



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION
ACT, No. 10 OF 2001**

[Certified on 9th August, 2001]

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*Civil Aspects of International Child Abduction
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L.D.—O. 28/98.

AN ACT TO GIVE EFFECT TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ADOPTED AT THE HAGUE ON 25TH OCTOBER, 1980 ; TO MAKE PROVISION FOR THE RETURN OF CHILDREN WRONGFULLY REMOVED FROM SRI LANKA OR THEIR COUNTRY OF HABITUAL RESIDENCE AND RETAINED IN ANY SPECIFIED COUNTRY OR SRI LANKA ; TO EXTEND THE JURISDICTION OF THE HIGH COURT OF A PROVINCE TO HEAR APPLICATIONS FOR THE RETURN OF CHILDREN WRONGFULLY REMOVED OR RETAINED ; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Convention on the Civil Aspects of International Child Abduction was adopted at the Hague on October 25, 1980 ;

Preamble.

AND WHEREAS Sri Lanka acceded to the aforesaid Convention ;

AND WHEREAS it is necessary to make legal provision to enable Sri Lanka to fulfill its obligations under the aforesaid Convention ;

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Convention on the Civil Aspects of International Child Abduction Act, No. 10 of 2001 and shall come into operation on such date as the Minister by Order published in Gazette, certifies as the date on which the Convention on the Civil Aspects of International Child Abduction signed at the Hague on October 25, 1980 (hereinafter referred to as "the Convention") enters into force in respect of Sri Lanka.

Short Title and
date of operation.

2. The Minister may by Order published in the Gazette, specify the countries in respect of which the provisions of this Act shall apply and the date with effect from which such

Application.

provisions shall so apply. A country in respect of which an Order is made under this section is hereinafter referred to as "a specified country".

Wrongful removal
or retention.

3. (1) For the purposes of this Act, the removal to, or retention in, Sri Lanka of a child shall be deemed to be wrongful where—

(a) the removal or retention, as the case may be, is in breach of rights of custody attributed to any person or institution or other body, either jointly or alone, under the law of the specified country in which that child had his or her habitual residence, immediately prior to such removal or retention, as the case may be ;

(b) at the time of the removal or retention, as the case may be, those rights were actually exercised, either jointly or alone, by such person, institution or other body or would have been exercised by such person, institution, or other body but for such removal or retention, as the case may be.

(2) The rights of custody referred to in subsection (1) include rights of custody arising—

(a) by operation of law of ;

(b) by reason of a judicial or administrative decision of ; or

(c) by reason of any agreement having legal effect under the law of,

the specified country in which the child had his or her habitual residence, immediately prior to such removal or retention, as the case may be.

Central Authority:

4. The Secretary to the Ministry of the Minister in charge of the subject of Justice shall be the Central Authority for the purposes of this Act, (hereinafter referred to as "the Central Authority").

5. The Central Authority, either directly or through an intermediary, may take all appropriate measures,—

Duties of Central
Authority.

- (a) to discover the whereabouts of a child who has been wrongfully removed to, or retained in Sri Lanka ;
- (b) to prevent further harm to any such child or prejudice to any other interested parties, by taking or causing to be taken, such provisional measures as may seem necessary ;
- (c) to secure the voluntary return of any such child to the specified country in which such child had his or her habitual residence or to bring about an amicable resolution of the differences between the person claiming that such child has been wrongfully removed to, or retained in, Sri Lanka and the person opposing the return of such child to the specified country in which that child has his or her habitual residence ;
- (d) to exchange, where desirable, information relating to any such child, with the appropriate authorities of a specified country ;
- (e) to provide, on request, information of a general character, as to the law of Sri Lanka in connection with the implementation of the Convention in any specified country ;
- (f) to institute judicial proceedings with a view to obtaining the return of any such child to the specified country in which that child has his or her habitual residence, and in appropriate cases, to make arrangements for organizing or securing or to institute judicial proceedings for securing, the effective exercise of rights of access to a child who is in Sri Lanka ;
- (g) where circumstances so requires to facilitate the provision of legal aid or advice ;

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- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of any such child to the specified country in which that child has his or her habitual residence.

Application to
Central Authority
for assistance in
securing the return
of a child who has
been wrongfully
removed or
retained.

6. (1) The appropriate authority of a specified country or a person, institution or other body claiming that a child has been wrongfully removed to, retained in, Sri Lanka in breach of rights of custody may apply to the Central Authority for assistance in securing the return of such child.

(2) Every application made under subsection (1), shall substantially be in the Form set out in the Schedule to this Act and shall contain *inter alia*—

- (a) information relating to the identity of the applicant, the child and the person alleged to have removed or retained the child ;
- (b) where available, the date of birth of the child ;
- (c) the grounds on which the applicant's claim for return of the child is based ;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be,

and may be accompanied by—

- (i) a duly authenticated copy of any relevant decision or agreement giving rise to the rights of custody claimed to have been breached ;
- (ii) a certificate or affidavit from the appropriate authority of the specified country in which that child has his or her habitual residence or from a qualified person, setting out the law of that specified country relating to the rights of custody alleged to have been breached ;
- (iii) any other relevant document.

(3) Every application under subsection (1) and the documents accompanying such application shall have translations thereof in the Sinhala, Tamil or English languages.

7. The Central Authority may refuse to accept an application made to him under section 6, if he is satisfied that there are no grounds for making the same. On his refusing to accept an application, the Central Authority shall forthwith inform the appropriate authority making the application, the reasons for the refusal.

Central Authority
may refuse
application.

8. Where, on receipt of an application under section 6 the Central Authority has reason to believe that the child in respect of whom the application is made is in another specified country, the Central Authority shall forthwith transmit the application to the appropriate authority in that specified country, and shall inform the appropriate authority making the application, that he has done so.

Central Authority
to transmit
application to
appropriate
authority in
another specified
country in certain
cases.

9. (1) Without prejudice to any other means for securing the return of a child in respect of whom an application has been made under section 6, the Central Authority may apply to the High Court established under Article 154P of the Constitution for the Western Province for an order ordering the return of such child to the specified country in which the child has his or her habitual residence.

Central Authority
may apply to High
Court for order of
return.

(2) Every application under subsection (1), shall be by way of summary procedure and shall be exempt from the payment of any stamp duty under the Stamp Duty Act, No. 43 of 1932.

10. Where the High Court is satisfied, upon an application made to it under section 9, but subject to section 11 that—

High Court may
order return of
child.

- (a) the child in respect of whom the application is made has been wrongfully removed to, or retained in, Sri Lanka as the case may be, within the meaning of section 3; and

- (b) a period of less than one year has elapsed between the date of the alleged removal or retention, as the case may be, and the date of such application.

shall forthwith order the return of such child to the specified country in which that child has his or her habitual residence :

Provided that the High Court may order the return of a child to the specified country in which that child has his or her habitual residence even in a case where more than one year has elapsed between the date of the alleged removal or retention, as the case may be, and the date of the application, unless it is satisfied that the child is settled in his or her new environment.

Grounds on which
High Court may
refuse to make an
order under
section 10.

11. (1) The High Court may refuse to make an order under section 10 for the return of a child to the specified country in which that child has his or her habitual residence if the person or body opposing such return satisfies the Court that —

- (a) the person, institution or other body having the care of the person of the child was not exercising such rights of custody at the time of removal or retention, as the case may be, or had consented to, or subsequently acquiesced in, such removal or retention, as the case may be ; or
- (b) there is grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

(2) The High Court may refuse to make an order under section 10 for the return of a child to the specified country in which that child has his or her habitual residence, if the child objects to being returned and the court is satisfied that the child has attained an age and a degree of maturity at which it is appropriate to take account of the child's views.

(3) In exercising its powers under subsections (1) or (2), the High Court shall have regard to any information relating to the social background of the child provided by the appropriate authority of the specified country in which that child has his or her habitual residence.

(4) The High Court shall not refuse to make an order under section 10 for the return of a child to the specified country in which that child has his or her habitual residence, on the ground only that there is in force, a decision of a court in Sri Lanka or a decision entitled to be recognized by a court in Sri Lanka relating to the custody of such child, but the High Court shall, in making an order under section 10, take into account the reasons for such decision.

12. (1) Where the High Court to which an application is made under section 9 for the return of a child fails to dispose of such application within six weeks of the date of the application, the Central Authority may —

Central Authority may request Court for reasons for delay in disposing of application.

(a) on its own motion; or

(b) at the request of the appropriate authority of the specified country in which that child has his or her habitual residence,

request the High Court for reasons for the delay.

(2) Where the Central Authority receives a reply in response to a request made by him under subsection (1), he shall cause such reply to be transmitted to the appropriate authority of the specified country in which that child has his or her habitual residence.

13. (1) The appropriate authority, or a person, institution or other body of a specified country, may make an application to the Central Authority for assistance in securing effective exercise of rights of access of a person specified in the application to a child who is in Sri Lanka.

Rights of access

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(2) An application made under subsection (1) shall, contain *inter alia* —

- (a) information relating to the identity of the applicant, the child and the person in whose custody the child is in Sri Lanka ;
- (b) where available, the date of birth of the child ;
- (c) the grounds on which the applicant's claim for right of access is based ; and
- (d) all available information relating to the whereabouts of the child, and the identity of the person with whom the child is presumed to be,

and may be accompanied by —

- (i) a duly authenticated copy of the relevant court decision or agreement giving rise to the right of access to the child ;
- (ii) a certificate or affidavit from the appropriate authority of the specified country in which that child has his or her habitual residence or from a qualified person, setting out the law of that specified country relating to the rights claimed by the applicant.

(3) Every application under subsection (1) and the documents accompanying such application shall have been translated in the Sinhala, Tamil or English language.

Central Authority
may apply to
court for order of
access.

14. (1) Without prejudice to any other means for securing the exercise of the rights of access of any person to a child in Sri Lanka, the Central Authority may apply to the High Court established under Article 154P of the Constitution for the Western Province, for an order of court for securing the effective exercise of those rights.

(2) Every application under subsection (1) shall be, by way of summary proceedings and shall be exempt from the payment of any stamp duty under the Stamp Duty Act, No. 43 of 1982.

(3) Where the High Court is satisfied from an application made to it under subsection (1) that the person who, or on whose behalf, such application is made has a right of access to the child specified in application, it may make such orders as may be necessary to secure the effective exercise of those rights of access, and any conditions to which they are subject.

15. (1) The application made to the Central Authority under section 6 or section 13 in respect of a child, and all documents accompanying such application shall be admissible in evidence without proof of signature, at the hearing of such application under section 9 or section 14 as the case may be, for the return of that child or access to the child, as the case may be, and shall be proof of the facts stated therein until the contrary is proved.

Evidence.

(2) For the purpose of determining whether the removal to, or retention in, Sri Lanka of a child is wrongful within the meaning of section 3, the High Court may, at the hearing of an application under section 9 for the return of the child, take judicial notice of the relevant law and judicial decisions of the specified country in which that child has his or her habitual residence.

16. The High Court may prior to making an order under section 10 for the return of a child to the specified country in which that child has his or her residence, request the Central Authority to obtain from the relevant authorities of the specified country in which that child has his or her habitual residence, a decision or determination as to whether the removal to, or retention in Sri Lanka, of that child, is wrongful within the meaning of the Convention.

High Court may require Central Authority to obtain order from relevant authorities in specified country.

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Central Authority
not to be required
to give security
for payment of
costs.

17. Nothing in this Act or any other written law shall be deemed to authorize the High Court to order the Central Authority to give security for the payment of any costs incurred, or likely to be incurred, by any respondent to any application under section 9 or section 14 or to pay the costs of any such application.

High Court may
order payment of
costs incurred by
Central Authority.

18. Upon making an order under section 10 for the return of a child to the specified country in which that child has his or her habitual residence, the High Court may order the person who removed that child to Sri Lanka or who retained that child in Sri Lanka to pay the expenses incurred by Central Authority including costs incurred in locating the child, the costs of legal representation of the Central Authority and the costs incurred in returning the child to the specified country in which that child has his or her habitual residence.

Order under
section 10 not a
decision or
determination on
merits.

19. An order made by the High Court under section 10 shall not be regarded as a decision or determination, on the merits, of any question relating to the custody of the child to whom the order relates.

Courts jurisdiction
to decide or
determine
questions relating
to the custody of a
child wrongfully
removed to Sri
Lanka.

20. Where the Central Authority receives notice that a child has been wrongfully removed to Sri Lanka from a specified country, no court in Sri Lanka shall decide or determine any question on the merits relating to the custody of the child to whom the notice relates —

- (a) until after the Central Authority or a court in Sri Lanka has refused an application made under section 6 or section 9, as the case may be, for the return of such child to the specified country ; or
- (b) until after the expiration of the period of six weeks from the date of such notice, and no application under section 6 for the return of that child to the specified country has been made during that period.

21. Where an order is made under section 10 for the return of a child to the specified country in which that child has his or her habitual residence, the Central Authority shall cause such arrangements as are necessary to be made in accordance with the order, for the return of such child to such specified country.

Central Authority to arrange for return of child in respect of whom an order has been made under section 10.

22. (1) A person, institution or other body in Sri Lanka claiming that a child has been wrongfully removed to a specified country or is wrongfully being retained in a specified country, in breach of rights of custody of such person, institution or other body may apply to the Central Authority for assistance in securing the return of that child to Sri Lanka.

Person, institution or other body may apply to Central Authority for securing return of child wrongfully removed to, or wrongfully retained in a specified country.

(2) On receipt of an application under subsection (1) the Central Authority shall apply in the appropriate manner to the appropriate authority in the specified country to which such child is alleged to have been removed or in which such child is alleged to be retained in, for assistance in securing the return of that child to Sri Lanka.

(3) "rights of custody" referred to in subsection (1) include rights of custody accruing to any person, institution or other body —

- (a) by operation of law of ; or
- (b) by reason of a judgement or order of a court or tribunal of ; or
- (c) by reason of any agreement having legal effect under the law of.

Sri Lanka.

23. The High Court established by Article 154P of the Constitution for the Western Province may, on an application made by or on behalf of the appropriate authority of a specified country, declare that the removal of a child to that specified country or the retention of that child in that specified country is wrongful within the meaning of Article 3 of the Convention.

Jurisdiction of High Court to make certain declarations.

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Sinhala text to
prevail in case of
inconsistency.

24. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

25. (1) In this Act unless the context otherwise requires—

“child” means a person who has not attained sixteen years of age;

“rights of access” in relation to a child includes the right to take a child for a limited period to a place other than the child’s habitual residence ;

“rights of custody” in relation to a child include the rights relating to the care of the person of the child and in particular the right to determine the child’s place of residence.

(2) Where in a specified country, there are in matters of custody of children, two or more systems of law applicable in different territorial units of the specified country —

(a) references in this Act to “habitual residence in that specified country” shall be read and construed as references to habitual residence in the territorial unit of that specified country; and

(b) references in this Act to the “law of the specified country in which the child has his or her habitual residence” shall be read and construed as references to the law of the territorial unit of the specified country in which that child has his or her habitual residence.

(3) Where in a specified country there are, in matters of custody of children, two or more systems of law applicable to different categories of persons, references in this Act to the “law of that specified country” shall be read and construed as references to the applicable legal system.

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SCHEDULE [Section 6 (2)]

FORM OF APPLICATION

REQUESTING CENTRAL AUTHORITY OR APPLICANT	REQUESTING AUTHORITY
----------------------------------------------	-------------------------

Concerns the following child : who will
attain the age of sixteen years on.....

I - IDENTITY OF THE CHILD AND ITS PARENTS

1 Child

Name and first name	.....
Date and place of birth	.....
Habitual residence before removal or retention	.....
Passport or identity card No. if any	.....
Description and photo, if possible (see annexes)	.....

2 Parents

- | | | |
|-----|--------------------------------------|-------|
| 2.1 | Mother : Name and first names | |
| | Date and place of birth | ..... |
| | Nationality | ..... |
| | Occupation | ..... |
| | Habitual residence | ..... |
| | Passport or identity card No. if any | ..... |
| 2.2 | Father : Name and first name | ..... |
| | Date and place of birth | ..... |
| | Nationality | ..... |
| | Occupation | ..... |
| | Habitual residence | ..... |
| | Passport or identity card No. if any | ..... |
| 2.3 | Date and place of marriage | ..... |

II - REQUESTING INDIVIDUAL OR INSTITUTION (who actually
exercised custody before the removal or retention)

- | | | |
|----|-------------------------------------------|-------|
| 3. | Name and first names | ..... |
| | Nationality of individual applicant | ..... |
| | Occupation of individual applicant | ..... |
| | Address | ..... |
| | Passport or identity card No. if any | |
| | Relation to the child | |
| | Name and address of legal adviser, if any | |

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III - PLACE WHERE THE CHILD IS THOUGHT TO BE

- 4.1 Information concerning the person alleged to have removed or retained the child

Name and first names
Date and place of birth, if known
Nationality, if known
Occupation
Last known address
Passport or identity card No. if any
Description and photo, if possible
(see annexes)

- 4.2 Address of the child
.....
.....

- 4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child
.....
.....
.....
.....

IV - TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

.....
.....
.....
.....

V - FACTUAL OR LEGAL GROUNDS ON WHICH THE APPLICANT'S CLAIM IS BASED

.....
.....
.....
.....

VI - CIVIL PROCEEDINGS IN PROGRESS

.....
.....
.....
.....

VII - CHILD IS TO BE RETURNED TO

- (a) Name and first names
Date and place of birth
Address
Telephone number
- (b) Proposed arrangements for return of
the child
.....
.....
.....

VIII - OTHER REMARKS

.....
.....
.....
.....

IX - LIST OF DOCUMENTS ATTACHED *

.....
.....
.....
.....

Date :

Place :

.....
Signature and/or stamp of requesting
Central Authority or applicant.

.....
* e.g. Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; authorization empowering the Central Authority to act on behalf of applicant).

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