



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

DEPARTMENT CIRCULAR NO. 010

**ESTABLISHING THE PROCEDURE FOR PROCESSING APPLICATIONS
UNDER THE 1980 CONVENTION ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION, AND FOR OTHER PURPOSES**

WHEREAS, under Section 2, Article II of the 1987 Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land;

WHEREAS, paragraph 2, Section 3, Article XV of the 1987 Constitution provides for the duty of the State to, among others, defend the right of children to proper care and special protection from other conditions prejudicial to their development;

WHEREAS, it is a State policy to protect the best interests of the Child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a Party;

WHEREAS, the Philippines, as a State Party to the Convention on the Rights of the Child, is obliged to ensure, among others, that a Child shall not be separated from his or her parents against his or her will, except when competent authorities, subject to judicial review, determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the Child;

WHEREAS, in Resolution No. 116, dated 01 February 2016, the Senate concurred in the accession of the Philippines to the 1980 Convention on the Civil Aspects of International Child Abduction or the Hague Child Abduction Convention (HCAC), which obliges State Parties to: (a) secure the prompt return of children wrongfully removed from or retained in any Contracting State; and (b) ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States;

WHEREAS, as a State Party to the HCAC, the Philippines is obliged to take all appropriate measures to secure within its territory the implementation of the objectives of the HCAC using the most expeditious procedure available;

WHEREAS, the Department of Justice (DOJ) has been designated as the Philippine Central Authority for the implementation of the country's commitments under the HCAC;

WHEREAS, under Section 7, Chapter 2, Title III, Book IV of the Administrative Code of 1987, the Legal Staff (Office of the Chief State Counsel)

of the DOJ may perform such functions as may be assigned by the Secretary of Justice;

WHEREFORE, the Department of Justice, through the Office of the Chief State Counsel, shall carry out its mandate as the Philippine Central Authority for the implementation of the country's commitments under the HCAC in accordance with the following procedures:

I. PRELIMINARY PROVISIONS

SECTION 1. Objective. – This Circular establishes the procedure to facilitate the prompt return to the country of their habitual residence of children covered by the HCAC, who were wrongfully removed therefrom or wrongfully retained in another HCAC Contracting State, and to ensure that rights of custody and of access under the law of HCAC Contracting States are effectively respected.

SECTION 2. Coverage. - The procedure under this Circular shall apply to both incoming and outgoing HCAC applications received by the HCAC Unit for the return of, or access to, a Child who was wrongfully removed from his or her country of habitual residence, or who was wrongfully retained in a country other than his or her country of habitual residence.

SECTION 3. Definition of Terms. - For purposes of this Circular, the following terms are hereby defined:

- (a) **“Central Authority”** refers to the agency or authority designated by an HCAC Contracting State to discharge the duties imposed by the HCAC to secure the prompt return of children under the HCAC and to achieve its other objectives;
- (b) **“Child”** refers to a person below 16 years of age, who is a habitual resident in a Contracting State and under the care of his or her parent(s) or other person exercising parental authority over him or her, at the time of the breach of custody or access rights;
- (c) **“Competent Authority”** refers to the government agency vested with the legal mandate to perform the functions necessary to implement the country's obligations under the HCAC;
- (d) **“Country of Habitual Residence”** refers to the State where a Child has been physically present for an amount of time sufficient for acclimatization and which has a degree of settled purpose from the Child's perspective;
- (e) **“HCAC”** refers to the 1980 Convention on the Civil Aspects of International Child Abduction or the “Hague Child Abduction Convention”;
- (f) **“HCAC Application”** refers to the written document, including those transmitted through electronic communication, submitted by the Central Authority of the country of habitual residence of a Child prior to the

wrongful removal or retention under the HCAC, on behalf of the Left-Behind Parent;

- (g) **"HCAC Contracting State"** refers to the Philippines and any other State Party to the HCAC;
- (h) **"Left Behind Parent"** refers to any person, institution or any other body exercising custody rights over the Child, immediately prior to the breach of custody or access rights;
- (i) **"Rights of Access"** include the right to take a Child for a limited period of time to a place other than the Child's country of habitual residence;
- (j) **"Rights of Custody"** include rights relating to the care of the person of the Child and the right to determine the Child's country of habitual residence;
- (k) **"Taking Parent"** refers to any person, institution or any other body who wrongfully removed a Child from his or her country of habitual residence, or wrongfully retained the Child in another State;
- (l) **"Wrongful removal"** refers to the breach of rights of custody attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the Child was habitually residing immediately before the removal, and, at the time of removal, those rights were actually exercised, either jointly or alone, or would have been so exercised had the Child not been wrongfully removed; and
- (m) **"Wrongful retention"** refers to the breach of rights of custody attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually residing immediately before the retention, and, at the time of retention, those rights were actually exercised, either jointly or alone, or would have been so exercised had the Child not been wrongfully retained.

II. HCAC PRINCIPLES

SECTION 4. Basic Principles. – This procedure shall be governed by the following basic principles:

- (a) The HCAC is based on the principle that, save in exceptional circumstances, the wrongful removal or retention of a Child across international borders is not in the best interests of the Child.
- (b) A decision under the HCAC concerning the return of the Child shall not be taken to be a determination on the merits of any custody issue.
- (c) The return of the Child to his or her country of habitual residence is to restore the *status quo* that existed prior to the wrongful removal or wrongful retention.

- (d) The HCAC applies to the wrongful removal or wrongful retention of children across international borders, without regard to the nationalities of the Taking Parent, Left Behind Parent and the Child.
- (e) The HCAC applies only between the Philippines and HCAC Contracting States which accepted the Philippines' accession, and between the Philippines and HCAC Contracting States whose later accession to the HCAC was likewise accepted by the Philippines.

III. PHILIPPINE HCAC CENTRAL AUTHORITY

SECTION 5. *Philippine HCAC Central Authority.* - The Department of Justice, through the Legal Staff (Office of the Chief State Counsel), is the designated Philippine HCAC Central Authority.

It shall cooperate with the Central Authorities of other HCAC Contracting States to secure the prompt return of children covered by the HCAC and to achieve the other objects of the HCAC.

SECTION 6. *Creation of the HCAC Unit.* - There is hereby created the HCAC Unit, headed by the Chief State Counsel and assisted by such number of personnel, as may be necessary, to perform the functions of the Philippine HCAC Central Authority.

The Chief State Counsel is the Philippines' HCAC Focal Person and the designated signatory for all matters covered by this Circular.

For purposes of this Circular, "HCAC Unit" may be used interchangeably with "Philippine HCAC Central Authority".

SECTION 7. *Functions of the HCAC Unit.* - The HCAC Unit shall, in coordination with, or with assistance from, relevant government departments, agencies, instrumentalities and bureaus, as well as institutions and organizations, perform the following functions:

- (a) Locate the whereabouts of the Child who has been wrongfully removed or retained;
- (b) Prevent further harm to the Child, or prejudice to interested parties through provisional measures;
- (c) Secure or facilitate the voluntary return of the Child, or bring about an amicable resolution of the issues;
- (d) Provide, if requested, information relating to the social background of the Child, in accordance with existing laws, rules and regulations;
- (e) Provide, if requested, information about Philippine laws, regulations, issuances and jurisprudence relating to the application of the HCAC;

- (f) Make arrangements to organize, or secure the effective exercise of rights of access to the Child;
- (g) Facilitate the provision of legal aid and advice, where circumstances require;
- (h) Assist in administrative arrangements, when necessary and appropriate, to secure the safe return of the Child;
- (i) Provide information to its counterpart HCAC Central Authority about the progress of specific cases;
- (j) Exchange information and experience with its counterpart HCAC Central Authority and with the Hague Conference on Private International law on the operation of the HCAC and, coordinate on how to address any challenges in the HCAC's application;
- (k) Obtain all necessary personal data and other pertinent information to enable the performance of the above functions, in accordance with the provisions of Republic Act (R.A.) No. 10173, or the "*Data Privacy Act of 2012*" and other applicable laws and regulations;
- (l) Conduct awareness-raising activities to promote information about the HCAC; and
- (m) Perform such other functions, as may be deemed necessary, for the effective implementation of the HCAC.

SECTION 8. *Coordination with Other Government Departments, Agencies, Instrumentalities and Bureaus; Institutions and Organizations.* - In the performance of its functions, the HCAC Unit may request the support and/or assistance of any relevant department, agency, instrumentality or bureau of the government, which has the mandate to perform such tasks or measures necessary for the implementation of the HCAC.

These may include the Bureau of Immigration (BI), Department of Foreign Affairs (DFA), Department of the Interior and Local Government (DILG), Department of Social Welfare and Development (DSWD), National Bureau of Investigation (NBI), Office for Alternative Dispute Resolution (OADR), Philippine National Police (PNP), Public Attorney's Office (PAO) and the Integrated Bar of the Philippines (IBP), among others.

This inter-agency coordination may be embodied in the form of a Memorandum of Agreement, Inter-Agency Arrangement, Data Sharing Agreement, or other similar agreements with the relevant government departments, agencies and instrumentalities, as well as with institutions and organizations, in order to ensure the effective implementation of the HCAC.

IV. PROCESSING OF HCAC APPLICATIONS

A. INCOMING HCAC APPLICATIONS

SECTION 9. *HCAC Application.* – The HCAC Application shall be filed with the Legal Staff (Office of the Chief State Counsel) of the DOJ.

However, nothing shall preclude the Left Behind Parent from applying directly before the Philippine courts, whether under the HCAC or not.

The HCAC Application, as well as communications and documents sent by the Requesting HCAC Central Authority, shall be in the English language, or if in its original language, must be accompanied by an official translation thereof in English.

SECTION 10. *Contents of HCAC Application; Mandatory Requirements.* – The HCAC Application shall include the following information and/or documents:

- (a) Copy of applicant Left Behind Parent's passport, identification card or other proof of identity, proof of his or her country of habitual residence, and statement about his or her occupation and address;
- (b) Copy of the Child's passport, identification card or other proof of identity, and proof of the Child's country of habitual residence prior to the wrongful removal or wrongful retention;
- (c) Copy of the Child's recent photograph;
- (d) Copy of the Taking Parent's passport, identification card or other proof of identity, proof of his or her country of habitual residence, and statement about his or her occupation and address;
- (e) Copy of the Taking Parent's recent photograph;
- (f) Relevant provisions of laws and regulations of the country of habitual residence of the Child, in support of the applicant Left Behind Parent's rights of custody over the Child;
- (g) Copy of documents as proof of relationship among the Left Behind Parent, the Child, and the Taking Parent;
- (h) Copy of the proof of marriage of the applicant Left Behind Parent and Taking Parent, if applicable;
- (i) Copy of documents issued by a government agency or by a person who has statutory authority, or any other similar document evidencing agreement that the Left Behind Parent has right of custody over the Child or that the Left Behind Parent is actually exercising custody over the Child prior to the wrongful removal or wrongful retention;

- (j) Address or place where the Taking Parent and/or the Child are believed to be, and information on person/s who might be able to supply information relating to the whereabouts of the Child;
- (k) Factual or legal grounds justifying the HCAC Application, such as the time, place, date and circumstances of the wrongful removal or wrongful retention; and
- (l) Name of applicant Left Behind Parent's legal adviser, if any.

SECTION 11. *Supplementary Requirements.* - The HCAC Application may be accompanied by the following documents:

- (a) Proof of civil proceedings in progress, if any;
- (b) Authenticated or apostillized, whichever is applicable, copy of any relevant decision or agreement;
- (c) Certificate or an affidavit emanating from the Central Authority, or other competent authority of the State of the Child's habitual residence, or from a qualified person, concerning the relevant law of that State; and
- (d) Any other relevant document.

SECTION 12. *Verification of Entry of the Taking Parent and the Child in the Philippines.* - Upon receipt of the HCAC Application, the HCAC Unit shall immediately verify from the BI if there are records of the entry into, and if applicable, exit from the Philippines of the Taking Parent and the Child.

If verification with the BI shows that the Child is not in the Philippines, the Philippine Central Authority shall directly transmit the HCAC Application to the Central Authority of the HCAC Contracting State where the Child is believed to be. It shall also inform the Requesting HCAC Central Authority of this matter. The Philippine Central Authority shall, thereafter, terminate the processing of the HCAC Application.

SECTION 13. *Refusal to Accept the HCAC Application.* - Upon confirmation that the Child is in the Philippines, the HCAC Unit shall make an evaluation of the HCAC Application.

If the HCAC Application is not in accordance with the requirements of the HCAC, or if the HCAC Application is not well-founded, the Philippine HCAC Central Authority shall forthwith inform the Left Behind Parent, through the requesting HCAC Central Authority, of its reasons for not accepting the HCAC Application.

SECTION 14. *Grounds for the Refusal of the HCAC Application.* The HCAC Application shall be refused on the following grounds:

- (a) The Child is already 16 years of age at the time of the filing of the application or has reached the age of 16 during the pendency of the HCAC application;
- (b) The presence of the Child in the Philippines cannot be reasonably determined;
- (c) Lack of sufficient proof showing the relationship between the Left Behind Parent and the Child;
- (d) Absence of any proof or evidence of wrongful removal or wrongful retention;
- (e) The Left Behind Parent was not given the custody and/or access rights at the time of removal or retention, or had given consent to, or subsequently acquiesced in the removal or retention;
- (f) There is a grave risk that the Child's return would expose him or her to physical or psychological harm, or otherwise place the Child in an intolerable situation; or
- (g) The Child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take into account the Child's views.

The Philippine HCAC Central Authority's refusal of the application shall not prevent the Left Behind Parent from filing the request directly with the appropriate court.

SECTION 15. *Action if Taking Parent and Child are in the Philippines; Request for Access and/or Return.* – If the whereabouts in the Philippines and contact details of the Taking Parent and the Child are known, or if the same are indicated in the HCAC Application, the HCAC Unit shall inform the Taking Parent of the receipt of the HCAC Application and advise the Taking Parent to communicate with the Left Behind Parent to discuss the possibility of coming up with a mutual agreement for the voluntary return of the Child.

If the whereabouts in the Philippines of the Taking Parent and the Child are not known, the HCAC Unit may request assistance from relevant law enforcement agencies, such as the NBI or the PNP, to help locate their whereabouts, and to inform the HCAC Unit of the results thereof.

Should the HCAC Application include a request for right of access or to check the condition of the Child, the HCAC Unit shall coordinate with the relevant agencies, such as the DSWD, with assistance from the NBI or the PNP, if necessary.

SECTION 16. *Action if Taking Parent Agrees to the Voluntary Return of the Child.* - Should the Taking Parent agree to discuss with the Left Behind Parent on the possible return of the Child, this could be done directly between the Taking Parent and the Left Behind Parent.

The HCAC Unit may also provide both parties with a list of family mediators who are duly accredited by the OADR to assist in the discussions.

Where the Taking Parent agrees to voluntarily return the Child to the Child's country of habitual residence, the Philippine Central Authority shall promptly inform the Requesting HCAC Central Authority for coordination of appropriate arrangements for the return of the Child, together with the Taking Parent, if such were the agreement.

SECTION 17. *Action if Taking Parent and Left Behind Parent Fail to Agree to the Voluntary Return of the Child.* - Should the Taking Parent and the Left Behind Parent fail to agree on the voluntary return of the Child, the Left Behind Parent may file a case before the appropriate court. The said court shall decide on whether the Child should be returned to the alleged country of habitual residence.

SECTION 18. *Legal Assistance.* - Whenever necessary for the purpose of pursuing or participating in domestic judicial proceedings resulting from the enforcement of parties' rights under the HCAC, the HCAC Unit may provide a list of law firms which may provide legal assistance to the Left Behind Parent. Legal assistance may also be provided through the PAO or the IBP, provided that the criteria to be eligible for legal assistance are complied with.

SECTION 19. *Welfare Needs of the Child.* - Whenever necessary at any stage of the process, the HCAC Unit may request the assistance of the DSWD for the welfare needs of the Child, which may include counselling and developmental interventions.

B. OUTGOING HCAC APPLICATIONS

SECTION 20. *Outgoing HCAC Applications.* – The Left Behind Parent whose Child, who is habitually residing in the Philippines, has been wrongfully removed from the Philippines, or wrongfully retained by the Taking Parent in another country, may file an HCAC application with the Philippine HCAC Central Authority should there be information that the Child was brought to an HCAC Contracting State and that the HCAC is in effect between the said State and the Philippines.

The HCAC Application shall include the information and/or documents listed in Sections 11 and 12, as well as other documents which may be required by the Central Authority in the HCAC Contracting State where the Taking Parent and the Child are situated.

The Philippine Central Authority shall coordinate with its counterpart HCAC Central Authority on this matter.

V. MISCELLANEOUS PROVISIONS

SECTION 21. *Security of Information.* - The information provided by the parties under this procedure, including any personal data, shall be subject to reasonable and appropriate safeguards and security measures to maintain its

availability, integrity and confidentiality, and shall be used solely for the purpose of evaluating and processing the HCAC Applications received by the Philippine Central Authority subject to the provisions of R.A. No. 10173.

SECTION 22. *Coordination with the Supreme Court.* - In recognition of the role of the Supreme Court in the implementation of the HCAC, the Philippine Central Authority shall coordinate with the Supreme Court on HCAC-related matters and concerns, such as:

- (a) Formulation of the Special Rules of Procedure to Govern HCAC Cases;
- (b) Designation of special courts to handle HCAC Cases;
- (c) Inclusion of the HCAC and related domestic issuances in the training curricula for judges; and
- (d) Collection of data and generation of statistics on HCAC Cases filed before the courts.

SECTION 23. *Construction.* The procedure and provisions contained in this Circular shall be liberally construed to achieve its primary objective of facilitating the prompt return of children to the country of their habitual residence while upholding the best interests of the Child, respecting the rights of custody and of access under the law of HCAC Contracting States, and affording the highest respect for human dignity and individual privacy.

Should any provision contained in this Circular be found to be ambiguous, an interpretation consistent with the purpose of the HCAC that would render the provision valid shall be favored over any interpretation that would render it invalid.

SECTION 24. *Effectivity.* - This Circular shall take effect after fifteen (15) days from its publication in a newspaper of general circulation, and after copies thereof have been deposited with the Office of the National Administrative Register (ONAR), U.P. Law Center, University of the Philippines, Diliman, Quezon City. A copy of this Circular shall likewise be posted in the official website of the Department of Justice.

ISSUED this 22 day of FEB, 2022 in the City of Manila.



MENARDO I. GUEVARRA
Secretary

Department of Justice
CN: O202202202

