women unless she has a child who is born out of wedlock.

Nouvelle-Zélande / New Zealand

There are obligations on a spouse/partner to a marriage or civil union to support the other spouse/partner who is unable to meet their own reasonable needs because of a physical or mental disability during that marriage or civil union. After the dissolution of a marriage or civil union or after *de facto* partners have ceased to live together, there is no obligation for a spouse, civil union partner or *de facto* partner to support a former spouse or partner who is unable to meet their own reasonable needs solely because of a physical or mental disability.

The State then takes over the role of supporting vulnerable people unable to meet their own reasonable needs.

Royaume-Uni / United Kingdom

The law of the UK has no specific maintenance obligations towards a vulnerable spouse.

Slovaquie / Slovakia

A simple answer is problematic. The law does not contain a specific maintenance obligation for reasons of vulnerability, but it allows to impose a maintenance obligation to a former spouse beyond the 5 year cut off period after the divorce for reasons, including health, if the other ex-spouse is not capable to maintain herself or himself. This is considered an exceptional measure.

Slovénie / Slovenia

Slovenian Marriage and Family Relations Act does not deal specifically with maintenance obligation in respect of a spouse towards a vulnerable spouse but applies to them in the limits of the scope of the Articles referring to the maintenance obligations between spouses.

Suisse / Switzerland

Les dispositions de la législation suisse concernant le droit aux aliments s'appliquent à toutes les personnes à l'égard desquelles il existe des obligations alimentaires, que ces personnes soient vulnérables ou non. En outre, le droit suisse en matière d'assurances sociales, notamment, contient des dispositions régissant les prestations destinées aux personnes vulnérables, en particulier celles qui sont handicapées.

Question 4Argentine / Argentina

No. Maintenance obligations are regulated without regard to the parties' capacity. Maintenance is based on family relationship, irrespective of the parties' health status.

In this regard, blood relatives owe each other maintenance obligations in the following order:

1. Ascendants and descendants. Between them, support must be provided preferably by the closest in degree of relationship. In the case of equal degrees, support must be provided by those who are best able to provide it;
2. Siblings and half siblings.

Maintenance obligations between relatives are reciprocal.

The relative applying for maintenance must prove that he or she lacks means of support and that he or she is unable to obtain support through employment, irrespective of the cause that led him or her to this situation.

Argentine law refers to health status in the case of maintenance obligations only when it regulates legal separation on grounds of "permanent mental condition" of one of the spouses. This situation was discussed in the answer to question (2).

Brésil / Brazil

Brazilian legislation provides that relatives who prove their need have the right to maintenance, regardless of their vulnerability.

Canada / Canada

[Alberta / Alberta]

- de relations de famille [] OUI / [X] NON
 - « Non » parents, famille élargie
 - « Oui » conjoints de fait s'ils font partie des « relations de famille »
- de filiation [X] YES / [] NON (pensions alimentaires pour enfants)
- du mariage [X] YES / [] NON (pensions alimentaires pour époux)
- d'alliance [] OUI / [X] NO (pas d'obligation alimentaire envers la belle-famille)

- a family relationship YES / NO
 - "No" for parents, extended family
 - "Yes" for un-married partners if these are included in "family relationship"
- parentage YES / NO (child support)
- marriage YES / NO (spousal support)
- affinity YES / NO (in-law support)

[Manitoba / Manitoba]

- de relations de famille OUI / NON
 - i) obligation alimentaire d'un enfant adulte envers un parent qui est incapable de subvenir à ses propres besoins sans aucune forme d'aide en raison de son âge, d'une maladie ou d'une incapacité.
 - ii) obligation alimentaire envers le conjoint de fait (considéré être un conjoint en vertu de la loi du Manitoba)
- de filiation OUI / NON (pensions alimentaires pour enfants)
- du mariage OUI NON (pensions alimentaires pour époux)
- d'alliance OUI / NON

a) parent-child relationship: the "vulnerable person" must be:

- i) under the charge of the parent seeking to enforce or establish a maintenance obligation; and
- ii) unable to withdraw from the charge of this parent or to obtain the necessaries of life by reason of illness, disability, or other cause.

(derived from s. 35.1 *Family Maintenance Act* of Manitoba and s. 2 of the *Divorce Act* of Canada)

b) obligation towards a vulnerable spouse:

- address whether "spouse" includes non-married partners
- link between the creditor's "vulnerable" status and the marriage/relationship and a continuing financial dependence.

[Ontario / Ontario]

- de relations de famille YES NON
- de filiation OUI NON (pensions alimentaires pour enfants)
- du mariage OUI NON (pensions alimentaires pour époux)
- d'alliance OUI NON

i) *Obligation alimentaire de l'enfant envers les parents – l'article 32 de la Loi sur le droit de la famille de l'Ontario prévoit que l'enfant majeur est tenu de fournir des aliments à son père ou à sa mère qui a pris soin de lui ou lui a fourni des aliments, dans la mesure de ses capacités et des besoins.*

ii) *Obligation alimentaire envers un conjoint de fait – En vertu de la loi de l'Ontario, la personne qui répond à la définition fournie ci-haut en réponse à la question 3 b) peut obtenir des aliments.*

- parentage YES / NO (child support)
- marriage YES / NO (spousal support)
- affinity YES / NO
- a family relationship YES / NO

i) *Obligation of a child to support a parent – Section 32 of the Family Law Act of Ontario provides that every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.*

ii) *Support of unmarried partners – considered spousal support under Ontario law if it meets the definition set out in the answer to question 3(b) above.*

[Québec / Quebec]

- de relations de famille OUI / NON
- de filiation OUI / NON - "enfants à charge" (Loi sur le divorce)
- du mariage OUI / NON – conjoint vulnérable lié à l'échec du mariage (jurisprudence)
- d'alliance OUI / NON

Chine RAS Macao / China SAR Macao

Save for what has been said in the responses to questions 1) and 2).

États-Unis d'Amérique / United States of America

Our answers to previous questions address child and spousal support. The statutory duty of an adult child to provide support for his or her elderly or infirm parents currently exists in about 28 U.S. states. It is also possible that other states might in a particular case enforce such an obligation as a matter of common law. However, notwithstanding the fact that a majority of states have imposed a theoretical responsibility for adult children to support parents who are unable to support themselves, in fact those laws are virtually never enforced. Our research has not disclosed any state statute that imposes a duty of support of vulnerable persons based on affinity or other relationships, such as grandparent/grandchild, adult sibling/minor sibling, uncle/aunt-niece/nephew, etc.

Malaisie / Malaysia

In addition to the explanation provided for questions 1 and 2 above, reference is also made to section 99 of Act 164, and sections 72, 78 and 80 of Act 303.

Section 99 of Act 164: Duty to maintain child accepted as member of family.

“(1) Where a man has accepted a child who is not his child as a member of his family, it shall be his duty to maintain such child while he or she remains a child, so far as the father and the mother of the child fail to do so, and the court may make such orders as may be necessary to ensure the welfare of the child:

Provided that the duty imposed by this subsection shall cease if the child is taken away by his or her father or mother.

(2) Any sums expended by a man maintaining such child shall be recoverable as a debt from the father or mother of the child.”

Section 72 of Act 303: Duty to Maintain Children

“(1) Except where an agreement or order of Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof.

(2) Except as aforesaid, it shall be the duty of a person liable under Hukum Syara', to maintain or contribute to the maintenance of children if their father is dead or his whereabouts are unknown or if and so far as he is unable to maintain them.”

In cases where the father dies or is missing or is incapable of maintaining his child, the paternal grandfather, male siblings and paternal uncles will be responsible for the

maintenance obligation. Subsection 72(2) of Act 303 provides that the Syariah court has power to order a person liable under Hukum Syarak to maintain the child if his/her father is dead or his whereabouts unknown or if and in so far that he is unable to maintain him/her. This clause is wide enough to cover the situation where a father is incapable to maintain his legitimate child.

In the questionnaire, by virtue of the inclusion of affinity, the scope is extended to illegitimate child, adopted child of heterosexual parents who are not married to each other or homosexual parents or children born out of rape. Unlike the civil law, it is important to note that according to *Hukum Syarak*, where it involves relationship that does not fall under the definition of family relationships from the Syariah perspective for reasons of illegitimacy, adoption, cohabitation or marriage which are not recognized by *Hukum Syarak*, the original rulings on maintenance obligations would not be applicable.

Be that as it may, Act 303 imposes a duty on a man to maintain a child accepted as a member of his family which includes an adopted child. This is provided for under section 78 of Act 303 which reads as follows:

Section 78: Duty to maintain child accepted as member of family.

- “(1) Where a man has accepted a child who is not his child as a member of his family, it shall be his duty to maintain the child while he or she remains a child, so far as the parents of the child fail to do so, and the Court may make such orders as may be necessary to ensure the welfare of the child.
- (2) The duty imposed by subsection (1) shall cease if the child is taken back by either of his or her parents.
- (3) Any sum expended by a man in maintaining a child as required by subsection (1) shall be recoverable from the father or mother of the child.”

With regard to an illegitimate child, Act 303 imposes a duty on a mother to maintain her illegitimate child. This is because, under the Islamic law, an illegitimate child derives his nasab (lineage) from the mother. In her absence or inability, the duty will shift to the maternal grandfather, maternal uncles and the Baitulmal, as the case may be.

Subsection 80(1) of Act 303 provides as follows:

“Section 80: Duty to maintain illegitimate children.

- (1) If a woman neglects or refuses to maintain her illegitimate child who is unable to maintain himself or herself, other than a child born as a result of rape, the Court, upon due proof thereof, may order the woman to make such monthly allowance as the Court thinks reasonable.”

Nouvelle-Zélande / New Zealand

Please refer to our previous comments.

République dominicaine / Dominican Republic

The Dominican Civil Code establishes:

1. That the spouses contract by the fact of the marriage, the obligation common to feed and to educate their children.
2. The children are forced to feed their needed ascending parents and.
3. The previous obligations are reciprocal.
4. The foods do not remember but in proportion to the necessity del that it demands them, and to the fortune del that must provide them.

Texto en Español:

El Código Civil Dominicano establece:

1. Que los esposos contraen por el hecho del matrimonio, la obligación común de alimentar y educar sus hijos.
2. Los hijos están obligados a alimentar a sus padres y ascendientes necesitados.
3. Las obligaciones anteriores son recíprocas.
4. Los alimentos no se acuerdan sino en proporción a la necesidad del que los reclama, y a la fortuna del que debe suministrarlos.

Slovaquie / Slovakia

Note: see answer to Q.2. above as well. As regards maintenance towards children, the vulnerability (i.e. incapacity to provide for himself/herself) is a reason for continuation of the maintenance obligation without a cut off period.

Slovénie / Slovenia

Slovenian Marriage and Family Relations Act does not deal specifically with maintenance obligation in respect of vulnerable persons for maintenance obligations arising from a family relationship, marriage or affinity but applies to them in the limits of the scope of Articles referring in general to the maintenance obligations arising from a family relationship, marriage or affinity.

As regards maintenance obligation of a parent toward a child who is a vulnerable adult, Slovenian Marriage and Family Relations Act was amended in the way that the maintenance obligation of a parent towards a vulnerable child over 18 years was abolished. The aim was to transfer the financial burden from parents to the State. However, until the additional necessary measures are adopted, parents still have to support their vulnerable children.

Suisse / Switzerland

Les dispositions de la législation suisse concernant le droit aux aliments s'appliquent à toutes les personnes à l'égard desquelles il existe des obligations alimentaires, que ces personnes soient vulnérables ou non. En outre, le droit suisse en matière d'assurances sociales, notamment, contient des dispositions régissant les prestations destinées aux personnes vulnérables, en particulier celles qui sont handicapées.

Question 5Canada / Canada

[Alberta / Alberta]

À déterminer (mais probablement pas) / Not yet determined (but probably not)

Chine RAS Macao / China SAR Macao

It will most probably be considered to extend at least part of the Convention to maintenance obligations arising from relationships mentioned in the response to question 1), which would include certain categories of vulnerable persons (i.e., interdicted persons as defined by the internal law, whose incapacity is similar to that of children).

Communauté européenne / European Community

This matter will be determined by a Council Decision in the future.

Danemark / Denmark

Denmark has not yet decided to accede to the 2007 Convention on Maintenance. Thus, Denmark has not either determined the extension of the possible application of the Convention.

Question 6Canada / CanadaQuébec / Quebec

[X] filiation : L'enfant à charge, tel que défini par la Loi sur le divorce: "enfant des deux époux ou ex-époux qui, à l'époque considérée, est majeur et à leur charge, sans pouvoir, pour cause notamment de maladie ou d'invalidité, cesser d'être à leur charge ou subvenir à ses propres besoins" (art. 2 (1)).

Chine RAS Macao / China SAR Macao

Please refer to the previous response and to the response to question 3/a).

Question 9Argentine / Argentina

The Argentine Civil Code sets forth the obligation to provide maintenance to a donor, when the donation is not subject to a charge. In this regard, Section 1837 of the Argentine Civil Code requires a donee to provide maintenance to the donor when the latter has no means of self-support. However, the donee can be exempted from this obligation by returning either the donated property or the value of such property if it has been disposed of.

Chine RAS Macao / China SAR Macao

Please refer to the response to question 1

Lettonie / Latvia

However Latvian Civil Law provides for general provisions as regards the obligations which arise from non-contractual obligation in cases of personal injuries. According to Article 2348 of Latvian Civil Law if the person sustains bodily injury occurred from unlawful action and therefore is not able to support himself further, the person responsible for unlawful action has an obligation to support the injured person and persons financially dependant from injured person.

Malaisie / Malaysia

See explanation for question 1.

Act 685 can be construed as providing maintenance to persons with disabilities through other means other than monetary.

Section 38 of Act 685 provides the following:

"(1) The Government shall provide the necessary lifelong protection and social support system including ensuring that the welfare of persons with severe disabilities remain unaffected after the death of their parents or their caregivers

in order to enable the persons with severe disabilities to lead a better quality of life.

(2) Any non-governmental organization intending to provide or providing institutional care for persons with severe disabilities or the caregivers for persons with severe disabilities may make an application for an incentive for providing such care to the Council in such form and manner as may be prescribed.

(3) The Council may, if it is satisfied that the application of the non-governmental organization or caregivers referred to in subsection (2) should be considered, grant such incentive as it deems appropriate with the approval of the Minister responsible for finance."

Be that as it may, the word "maintenance" is not defined under Malaysian law, but the term "maintenance order" is defined under section 3 of Married Woman and Children (Enforcement of Maintenance) Act 1968 (revised 1988) as –

"(a) an order made under section 3 of the Married Women and Children (Maintenance) Act 1950 (Act 263);

(b) an order for the payment of periodical sums by way of maintenance or alimony to a wife or for the benefit of any child under the Law Reform (Marriage and Divorce) Act 1976 (Act 164);

(c) a maintenance order confirmed by the court under the Maintenance Orders (Facilities for Enforcement) Act 1949 (Act 34); and

(d) where this Act are made applicable by virtue of an authorization under section 14 to or in respect of a maintenance order made by a Syariah Court shall include such order."

Therefore, under the Malaysia law, the maintenance obligations mentioned therein does not include protection, rehabilitation, development and well being of persons with disabilities provided by the government. Clarification is sought whether the term "maintenance obligations" referred to under this questionnaire would include the lifelong protection and social support system provided by the government.

Under the general principles of Islamic law, both adopted and illegitimate children are not children arising from family relationship, parentage, marriage or affinity (kindly see explanation for question 4).

Portugal /Portugal

Portuguese Law admits the possibility of creating maintenance obligations "ex voluntate" (arising from a legal act, namely a contract), regardless of the above referred ties (article 2014 of the Portuguese Civil Code). It does not, however, specifically target any type of beneficiary.

Royaume-Uni / United Kingdom

There are no such obligations placed on individuals.

Suisse / Switzerland

Les prestations qui sont prévues par la législation sur les assurances sociales ne dépendent pas nécessairement de l'existence de relations de famille ni d'une obligation alimentaire découlant de telles relations.

Question 12

Canada / Canada

[*Québec / Quebec*]

[X] NON, mais nos accords peuvent néanmoins couvrir de telles obligations alimentaires.

Communauté européenne / European Community

As regards **question 12**, in the Community, Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations applies to maintenance obligations arising from a family relationship, parentage, marriage or affinity. The Regulation does not deal specifically with maintenance obligations in respect of vulnerable persons but applies to them in the limits of the scope.

Danemark / Denmark

The Community Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations applies to maintenance obligations arising from a family relationship, parentage, marriage or affinity. The Regulation does not deal specifically with maintenance obligations in respect of vulnerable persons but applies to them in the limits of the scope.

The regulation does not apply to Denmark, but through an agreement between the Community and Denmark on the Bruxelles I-Regulation, the content of the Regulation applies in the relations between the Member States of the Community and Denmark, except the rules on applicable law and administrative cooperation.

Malaisie / Malaysia

(a) It should however be highlighted that Malaysia signed the Convention on the Rights of Persons with Disabilities ("PwD Convention") on 8 April 2008. Malaysia has not yet ratified the PwD Convention. Although the PwD Convention does not deal specifically with maintenance obligations in respect of vulnerable persons, the Convention does, *inter alia*, obligate State Parties to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care (Article 28(2)(c) of the PwD Convention).

Article 28 of PwD Convention provides the following:

"Article 28 - Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d. To ensure access by persons with disabilities to public housing programmes;
- e. To ensure equal access by persons with disabilities to retirement benefits and programmes."

(a) Malaysia also ratified the Convention on the Rights of the Child ("CRC") on 17 February 1995. Article 23 of the CRC provides, *inter alia*, for special care and assistance to be given to disabled children.

Article 23 of CRC provides the following:

"1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

Slovaquie / Slovakia

Slovakia does not have bilateral agreements which would deal specifically with vulnerable persons. However, the existing bilateral agreements are applicable to maintenance of vulnerable persons if the law applicable under them provides for such obligations.

Slovénie / Slovenia

Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations applies to maintenance obligations arising from a family relationship, parentage, marriage or affinity. Regulation does not deal specifically with maintenance obligations in respect of vulnerable persons but applies to them in the limits of the scope.

Question 14Canada / Canada

[Canada – Gouvernement fédéral / Canada- Federal Government]

Nous croyons qu'en vertu de son paragraphe 2(3), la Convention de La Haye sur le recouvrement des aliments s'applique déjà aux personnes vulnérables, puisque la déclaration d'un État à l'effet que les obligations alimentaires de la Convention viseront les personnes vulnérables de l'État suffit à la mise en application de celle-ci dans l'État déclarant. D'une part, ce type de déclaration peut produire le même effet qu'un protocole et d'autre part il peut préciser les catégories de personnes visées par son application comme les époux vulnérables, les enfants vulnérables de plus de 21 ans (ou 18 ans) ou toute autre catégorie de personne vulnérable visée par un État déclarant.

Il serait utile d'examiner l'expérience que s'approprient à vivre les États-Unis avec la mise en œuvre de la Convention sur le recouvrement des aliments et de la Convention sur la protection des adultes et d'évaluer si ces instruments permettent ou non de résoudre les problèmes liés aux obligations alimentaires envers les personnes vulnérables.

We understand that the Hague Maintenance Convention already covers vulnerable persons in Article 2(3). A State may simply declare that the Convention will apply to vulnerable persons and for this State and other States having made the same declaration, the scope of the Convention will include vulnerable persons. Such declarations may have the same effect than a protocol and would identify the categories of vulnerable persons such as vulnerable spouses or vulnerable children over the age of 21 (or 18) or others for each declaring State.

It would be useful to look at the upcoming experience of the States in applying the Maintenance and the Protection of Adults Conventions and then assess whether these instruments cover or not all of the issues regarding maintenance towards vulnerable persons.

Communauté européenne / European Community

As regards **questions 3, 8, 11, and 14** the answer is “no” since the Community cannot identify any special rules which might need to be added to the 2007 Child Support Convention and does not therefore consider a protocol necessary. As explained in the background note of the Questionnaire, maintenance obligations in respect of vulnerable persons come partly within the compulsory scope of the Convention and may be brought within the scope by a declaration if they arise from a family relationship, parentage, marriage or affinity. The Community does not see a need to extend this solution by a protocol at this stage taking into account that the Convention has not yet been ratified by any state.

Nouvelle-Zélande / New Zealand

From a New Zealand perspective, overseas enforcement is not necessary. However, if such a protocol were developed, New Zealand might be prepared to consider what it could do to assist countries for which this is an issue.

République dominicaine / Dominican Republic

Yes, In relation to the children's and adolescents and to whom with special necessities they fulfill most of age, since it would be the competition of performance of the CONANI, and in relation to the other people of which our Civil Code speaks would be necessary to analyze it.

En relación a los niños, niñas y adolescentes y a aquellos que con necesidades especiales cumplan la mayoría de edad sí, ya que sería la competencia de actuación del CONANI, y en relación a las demás personas de que habla nuestro Código Civil habría que analizarlo.