

**Standard questionnaire for newly acceding States, established by the Hague
Conference on private international law**

I. IMPLEMENTING LEGISLATION

- 1. Is implementing legislation necessary to bring the convention into force in domestic law? If so, has the necessary legislation been enacted and is it in force?**

Yes, implementation of legislation is necessary to bring the Convention into force in Trinidad and Tobago.

The Republic of Trinidad and Tobago's instrument of accession was deposited on 7th June 2000. Since international provisions such as those contained in the said Convention are not automatically incorporated into and do not have direct effect on municipal law, legislative measures must be put in place to expressly transform the Convention into domestic law by an Act of Parliament.

In the year 2000, the Children's Authority Act was passed in the Parliament of Trinidad and Tobago. Section 5A of the Act made provisions for the Children's Authority to be the Central Authority for the purpose of the Hague Convention. To date, this Act has not yet come into effect and a review of this legislation is currently taking place.

LOCATING CHILDREN

- 2. Please indicate the agencies involved and the processes available for the location of missing children in your country.**

The INTERPOL Unit and the Trinidad and Tobago Police Service of the Ministry of National Security are the authorised agencies to which a report is made after 24 hours of a child's disappearance. Information on the child will be circulated to all Police Stations while investigations are being done on the basis of the available information.

II. CENTRAL AUTHORITY

- 3. The designation and contact details of the Central Authority, contact persons within the Central Authority, languages spoken, contact details for each.**

In keeping with the obligations under the Convention, the National Family Services Division was designated by Cabinet Minute No. 615 of 11th April, 2002 as the Interim Central Authority for a six (6) month period with effect from February 2002, pending the establishment of the Children's Authority of Trinidad and Tobago.

The period for which approval was granted for the National Family Services Division to serve as the Interim Central Authority under the Hague Convention has since expired and no subsequent approval was granted for an extension of this term.

The Children's Authority Act 2000 designated the Children's Authority to be the Central Authority as mentioned in the response to question 1 above. However, the amendments to the Act currently under consideration reflect a shift in the decision to have the Children's Authority, established under the Act, as the Central Authority. It is most likely that The Ministry of the Attorney General will be the designated Central Authority.

In effect there is no Central Authority for the purposes of the Hague Convention in Trinidad and Tobago and the contact details and names of persons in the Central Authority cannot be provided.

4. Please indicate measures taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention.

Please be advised that in light of the aforementioned implementation situation of the Central Authority in Trinidad and Tobago, the Ministry of the Attorney General cannot respond to this query posed by the questionnaire. A full response can only be addressed once the Central Authority is established and is operational.

III. JUDICIAL PROCEDURES

5. Which courts/administrative bodies within your system have been given jurisdiction to consider applications for return orders (and questions of access) under the Convention?

Any court that has jurisdiction for family matters in Trinidad and Tobago will consider application for return orders under the Convention.

In May 2004, a family court pilot project was launched in Trinidad and Tobago. This project involves a dedicated building housing the courts that deal with family law matters at both the High Court and the Magistrates Court level in one building with a unified registry and administration. The building also houses various social services including access to mediators, probation officers, counselors, family social workers and other social services professionals.

At present, consideration is being given to making the Family Court a permanent structure within the judicial system and it is likely to be expanded to other locations in the country.

In addition, when the Children's Authority comes into effect it would be an administrative body that would play an integral part in the processes under the Convention.

The Family Court has been established with a Family Court Manager, Judges, Magistrates, Mediators, Social Workers, Probation Officers, a Statistician and additional contract and public service staff.

Furthermore, the High Court of Trinidad and Tobago as well as the Magistrates Court are seised with the jurisdiction to hear and determine family matters.

6. What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?

The **Family Proceedings Rules 1998**, which governs the hearing of family matters in the High Court and the proceedings of the Family Court Pilot Project, contain provisions that cater for the speedy and non-bureaucratic resolution of all matters. The overriding objective of these Rules, is to enable the court to deal with family matters justly and in a way which, in proceedings affecting any child of the family, gives first and paramount consideration to the welfare of that child. Dealing justly with a case includes inter alia ensuring that it is dealt with expeditiously.

The Family High Court standard for a Direction Hearing is within 8 weeks of filing. The Family Magistrates Court "target standard" for scheduling first hearings is within 3-4 weeks of filing. Over 60% of matters determined in the High Court and Magistrates Court had 2 or less hearings. Over 95% of matters determined in both courts took between 6-7 months to determine. Calendering of matters by the docket system reduced court time for the litigant and judicial officers.

The guiding principles of the **Family Proceeding Rules** administered by the Court ensures adherence to the procedures, laws and established policies. These Rules contain provisions that cater for the speedy and non-bureaucratic resolution of all matters in a less adversarial environment that is sensitive to the needs of the family.

7. What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular, is legal aid available and if so, on what conditions?

The **Family Proceedings Rules 1998** allow an applicant/defendant in any country which is party to the Convention to be served through the authority designated under the Convention in respect of that country or if the law of the country of the applicant permits, through the judicial authorities of that country or through the consular authority of Trinidad and Tobago in that country. Please note that with the

establishment of the Children's Authority, additional rules to the family law procedure may have to be developed to incorporate international child abduction matters.

Legal Aid is available under certain conditions and in circumstances prescribed by the **Legal Aid and Advice Act Chap 7:07** as amended.

Generally in civil matters, which includes family proceedings, the Legal Aid and Advisory Authority is required to look at the last twelve months of the applicant's disposable capital and disposable income to ascertain whether such sums have exceeded a total of approximately seven thousand Trinidad and Tobago dollars in the aggregate. Applicants who are not citizens of Trinidad and Tobago must be ordinarily resident in the country for a period of at least 6 months in order to qualify for Legal Aid. Persons applying as guardian ad litem or as next to friend to conduct proceedings on behalf of a minor can apply but are also subject to a means test.

V. ENFORCEMENT PROCEDURES

8. What procedures and measures exist for the enforcement of a return order and a contact/access order?

There are no procedures set in place for the enforcement of a return order and a contact order under the Convention.

VI. SUBSTANTIVE LAW

9. What are the legal criteria by which custody and contact determinations are made?

The **Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chap. 46:08** makes provisions for deciding on the issues of legal custody or upbringing of a minor. In making this decision, the court regards the welfare of the minor as the first and paramount consideration. It shall not take into consideration whether, from any point of view, the father might claim or might have a right in common law that is superior to that of the mother with respect to the custody or upbringing of the child.

The Act also makes provisions for the court to make an order regarding the legal custody and the right of access to the minor as well as to the conduct and to the wishes of the applicant and of all the parties involved.

The **Matrimonial Proceedings and Property Act Chapter 45:51 Part III (MPPA)** makes provisions for the protection and custody of children under the age of sixteen in the event of a divorce, judicial separation or of nullity of marriage. The welfare of the child, according to the **MPPA**, includes the custody and education of the child as well as the financial provisions for the child.

The court takes into consideration all the circumstances of the case in deciding maintenance of a child after divorce or judicial separation. Some of the factors considered by the court are:

- ◆ Parents financial capability to provide for the child;
- ◆ The quality of life that each parent has the ability to offer the child. This would include inter alia, the standards of accommodation in which the parent proposes to keep the child and each parent's proposed arrangements for the education and health of the child;
- ◆ The relationship between the child and each of his/her parents; and
- ◆ The religion that the child has been brought up in as compared to the religion of each of his parents.

10. Is there a difference in the legal status of mothers and fathers in custody or contact cases?

The above mentioned Act in question 9 provides that in relation to the custody or upbringing of a minor, a mother shall have the same rights and authority as the law allows a father and the rights and authority of the mother and father shall be equal and exercisable by either without the order. The equality of both parents, which are also observed in matters dealing with the administration of property belonging to or held in trust for the minor, cannot be contracted away and any agreement that attempts to have such an effect is void and unenforceable.

Where a minor's father and mother disagree on any question affecting his welfare, the court may, on application of either parent, make such an order regarding the matters in difference as it sees fit. However, the authority to make an order in the event of such a disagreement does not authorize the court to make any order regarding the custody of the minor or the right of access to him/her of his/her father or mother.

VII. SOCIAL SERVICES AND CHILD PROTECTION SERVICES

11. Please describe the services that exist for the assessment, care and protection of children in the context of international child abduction.

12. Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

Please be advised that in light of the aforementioned implementation situation of the Central Authority in Trinidad and Tobago with respect to the Convention, the Ministry of the Attorney General cannot respond to this particular question. This can only be addressed once the Authority is established and is operational. However, the National Family Services Division works with the Probation Division to address assessment care and protection of children in the context of International Child Abduction. The services of these Divisions together with the Family Court services also include counselling, advice, monitoring and relevant referrals to the children as well as parents accompanying the child(ren) on return.

Please see question 7 above which makes reference to legal aid.

VIII. INFORMATION AND TRAINING

13. What measures are being taken to ensure that persons responsible for implementing the Convention (eg, judges and central authorities personnel) have receives appropriate information and training?

At this time, the Ministry is unable to to respond to this particular question.