

## QUESTIONNAIRE ON PREVENTIVE MEASURES

The questionnaire which appears below is addressed to States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and some Non-Governmental Organisations. It should be emphasised that respondents are also invited to identify and comment upon matters concerning preventive measures, which are not addressed specifically in the questionnaire. Where information is available on web sites, please feel free to merely state the web site address.

The Permanent Bureau requests responses to the questionnaire to be sent to the Permanent Bureau, if possible in electronic form. Responses should be received no later than 1 April 2003.

### QUESTIONS

#### LEGISLATION AND COURT ORDERS

**Please give details of any civil legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.**

Relevant civil legislations available in the Laws of Hong Kong include -

Child Abduction and Custody Ordinance (CACO) (Cap.512)  
 Guardianship of Minors Ordinance (GMO) (Cap.13)  
 Separation and Maintenance Orders Ordinance (SMOO) (Cap.16)  
 Matrimonial Proceedings and Property Ordinance (MPPO) (Cap. 192)  
 Matrimonial Causes Ordinance (MCO) (Cap. 179)  
 Matrimonial Causes Rules (MCR) (Cap. 179A)  
 Rules of the High Court (HCR) (Cap. 4A)

The Hague Convention on the Civil Aspects of International Child Abduction (the Convention) entered into force in Hong Kong in September 1997, and was incorporated into Hong Kong law through the enactment of the CACO. Subject to the provisions of the CACO, the provisions of the Convention as set out in Schedule 1 to the CACO have the force of law in Hong Kong.

The GMO governs court proceedings relating to the custody and upbringing of children. This Ordinance states the principle that the welfare of the child in question is to be the first and paramount consideration of the courts. The rights and authority of the mother and father of a child are equal except where the child is born out of wedlock, in which case the mother has all parental rights and authority. However, on an application made by an unmarried father, the court may grant him some or all of the rights and authority that the law would allow him as a father if the child were born legitimate.

In matrimonial proceedings, the court may make an order relating to the custody of a child. Under Section 5 of the SMOO, the court may, having regard to the best interests of the children, make an order that the legal custody of any children of the marriage be committed to the husband or wife, until such children attain the age of 18 years.

Section 19 of the MPPO states that the court may make a custody order for a child in matrimonial proceedings such as divorce as it thinks fit. Procedural rules for applications for an order relating to custody, care and supervision of children are set out in the MCR, in particular, Rule 92. Rule 94 of the MCR further requires an application should be made to the court for permanent removal of a child out of Hong Kong. Rule 94 also states that either party to the marriage or both may apply at any time for an order prohibiting the removal of any child aged under 18 out of Hong Kong.

If a child is abducted to Hong Kong, to preserve the status quo, the left-behind parent/applicant may apply to the duty judge of the High Court, under Order 121 of the HCR, for an order restraining the further removal of the child.

The High Court of Hong Kong is vested with the wardship jurisdiction. If a parent sees the real risk that his/her child may be brought outside Hong Kong soon, he/she may apply to the duty judge for making the child a ward of court.

For details, please refer to the web-site of the Central Authority of the HKSAR, i.e. Secretary for Justice/ Department of Justice at [http://www.info.gov.hk/justice/childabduct/english/abduct\\_toc.html](http://www.info.gov.hk/justice/childabduct/english/abduct_toc.html).

**Please give details of any criminal legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.**

Relevant criminal legislations in the Laws of Hong Kong include –

Protection of Children and Juveniles Ordinance (PCJO) (Cap. 213)

Offences Against the Person Ordinance (OAPO) (Cap. 212)

Crime Ordinance (CO) (Cap. 200)

Section 26 of the PCJO provides that it is an offence for a person to take a child/juvenile (under 18 years of age) away unlawfully against the will of the child's/juvenile's parent or guardian.

Under Section 43 of the OAPO, there is an offence of "stealing child under 14 years". Section 126 of the CO provides for an offence of abduction of an unmarried girl under 16 against the will of her parent or guardian, and some other sections of this Ordinance provide for other abduction situations relating to sexual acts.

There are also the common law offences of kidnapping and false imprisonment, and an offence of kidnapping for a ransom in Section 42 of the OAPO.

For details, please refer to the web-site of the Central Authority of the HKSAR, i.e. Secretary for Justice/ Department of Justice at [http://www.info.gov.hk/justice/childabduct/english/abduct\\_toc.html](http://www.info.gov.hk/justice/childabduct/english/abduct_toc.html).

**Please give details of any court orders which can be obtained during, for example, divorce or custody proceedings which prohibit, restrict or criminalise removal or retention of a child.**

Our legislation empowers the court to make a range of orders regarding the custody of a child during matrimonial proceedings.

Section 48 of the MCO provides that where it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child be under the supervision of the Director of Social Welfare. Section 48A of the MCO also contains similar provisions that where it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the court could make an order committing the care of the child to the Director of Social Welfare.

The MCR further sets out the requirement for removing a child out of Hong Kong. According to Rule 94 of the MCR, an application should be made to the court for permanent removal of a child out of Hong Kong. Rule 94 also states that either party to

the marriage or both may apply at any time for an order prohibiting the removal of any child aged under 18 out of Hong Kong.

**Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained out-of-hours and *ex parte*?**

If a child is abducted to Hong Kong, to preserve the status quo, the left-behind parent/applicant may apply to the duty judge of the High Court, under Order 121 of the HCR, for an order restraining the further removal of the child. The application can be made on an ex-parte basis and the duty judge sits outside office hours (even at the judge's residence) as well. It is extraordinary to make an application to a judge outside office hours. Therefore, the applicant will need to show the urgent need when he or she does so.

The High Court of Hong Kong is vested with the wardship jurisdiction. If a parent sees a real risk that his/her child may be brought outside Hong Kong soon, he/she may apply to the duty judge to make the child a ward of court. The application may be made on an urgent and ex-parte basis. Once the originating summons is filed, the child will automatically become a ward of court and will not be allowed to leave Hong Kong pending the hearing of the originating summons.

**Do you have any comments relating to relocation orders?**

No specific comment.

**Do you have any other comments relating to legislative provisions, court orders or administrative measures including any comments on the effectiveness of these provisions, and how often they are used in practice?**

In practice, stop orders (including orders containing a clause restraining the removal of children) can always be obtained by parties in family proceedings. Indeed, under Rule 56(1)(c) and Form 24 (1) of the MCR, when a divorce *decree nisi* is made, it is a standard term of the decree that the child of the family shall not be removed out of Hong Kong. On the other hand, parties to the proceedings may apply to the Family Court to dispense with the said restriction. Nevertheless, parties usually do not serve the stop orders in the Immigration Department. A stop order will not be effective if the person in favour of whom the stop order is granted does not bring it to the attention of the Immigration Department.

**BORDER CONTROLS**

**Please give details of any rules or procedures relating to the issuance or withdrawal of passports which may help to prevent removal or retention.**

The Immigration Department of the HKSAR may stop a child from being removed from Hong Kong only if they have a sealed copy of the court order prohibiting such a removal. An immigration officer does not have power to stop a child from departure without a court order if the child has a valid travel document.

If a court order prohibiting removal or directing that the Immigration Department be requested not to issue a travel document to a child without the applicant's consent, a sealed copy of the court order should be delivered by hand to the Immigration Department, together with a copy of the child's birth certificate, identity card and travel document(s) (if applicable and available).

As regards withdrawal of passports to prevent removal, there is no policy or statutory requirement for the Immigration Department to do so. A person's travel document will

not be withdrawn unless the holder ceases to be eligible or is subsequently found not eligible for the travel document issued to him.

**Please give details of any rules or procedures relating to the issuance or withdrawal of visas which may help to prevent removal or retention.**

To prevent a child from being removed from Hong Kong, a court order prohibiting the child's removal and relevant documents should be sent to the Immigration Department for action. Detailed procedures on documents required are provided in the HKSAR Central Authority's International Child Abduction Web Page at [http://www.info.gov.hk/justice/childabduct/english/abduct\\_toc.html](http://www.info.gov.hk/justice/childabduct/english/abduct_toc.html). The issuance or withdrawal of visas is not relevant in the matter of preventing a child's removal.

**Are you aware of any co-operative arrangements with other States with regard to children who maintain more than one nationality?**

As far as we are aware, there is no such formal co-operative arrangement with other contracting states. If the child has one or more foreign nationalities, the applicant may consider contacting the appropriate embassy, consulate or passport office to enquire the possibility of denial or revocation of travel documents.

**Are there any foreign States which it is possible for nationals from your State to enter without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?**

We are not aware of any foreign states which holders of Hong Kong travel documents could possibly enter without a travel document or without passing border control. The Macau Special Administrative Region which allows Hong Kong permanent residents to enter Macau by using a Hong Kong Permanent Identity Card is not a foreign state.

**Are there any foreign States whose nationals can enter your State without a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?**

No, all travelers passing in and out of Hong Kong, be it by air, land or sea are subject to immigration examination.

**Please give details of any port alert or similar emergency systems which can operate to prevent removal from your jurisdiction including the conditions required to put these procedures into effect.**

The Immigration Department of HKSAR may stop a child from being removed from Hong Kong only if they have a sealed copy of the court order prohibiting such removal. An immigration officer does not have the power to stop a child from departure without a court order if the child has a valid travel document.

If a court order prohibiting removal or directing that the Immigration Department be requested not to issue a travel document to a child without the applicant's consent, a sealed copy of the court order should be delivered by hand to the Immigration Department, together with a copy of the child's birth certificate, identity card and travel document(s) (if applicable and available).

**Please give details of any specific duties on air carriers / ferries relating to the carriage of children.**

Nil.

**Do you have any other comments relating to border controls, including any comments on the effectiveness of these measures to prevent removal or retention and how often they are used in practice?**

Provided that a court order prohibiting a child's removal is sent to the Immigration Department, the child will be stopped from departure. However, if no court order prohibiting removal is made or if the parents do not inform the Immigration Department that such a court order has been made, then the Immigration Department cannot stop a child from leaving Hong Kong if the child has a valid travel document.

**INFORMATION FOR PARENTS**

**Please give details of any web pages, and provide copies of any brochures, or information packs or similar which contain information or advice on preventive measures and which are available to parents in your State. Who provides this information?**

Information on [Preventing the removal of a child from Hong Kong](http://www.info.gov.hk/justice/childabduct/english/abduct_riidassist.html) is available on the International Child Abduction web-page on the web-site of the Department of Justice at [http://www.info.gov.hk/justice/childabduct/english/abduct\\_riidassist.html](http://www.info.gov.hk/justice/childabduct/english/abduct_riidassist.html) [http://www.info.gov.hk/justice/childabduct/english/abduct\\_riprevent.html](http://www.info.gov.hk/justice/childabduct/english/abduct_riprevent.html)

The Social Welfare Department of Hong Kong also helps families in trouble by providing family services, family and child protective services (including child custody services), residential care services for children (including foster care, small group homes and other residential homes for children) and services for battered spouses (including refuge centres for women).

Please see the [Family and Child Welfare Services](http://www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html) page of the [Social Welfare Department Home Page](http://www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html) [http://www.info.gov.hk/swd/html\\_eng/ser\\_sec/fam\\_ser/index.html](http://www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html) or call the Social Welfare Department Hotline (telephone: (852)23432255) for more information.

A pamphlet "Parents of a Lifetime" is also produced by the Social Welfare Department to help divorced couples handle custodial and access arrangements.

**When was this information compiled? When was it last updated? How is the information made available?**

The Department of Justice's web-page on international child abduction was launched in mid-2002.

The web-site of the Social Welfare Department was last updated in March 2003. The above-mentioned pamphlet "Parents of a Lifetime" produced by the Department was produced in January 2003 for distribution to the public through service units of the Department.

**Do you have any other comments relating to information for parents, including any comments on whether such information is effective in preventing abductions?**

Information on legal aid or assistance provided by the Government is also available on the web-sites of Legal Aid Department and the Official Solicitor's Office at <http://www.info.gov.hk/lad/index.htm> and <http://www.info.gov.hk/oso/> respectively.

Parents may also visit the web-site of the Hong Kong Law Society at <http://www.hklawsoc.org.hk/pub/default.asp> to identify a firm of solicitors specializing in family law practice for legal advice.

## **TRAINING AND EDUCATION FOR PROFESSIONALS**

**Please give details of any training or education that is available in your State for professionals (including, Central Authority personnel, lawyers, mediators, police officers, port or airport authorities and social workers) as a means of assisting them to operate preventive measures.**

Training available for officers working for the Central Authority (Department of Justice) is largely on-the-job training, e.g. case-based meetings with supervisory officers. An Office Manual, as recommended by the Permanent Bureau of the Hague Conference, is being compiled and will be available to officers working for the Central Authority in due course. Upon request, Central Authority officers also give talks in relation to child abduction to officers of the other related departments and members of the legal profession.

Training programmes are also organized by the Social Welfare Department to equip social workers and child care workers with knowledge and intervention skills on handling child custody issues. Besides, training for social workers of the Department's Family and Child Protective Services Units on handling international child abduction cases is conducted whenever necessary.

The Hong Kong Police Force also provides training on the subject to police officers.

### **Who provides this training and education?**

Officers of the Central Authority who are Government lawyers would be prepared to provide training on the legal side of any preventive measures.

The Social Welfare Department and the Hong Kong Police Force are responsible for organizing training for their respective staff. Local and overseas trainers are invited to conduct the training where appropriate. Some of the training programmes of the Social Welfare Department are also open to staff from other related Government departments and non-governmental organizations.

### **What form does this training take and how regularly does it occur?**

The training programmes mentioned above are conducted in the form of seminars and workshops on ad hoc or need basis. Officers working in the Central Authority also meet regularly to discuss the recent developments of child abduction law and practice.

**Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of preventing abduction?**

No particular comment.

## **PUBLICITY**

**Please give details of any means used to publicise the Convention or the work of the Central Authority.**

Work of the relevant government departments related to the Convention are published in their respective web-sites. These include -

Department of Justice (Central Authority)

[http://www.info.gov.hk/justice/childabduct/english/abduct\\_toc.html](http://www.info.gov.hk/justice/childabduct/english/abduct_toc.html)

Social Welfare Department  
[http://www.info.gov.hk/swd/html\\_eng/ser\\_sec/fam\\_ser/index.html](http://www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html)

Hong Kong Police Force  
[http://www.info.gov.hk/police/hkp-home/english/main\\_in.html](http://www.info.gov.hk/police/hkp-home/english/main_in.html)

**Please give details of any means used to publicise other preventive measures operating in your State.**

Information on preventive measures are available on the web-page of the Hong Kong Central Authority.

As far as the Social Welfare Department is concerned, apart from the distribution of the pamphlet "Parents of a Lifetime" targeted for divorced parents mentioned under the reply to Question C2, its Family and Child Protective Services Units also organize relevant public education programmes e.g. seminars, talks, etc. for divorced parents with custody disputes.

**Do you have any other comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures?**

In addition to the above mentioned measures, the Central Authority is preparing an information leaflet on child abduction for distribution to consulates.

#### **CO-OPERATION**

**Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to preventive measures. How did this co-operation develop?**

There are established inter-departmental co-operation channels within the Government, amongst relevant parties such as the Department of Justice (Central Authority), Social Welfare Department, Hong Kong Police Force and Immigration Department.

**Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies. How did this co-operation develop?**

Co-operation between Central Authorities is provided under the Hague Convention regime. We are not aware of any specific agreement or arrangement between Hong Kong and any other contracting states on preventive measures.

**Please provide details (including contact details, web sites etc.) of all agencies in your State which have a role to play in preventing the removal or retention of children.**

Department of Justice (Secretary for justice being the Hong Kong Central Authority)  
[http://www.info.gov.hk/justice/childabduct/english/abduct\\_toc.html](http://www.info.gov.hk/justice/childabduct/english/abduct_toc.html)

Social Welfare Department (Family and Child Protective Services Unit)  
[http://www.info.gov.hk/swd/html\\_eng/ser\\_sec/fam\\_ser/index.html](http://www.info.gov.hk/swd/html_eng/ser_sec/fam_ser/index.html)

Hong Kong Police Force (Child protective Unit)  
[http://www.info.gov.hk/police/hkp-home/english/main\\_in.html](http://www.info.gov.hk/police/hkp-home/english/main_in.html)

Immigration Department (Control Administration Section)  
<http://www.gov.hk/immd/index.htm>

**Do you have any other comments relating to co-operation, including any comments on the effectiveness of such agreements?**

No particular comment.

**OTHER INFORMATION**

**Please provide any other information which may be relevant to the issue of preventive measures and their effectiveness.**

Nil.

**Please provide details of any other bodies or authorities in your State who may have information useful to this research.**

Nil.

**Have you any general comments to make regarding preventive measures?**

The preventive measures currently available in Hong Kong seem sufficient if people make full use of them. Usually, the reason for failure to prevent children abduction may be attributable to the failure of an applicant or his/her lawyer to make use of those measures, e.g. failing to serve the stop order on the Immigration Department.

**The Permanent Bureau would like to thank you for taking the time to consider this questionnaire. If you have any further questions or comments please do not hesitate to contact us.**