

HAGUE CONVENTION OF 25 OCTOBER 1980
ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

STANDARD QUESTIONNAIRE FOR NEWLY ACCEDING STATES

response from: JAMAICA

date of response: MAY 2017

I Implementing legislation

(a) Is implementing legislation necessary to bring the Convention into force in domestic law?

Yes. Implementation of legislation is necessary to bring the Convention into force in Jamaica.

(b) If so, has the necessary legislation been enacted, and is it in force? (Please provide a copy or indicate where copies of the legislation may be obtained.)

In compliance, Jamaica acceded to the Convention on the Civil Aspects of International Child Abduction on the 8th February 2017 when implementation legislation was amended to incorporate the Children (Guardianship and Custody) (Amendment) Act. The Convention was entered into force on the 1st May 2017.

II Locating children

Please indicate the agencies involved and the processes available for the location of missing children in your country:

- Ananda Alert is the nationwide alert system designed to ensure a speedy and safe recovery of a child (under 18 years) in the unfortunate event that he/she cannot be located by a caregiver. It is formulated through the Office of the Children's Registry (OCR) in collaboration with other state entities and the police for the quick and safe return of a child that has been reported as missing.*
- The process begins when a child has been reported missing to the OCR and the investigation is channelled through the Jamaica Constabulary Force (JCF).*

- *Some key partners who are involved in the process are: The Child Development Agency (CDA) who will provide counselling support to children and family once they are recovered.*

III Central Authority

(a) The designation and contact details of the Central Authority (please note that this information will be added to the relevant webpage of the Hague Conference website):

- *Under Section 7(A)(1), of the Children (Guardianship & Custody)(Amendment) Act 2017, The Ministry of Justice is the designated Central Authority.*
- *The duties imposed by the Convention to the Ministry of Justice are directly executed by the Child Development Agency in accordance with Section 7(A) (2) of the Children (Guardianship & Custody)(Amendment) Act 2017.*

(b) Contact persons within the Central Authority, languages spoken, contact details for each (see remark at (a) above):

The contact persons within the Central Authority is:-

- *Mrs Maxine Bagalue
Child Development Agency
48 Duke Street
Kingston, Jamaica W.I.
Telephone: 1 876 922 1751
Fascimile: 1 876 924 9401
Email: jacentralauthority@cda.gov.jm
Language: English*

(c) 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:

There are state entities in Jamaica who will be able to facilitate the provisions within the Convention. The Act further makes provision for the Central Authority on receiving of application to obtain judicial orders for the retention of a child, wrongfully removed to or retained in Jamaica or for securing the effective exercise of rights to access to a child who is in Jamaica. The Ministry of Foreign Affairs and Foreign Trade, Jamaica Embassies and High Commissions overseas will cooperate in order to achieve the objects of the Convention.

IV Judicial procedures

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

The jurisdiction to consider applications for return and questions of access under the Convention is given to the Supreme Court of Judicature of Jamaica. The Child Development Agency as the designate Central Authority from the Ministry of Justice is mandated to make the application for cases in relation to return and access.

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

- *Section 7H of the Children (Guardianship & Custody)(Amendment) Act 2017 mandates that applications that are made to the Supreme Court must be considered expeditiously. Section 7I states that decisions must be made within six (6) weeks otherwise a written statement must be issued as to the reason for delay.*
- *Section 7T of the Children (Guardianship & Custody)(Amendment) Act 2017 makes reference to appeals against the decision of the Supreme Court. The Court of Appeal has within six (6) weeks from the date of decision of the proceedings from the Supreme Court to decide an appeal case that was submitted for consideration.*

(c) 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 appropriate authority of the foreign country, or a person, institution or other body of such country, may by application made on the required Form invoke the assistance of the Central Authority. The Central Authority may in suitable cases institute judicial proceedings, which will be conducted at no cost to the applicant of the foreign country. In instances where the applicant seeks to instruct independent attorney to attend the hearing, the applicant will be responsible for such costs that arises.

V Enforcement procedures

What procedures and measures exist for the enforcement of:

(a) a return order?

Where the Supreme Court of Jamaica makes an order for the return of a child to the country in which the child had his or her habitual residence prior to his or her removal to Jamaica, the Central Authority is required by virtue of Section 7H and 7I of the Children (Guardianship & Custody)(Amendment) Act 2017 to cause such arrangements as are necessary to be made in accordance with the order, for the return of the child to the specified country.

(b) a contact/access order?

Where the Supreme Court of Jamaica in accordance with Section 7(D)(1)(f) Children (Guardianship & Custody)(Amendment) Act 2017 makes a decision for an access order, the enforcement procedure applicable to order of the Supreme Court would be available.

VI Substantive law

(a) What are the legal criteria by which custody and contact determinations are made?

- *The Children (Guardianship & Custody) Act 1957 makes provisions for deciding on issues in relation to legal custody of children. In making a decision, the court must have regards to the best interest of the child as defined in Section 2(2) in the Child Care and Protection Act 2004.*
- *Section 23 of the Matrimonial Causes Act 1989 makes provisions for the protection and custody of children in the event of a divorce. The welfare of the child includes custody, education and financial provisions.*

(b) Is there a difference in the legal status of mothers and fathers in custody or contact cases?

The Children (Guardianship & Custody) Act 1957 provides that the custody or upbringing of a child, both parents have the same rights and authority. Where there is disagreement as to the child, the matter would be assessed and decided by the court.

VII Social services and child protection services

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction:

Where information has been received that a child has been abducted and the child has been located, an application would be presented to the court who may summon the abducting parent and request information about the child's well being. Where evidence has been received that the child has been ill treated, appropriate measures will be taken for criminal action and for child to be placed in safe custody.

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:

The Central Authority will be notified immediately the judge makes a decision on a return order. The Central Authority will immediately seek to notify the contracting state and the provide for the child's safe return. Embassies and local consulates of foreign countries will always be informed of return orders. All necessary legal assistance required to expedite the departure will be provided.

VIII Information and training

What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training?

(Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may be available for this purpose.)

Since the implementation and the coming into force of the accession to the Hague Convention on the Civil Aspects of International Child Abduction in Jamaica, there has been meetings and discussions with a Central Authority judge in the USA as to the role of the court in Hague Abduction cases, webinar discussions with the Central Authority in USA and conference in Guyana.