

**PUBLIC CONSULTATION ON THE DRAFT BILL TO IMPLEMENT THE
HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION (HCCAICA)**

Submission from AWARE

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1. **INTRODUCTION**

AWARE welcomes Singapore's intended accession to The Hague Convention on the Civil Aspects of International Child Abduction (The Convention) by the end of 2010, and the proposed bill of International Child Abduction (ICA) to implement the convention.

Since the Convention came into force in 1983, 82 countries have become signatories to it. Singapore's accession is somewhat overdue. The cross border-relationship/marriage is increasingly an inevitable consequent of globalization and cross-border movements in contemporary times.¹ Breakdown of such relationships has seen an increase in child abduction cases in many jurisdictions including Singapore. Aware, therefore, applauds Singapore's move to ratify this Convention.

2. **THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (HCCAICA)**

Observations:

The primary objects of the Convention are:

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.

Articles 2 & 11 of the Convention further state:

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

¹ The number of Singaporeans marrying foreigners have gone up from 3 in 10 in 1998 to 4 in 10 in 2008.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Clearly, a paramount purpose (and emphasis) of the Convention is the prompt and speedy return of the child to the country of the child's habitual residence so that Courts in that jurisdiction can determine issues relating to the welfare and best interests of the child.

It should also be noted that this is unlike in domestic proceedings involving children where the welfare of the child is the chief consideration.

3. **INTERNATIONAL CHILD ABDUCTION (ICA) Draft Bill**

Recommendations and Commentary:

3.1 We note the draft ICA bill has not adopted **Articles 2 and 11** of the Convention.

Recommendation:

Aware believes the ICA should adopt *Articles 2 & 11* to keep faith with the paramount purpose of the Convention, and for the following reasons:

- a. In many instances, delay is not in the welfare and interest of the child and may well result in a real prejudice to the person seeking the return of the child.
- b. Where expeditious dispensation of the case is not embodied in the domestic legislation, there may be a real danger of losing precious time through protracted litigation, thereby allowing the offending party to seek to argue that the child has become settled in the new environment.
- c. The success of the Convention depends on a very large measure on the active participation and co-operation of each member state. The level of success of the Convention in a Contracting State is related to provisions of the domestic law (that is, ICA in Singapore) and inter-agencies' co-operation and agreements to ensure minimal delays in the implementation

of the Convention. It is this speed and cooperation that will help Singapore achieve international recognition as a Contracting State.

3.2 Section 13

Section 13 [Advice of welfare officers, etc.] of the ICA provides that in applications for determination by the court for the return of a child, "*the court may receive advice from any person ...*". We note that the Section is, however, silent on whether the party making such an application is entitled to information or report of such "*advice*".

Recommendation

We propose that there be an additional provision therein stating that any such advice or report shall be disclosed to the party and or his/her counsel. We are of the view that it is an inherent right of such a party to be informed of the "*advice*" and of the basis of such findings / advice / reports. Such a party should also be allowed to cross-examine the welfare officer, etc. on his / her findings. Although the court is not bound to "*follow any such advice*", in instances where the court does in fact endorse the findings which recommends the non-return of the child to the place of habitual residence, this would have the grave result of a parent not being able to secure the return of the child to the Contracting State from which the child was removed. Given this grave and dire consequence which would have the result of depriving that parent of his / her right of constant contact with the child, disclosure of the advice / report and the basis thereof, should be made known to such a parent, who should also have the right to cross-examine the officer.

3.3 Criminalizing the breach

Recommendation

We propose an additional section in the ICA giving the court the power to impose a fine or a custodial sentence or both. Given the grave and serious impact such a breach may have both on the child and the parent remaining in the Contracting State of the child's habitual residence, we are also of the view that giving the courts the discretion where necessary and appropriate in certain cases to impose a penalty for such a wrongful removal or wrongful retention or deprivation of access, would act as a real deterrence to child abduction.

Thank you.