

Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

Wherever responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ¹	Republic of South Africa
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PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

1. Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No
 Yes

Please specify:

The development of court practice directives that address expeditious hearing of the matters.

2. Following the Covid-19 pandemic,³ have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.

- a) Methods for accepting and processing return and access applications and their accompanying documentation;

Electronically and via courier

- b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);
-Domestic legislation makes provision for child participation and the court proceedings require child participation

-COVID forced courts in South Africa to find an alternative to finalising matters without in person court appearances. In the High Court in Gauteng, those alternative methods included the use of Microsoft Teams, Skype and Zoom to conduct virtual hearings of all civil matters.

¹ The term “State” in this Questionnaire includes a territorial unit, where relevant.

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) (“2017 SC”).

³ This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

-The result of this is that the court process and participation has been made much more accessible for those who live outside the jurisdiction of a court. Virtual hearings have also facilitated hearing generally allowing for greater participation without the need to travel to court.

-Rule 41A of the Uniform Rules envisages that parties mediate their disputes prior to adjudication of the matter and it is envisaged that the parties will comply with these provisions before the matter is either launched or enrolled or adjudicated upon. The judge may enquire whether parties have considered this option. The parties are required to file a notice indicating that they have contemplated mediation and that resolution of the issues is not possible.

-The first innovation to report on is the use of information technology that has been progressively adopted in many courts in South Africa, particularly since the Covid pandemic created obstacles for physical court appearances. Virtual proceedings were routine in the Supreme Court of Appeal and in the Gauteng courts during the peak Covid period. While physical court has resumed throughout the country, in Gauteng parties still have the option, depending on their circumstances, of requesting virtual hearings. This is particularly useful in urgent cases, like child abduction and other family matters. Counsel and the parties do not all have to be physically available in court or in the Judge's chamber at the same time. This flexibility ensures that matters may proceed without unnecessary delays. It will be most useful in child abduction cases, as the applicant parent can remain in their country of residence. This development also has obvious cost-saving advantages.

-A second innovation has been implemented in Gauteng, since June 2022 (Johannesburg) and April 2023 (Pretoria) where Practice Directives have been issued setting up a dedicated Family Court that sits every week during term. The Family Court is not a specialised court with specialised Judges. Essentially, the Directives are aimed at providing a special procedural path for certain family law cases (including Hague Convention cases) so that these may be dealt with efficiently. The motivations that informed the Family Court process was the intention to afford parties a speedy and efficient forum where family matters enjoyed attention. This aligns with the expedited timeline required in Hague cases. The extent to which this innovation will speed up Hague matters remains to be tested.

-A third innovation has been the introduction of Rule 41A which applies to all High Court actions and applications. It requires all plaintiffs or applicants to file a notice before instituting proceedings indicating whether they will agree to or oppose mediation of the matter. A defendant or respondent is similarly required to file a notice opposing or agreeing to mediation before filing their opposing pleadings. The requirement applies across the board, regardless of the nature of the dispute. It is not yet clear whether this new procedure will have any practical effect. At present it appears to be complied with in a formulaic manner, with notices opposing mediation being regularly filed as a matter of course. However, and quite apart from Rule 41A, there has been a consistent programme of rolling out mediation training to Judges in South Africa. It is hoped that this will conscientise Judges to the benefits of mediated solutions to disputes, family matters being particularly suited to mediation. The Family Advocate's office in South Africa uses mediation in child abduction cases before the matter is referred to court. This is reported in, for example, the LC case (see section 3, below), where reference is made in the judgment to early attempts by the Family Advocate to mediate a solution. Ultimately, however, the court had to decide the matter.

- c) Promoting mediation and other forms of amicable resolution;

Mediation is promoted during meetings addressing voluntary return. It is also utilised during discussions pertaining to settlement of matters whilst a matter is before court. After receipt of expert reports or the participation/views of the child are obtained mediation is considered and maybe utilised to reach settlement.

- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
Interim contact/access arrangements are concluded or sought as interim relief pending the outcome of the proceedings, which may include ex parte applications.
- e) Obtaining evidence by electronic means;
Yes and through virtual consultations or testimony at court
- f) Ensuring the safe return of the child;
The ad hoc CA ensures that the child is on a return flight and advises the Central Authority of the requesting state accordingly. all barriers to the safe return are considered and incorporated into a draft order for the court to consider when making a final order.
- g) Cooperation between Central Authorities and other authorities;
Generally good but challenging in other instances where responses are not received timeously; where Central Authorities are relying on other agencies such as private attorneys or legal aid to support launching of applications for return.
- h) Providing information and guidance for parties involved in child abduction cases;
Generally good
- i) Other, please specify.
In The RSA , the Central Authority or the delegated Central Authority initiate court and mediation proceedings which strengthened the capacity of the Central Authority to support child abduction matters.

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities⁴ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Central Authority for the Republic of South Africa a.a vs SC (2022/0001) [2022] ZAGPJHC 700 (15 September 2022)	Gauteng Division, Johannesburg	High Court	The application was dismissed and leave was given for the 3 minor children to remain in South Africa The court put in place orders for the payment of maintenance by the father (the 2nd applicant) and contact arrangements between him and the minor children The parents were also ordered to secure therapeutic services for the minor children including therapy to ensure that the bond between the father and the children is fostered
Central Authority for the Republic	Gauteng Division, Johannesburg	High Court	Whilst the application was dismissed with costs, the court importantly stated that the Article 13 defences create an

⁴ The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such “authorities” will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

<p>of South Africa a.a vs C (20/18381) 2021 (2) SA 471 (GJ)</p>			<p>opportunity to investigate the best interests of the child – within the parameters set by Article 13 - as, “once the abducting parent successfully raises an exception to return, the words ‘is not bound to order the return’ and ‘may also refuse to order the return’ ... make it clear that the court retains a residual discretion to grant or refuse an order for the return of the child. Secondly, once a defence is raised and the court is exercising its discretion to refuse or order the return of the child, the court may conduct an investigation into the best interests of the individual child concerned...”</p>
<p>See cases attached</p>			

4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

During July 2022, a Family Court was set up in the Gauteng Division, Johannesburg. This has ensured an expeditious resolution of family matters. It is possible to obtain court dates sooner than enrolling matter on the ordinary civil roll. This contributes to a speedier resolution of family matters and matters related to children.

This court has now also been set up in the Gauteng Division, Pretoria as from April 2023. The rationale behind these courts is to provide an expeditious hearing of all matters which involve issues relating to family law in general.

The further rationale was that, whilst our District Courts (Lower Courts) have Children’s Courts which deal with children in need of care and matters pertaining to divorce proceedings, guardianship, primary care and residence and specialised Maintenance Courts, there was no similarly specialised court on a High Court level.

The purpose of the Family Court at the High Court level is to streamline those matters into one court and provide the parties with an expeditious hearing. The court in Pretoria hears the following matters unopposed divorces, unopposed and opposed Rule 43’s, interdicts, matters pertaining to guardianship, primary care and residence and/or contact issues, relocation applications, enforcement of Family Law Procedures (eg section 7 notices, Financial Disclosure Forms), “semi-urgent” urgent applications, surrogacy applications and Hague Convention applications.

Directives have been issued which assist practitioners in the allocation and hearing of their matters in the Family Court.

The hope is that the Gauteng Division will provide impetus for the other High Courts in South Africa to follow suit and that a uniform approach in dealing with Family Court matters are achieved.

There are developments in the response under 2(b) that is relevant to this question.

Issues of compliance

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes

Please specify the challenges encountered:

As stated previously Central Authorities take too long to respond especially when they are dealing with applicants via attorneys, a Central Authority has not responded at all, Central Authorities have limited capacity to cooperate when they are dependant on other sectors for assistance for eg, when a Central authority is not legally qualified then they wait on the AG attorney to respond; some Central Authorities will question why they need to give a report on social welfare circumstances despite Article 7 making provision for this. When a matter is before court the court will often want information or evidence related to a particular issue raised during the trial and Central Authorities are not able to respond promptly. The child is not legally represented.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?

- No
 Yes

Please specify:

Apart from certain relevant information above, some Central Authorities do not convey at the outset that should they not receive information by a certain time then they will close their files and they proceed to do so. Securing information from the applicant may be a time consuming exercise especially in instances where the applicant is not legally represented. There may not be common understanding of Article 7.

Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - "ADR" phases)⁵ in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

Central Authority

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

Judicial proceedings

- No
 Yes
 Procedure not yet revised

⁵ See C&R No 4 of the 2017 SC, "The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention."

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

-Identified sources of delay, judicial proceedings:

1 RSA does not have a unified family court system to deal with Hague Convention (Child Abduction) applications.

2 Judges President allocate Hague Convention matters to all judges and not specifically to designated Hague Network Judges who have received training on Hague Convention and without any case management monitoring mechanism in place.

-Measures implemented to address the delays:

(a) Gauteng Division of the High court has established a Family court which is manned by specialist judges who are Network judges with vast experience in Family law and Hague Convention on Child Abduction.

(b) The Judge President of the Gauteng Division of the High court developed a Practice Directive which sets out the procedure including pre-trial hearing to declare the case trial ready and manage the cases and mediation under Practice Directive 41A.

(c) Kwazulu Natal and Western Cape Divisions of the High court have Practice Directives not formalised.

3. SCA judgment since 2017:

3.1. LD v Central Authority (RSA) and Another [2022] ZASCA 6; [2022] 1 All SA 658 (SCA); 2022 (3) SA 96 (SCA)

3.2. L v Ad Hoc Central Authority for the Republic of South Africa and Others [2021] ZASCA 107

3.3. Koch N O and Another v Ad hoc Central Authority for the Republic of South Africa and Another [2022] ZASCA 60; [2022] 3 All SA 17 (SCA); 2022 (6) SA 323 (SCA)

Enforcement

- No
- Yes
- Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

Mediation / ADR

- No
- Yes
- Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please insert text here

Court proceedings and promptness

8. Does your State have mechanisms in place to deal with return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No

Yes

Please specify:

Mechanisms to deal with return decisions within six (6):

-Practice Directives should be developed for all divisions.

-Currently only Gauteng has a Practice Directive. Western Cape has drafted one for consideration and adoption by the Judge President.

The Western Cape practice directives state the following:

A. Hague Convention Matters

(1) All applications brought pursuant to the provisions of The Hague Convention on the Civil Aspects of International Child Abduction 1980 will, as a matter of course, be treated as urgent, with the aim of achieving finalisation within a maximum of 6 weeks from the date on which proceedings were instituted, save where exceptional circumstances render this impossible.

(2) The applicant shall set out in the founding affidavit whether there are any other proceedings pending in relation to the child or children concerned, whether at the instance of any Central Authority or otherwise, with relevant details as well as the current status thereof.

(3) The Judge President shall designate from time to time a judge or judges who shall be responsible for Hague Convention matters (Hague Judges).

(4) It is the responsibility of the applicant's legal representative to ensure that the court file is clearly endorsed so as to indicate that it is a 'Hague Convention' matter, together with the date on which the 6-week period will expire. Where an applicant is not represented, the Registrar must assist litigants as far as is possible.

(5) After issue of proceedings the court file must be taken to the Judge President who should allocate, if possible, a Hague Judge to case manage the matter and ultimately hear it when ripe for hearing, given that the interests of minor child(ren) are at stake. If no such judge is available, the Judge President may direct that it is placed before the urgent duty judge at the earliest opportunity. The application must also be served on the Family Advocate prior to the court file being taken to the Judge President, and the details of the specific Family Advocate to whom it has been allocated by that Office must be reflected in the Practice Note.

(6) Should the matter not be disposed of by the urgent duty judge during the course of that particular week, that duty judge or a Hague Judge designated by the Judge President should ordinarily be seized with the matter and manage the case, with due regard to the urgency thereof, until it is ripe for hearing.

(7) The attention of legal representatives is drawn to the following:

7.1 Regulations 17 to 30 of the Regulations relating to Children's Courts and International Child Abduction (GN.R250 dated 31 March 2010) which deal, inter alia, with the role of the Family Advocate as Central Authority and procedure in the High Courts;

7.2 The recommendation of the International Special Commission ("SC") on Hague Convention Matters that 'to ensure compliance and avoid delays, a court order for return should be as detailed as possible, and include the manner and timing of the return, specifying, for example, with whom, where, when and how the child should be returned. Where possible, the order should make provision for voluntary return and specify the progressive coercive measures to be applied in the event of non-compliance';

7.3 The recommendation of the SC that, subject to the best interests of a particular child, competent authorities hearing a child abduction case should consider 'at the

earliest opportunity and without undue formality, what appropriate contact and communication should take place between the left-behind parent and the child and proceed to make a determination in those terms as an urgent protective measure. Seeking and/or exercising interim contact per se should not be construed as acquiescence or consent to the wrongful removal or retention and should not produce additional delays in the return procedure.’

7.4 Due regard should be had to paragraphs 6.1 to 6.3 above when drafting a notice of motion and / or a draft order for consideration by the presiding judge.

9. If the response to question 8 above is “No”, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No
Please specify:
Please insert text here
- Yes
Please specify:

The Gauteng Family Court is a test case. It will be monitored to see improvement in the current system.

The Practice Directive is helpful. It will seek to improve on the current court practice directives

Rule 41 A on mediation is relied upon and used by judges regularly to the extent of insisting on the parties to embark upon mediation in the prehearings. If not, the matter can be struck off the roll.

10. Do the courts in your State make use of direct judicial communications⁶ to ensure prompt proceedings?

- No
 Yes
Please specify:

A few years ago, in a matter where the South African court(WC) was seeking and order from the Miami courts on the legal status of a muslim marriage in order to determine if a father had responsibilities and rights to his child who was abducted by the mother.

Due to the “un-unified” structure of the Family courts and lack of exposure to the work of the Liaison judge and Hague Conference Network of Judges, this has proved difficult.

Seminars are meant to address this confusion/lack of understanding the role of a Liaison Judge and Direct Judicial Communication and its value.

11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?

- No
 Yes

⁶ For reference, see “Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges”.

Please specify:
Judge BC Mocomie is the designated Judge

12. Please comment upon any cases (where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child’s safe return. What was the specific purpose of the communication? What was the outcome?

The Central Authority assists the court with such information.

The role and functions of Central Authorities designated under the 1980 Convention

In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No
 Yes

Please specify:

Our state does not always receive the statement of law of a particular country

14. Has your Central Authority encountered any challenges with the application of **any of the 1980 Convention provisions**? If so, please specify.

- No
 Yes

Please specify:

The Central Authority or delegated Central Authority would launch legal proceedings before court, a challenge will be in the opposing sides understanding of article 13 (b), considering the best interests of a child within the limitations of 1980 abduction convention, whereas the best interests principle is normally upheld in its broadest sense and may mitigate against return.

Legal aid and representation

15. Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States that were dealt with?

- No
 Yes

Please specify:

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16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents**?⁷

⁷ See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings”.

- No
 Yes

Please specify:

South Africa has no reservations on costs and proceeds with legal application and mediation at states cost. Legislation also provides for children to be legally represented in all Hague matters - experts are considered when children are very young

First world countries does not provide legal assistance at state cost to applicants from third world countries, making it impossible for such applicants to access the relief in terms of the convention.

Locating the child

17. Has your Central Authority encountered any **challenges with locating children** in cases involving the 1980 Convention, either as a requesting or requested State?

- No
 Yes

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

Incorrect addresses where provided and there have been instances where the abductor has moved away from that address to another province. Interpol the police were informed. The police also assisted with the location of children in limited matters.

Voluntary agreements and bringing about an amicable resolution of the issues

18. How does your Central Authority (either directly or through any intermediary) take, or is considering taking, appropriate steps under **Article 7(c)** to bring about an amicable resolution of the issues? Please explain:

Meetings are held with all the relevant people, the abducting parent and other significant others if relevant, legal representatives and the experts when necessary. The Child's views are also secured. Meetings known as round table discussions take place with a view to securing amicable resolution. The Central authority attempts voluntary return in terms of article 10 of the Convention

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills⁸)?

Please specify:
 Not yet.

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

⁸ For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, "Specific training for mediation in international child abduction cases", available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

Please provide comments:

Refining the operational implementation of the Hague convention will be addressed.

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?⁹

No
Please explain:
Costs and capacitation maybe a prohibitive factor

Yes
Please explain:
curently mediation is part of the process in addressing abduction matters.

Ensuring the safe return of children¹⁰

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

Please explain:

The leagl representatives and the Central Authorities will consider all the merits, factors and mechanisms required to facilitate return and to ensure that the child is safe when returned. This is done by discussion from the RSA Central Authority/delegated Central Authoritywith the Central authority from the requested state, who will source information and make it available.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

No
 Yes

Please specify:

should this be a requirement it can be implemented provided the parent and child cooperate. Consideration should also be given to whether Central Authorities should consider the inclusion of enforcement clauses for them in court applications. this will strengthen support to the abudction legislation.

Information exchange, training and networking of Central Authorities

24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online?¹¹

No
 Yes

Please specify:

It should be considered.

⁹ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on “Access to Mediation”. paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

¹⁰ See Art. 7(2)(h) of the 1980 Convention.

¹¹ See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at www.hcch.net (see path indicated in note 8).

Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No
 Yes

Please specify and share the relevant instruments whenever possible:
 Standard operating procedures are being considered.

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

- No
 Yes

Please specify:
 A refined caseflow and tracking system will be considered.

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?¹²

- No
 Yes

In case this information is publicly made available, please share the links to the statistical reports:
 Information is not made public.

Transfrontier access / contact¹³

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

- No
 Yes

Please specify:
 Please insert text here

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

- No
 Yes

Please specify:
 Central Authority of the requested state did not consider the matter to have any merit and did not want to assist any further.

¹² In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

¹³ See C&R Nos 18-20 of the 2017 SC.

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?¹⁴

- No
- Yes

Please specify:

The court order provided for contact/access was vague and led to disputes unnecessarily, the mother was obstructing contact and access to an expert who wanted to consult with a child; the children in another matter had outgrown old contact provisions ; the father did not want the children to be interviewed to obtain their views to contact he sought.

31. In the case of access / contact applications under **Article 21**, which of the following **services** are provided by your Central Authority?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input checked="" type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <input checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide <input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input checked="" type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify:
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input checked="" type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input checked="" type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input checked="" type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input type="checkbox"/> 7. Other, please specify: <p>Ensuring that Legal representation is provided for the child.</p>

¹⁴ According to C&R No 18 of the 2017 SC, “The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation.”

32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No
 Yes

Please specify:

The domestic laws that RSA has is consistent with the 1996 convention.

Special topics

Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State's jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child's statements)?

Please explain:

whether the child has views on return, will emotional attachment to an abducting parent relate to grave risk, is the child settled, the relationship with the left behind parent. Is the child mature enough to make a decision and is that decision in her/his/best interests.

The views of the child are obtained via the appointment of a legal representative for the child, if the child is of an age where he/she is able to express their views. If the child is however too young, the appropriate procedure is to appoint a curator ad litem for the child who must fulfil the same role as a legal representative. In general, the legal representative/curator ad litem must be given the power to appoint an expert(s) to assist them in expressing the necessary views on behalf of the child.

The purpose of the legal representative/curator ad litem would be to give the voice of the child expression as set out in s10 and s14 s279 of the Children's Act 38 of 2005 as read with Article 13 of the Convention.

-S10 provides:

"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration"

-S14 provides:

"Every child has the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within the jurisdiction of that court"

-S1279 provides:

"A legal representative must represent the child, subject to section 55, in all applications in terms of the Hague Convention on International Child Abduction"

Article 13 of the Convention provides that "[t]he judicial or administrative authority may also refuse to order the return if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views"

34. Are there any procedures, guidelines or principles available in your State to guide the person (e.g., expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No
 Yes

Please specify:

The Childrens Act 38/2005 makes provision for child participation. The South African consitution makes provision for the best interests of the child.

There are no set guidelines in South Africa that have been circulated to judges to apply when adjudicating Hague Convention matters. S278(3) of the Childrens Act provides a summary instruction to be interpreted according to the facts of each particular case. However, our case law provides some guidance and is instructive of how similar matters in the past have been dealt with.

-S 278(3) provides that: “The court must, in considering an application in terms of this Chapter for the return of a child, afford that child the opportunity to raise an objection to being returned and in so doing must give due weight to that objection, taking into account the age and maturity of the child”

Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:

The court practice directives of each division.

38. Considering C&R No 7 of the 2017 SC,¹⁵ what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:

Please insert text here

¹⁵ See C&R No 7: “The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group.”

Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

No

Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State:

Please insert text here

Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

No

Yes

Please provide comments:

some of the arguments have been that it would be in the child best interests to determine care in the country the child has been abducted to rather than allow return. Doing so prolongs the anxiety trauma the child may experience.

Use of the 1996 Convention¹⁶

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):

(a) providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**)

Protective measures are considered as part of return proceedings

(b) providing for the recognition of urgent protective measures by operation of law (**Art. 23**)

Domestic Legislation does provide for the best interests of the child which does incorporate protective measures.

(c) providing for the advance recognition of urgent protective measures (**Art. 24**)

Please insert text here

(d) communicating information relevant to the protection of the child (**Art. 34**)

Please insert text here

(e) making use of other relevant cooperation provisions (e.g., **Art. 32**)

Please insert text here

42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?¹⁷

¹⁶ For this part of the Questionnaire, the Practical Handbook on the Operation of the 1996 Child Protection Convention can provide helpful guidance, available on the HCCH website at [under "Child Protection Section"](#).

¹⁷ See C&R No 40 of the 2017 SC: "The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or

- No
 Yes
 Please specify:
 N/A

Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:
 In most cases primary carers who are abductors have returned with the child.

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:
 Yes, there could be monitoring of the child by social services. Mental health assistance.
 Reports on the status of the child.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

No
 Yes
 Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:
 The protective measures should be in a court order. The order should not be vague.

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

No
 Yes
 Please specify:
 The protective measures should be in a court order. The order should not be vague.

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

No
 Yes
 Please specify:
 N/A we are not signatories to the 1996 convention.
 N/A

the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection.” (Emphasis added.)

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

- No
 Yes

Please specify:

Unless court ordered to do so or at the request of a Central Authority

International family relocation¹⁸

49. Has your State adopted specific procedures for international family relocation?

- Yes
 Please describe such procedures, if possible:
 Please insert text here

- No
 Please describe how the authorities deal with international family relocation cases, if possible:
 The South Arican law Research Comission is considering guidleines for relocation matters

Publicity and debate concerning the 1980 Convention

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

- No
 Yes

Please indicate the outcome of this debate or discussion, if any:

Please insert text here

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

Please explain:

Through the departmental website, upon discussion with relevant stakeholders and on request for information.

¹⁸ See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: "The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention."

PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

Two conferences by private practitioners and the University of the Western Cape,

An HCCH conference at the University of Pretoria.

Training sessions/conferences organised in your State to support the effective functioning of the 1980 Convention and the influence that such sessions/conferences have had:

- Each province has a National Network judge representing their own division.
- Between 2019 and 2023 all network judges have attended conferences under the auspices of the International Academy of Family Practitioners, University of Western Cape, University of Pretoria and The Hague Conference where the members of The Hague Conference presented.
- Some of the National Network judges presented on procedures and recent developments.
- The SAJEI is reluctant to embark upon training on Hague Convention Matters

The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

- a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

A country's profiles should specify to what extent a country will assist.

Certain country profiles does not provide an explanation on who their Central Authority is and or does not provide proper contact details. Considering the urgent nature and when advising parties it is beneficial to have this information readily available.

- b. INCADAT (the international child abduction database, available at www.incadat.com).

Please insert text here

- c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;²⁰

Please insert text here

- d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net);

Please insert text here

- e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may

²⁰ Available on the HCCH website at under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

supported

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);²¹

supported

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

Supported

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

Supported

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

Supported

Guides to Good Practice under the 1980 Convention

54. For any of the Guides to Good Practice²² which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

- a. Part I on Central Authority Practice.

The Central Authorities should be empowered to support the relevant conventions in a more tangible manner, by having watching briefs in matters before court should they not be a party to proceedings. CA should become party to proceedings and contribute to preventative measures, enforcement requirements etc

- b. Part II on Implementing Measures.

Please insert text here

- c. Part III on Preventive Measures.

Please insert text here

- d. Part IV on Enforcement.

Please insert text here

²¹ Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

²² All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

e. Part V on Mediation

Please insert text here

f. Part VI on Article 13(1)(b)

Please insert text here

g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice

Please insert text here

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

Website information. The latter requires updating.

56. Do you have any other comments about any Part of the Guide to Good Practice?

Please insert text here

57. In what ways have you used the *Practitioner’s Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*²³ to assist in improving the practical operation of the 1980 Convention in your State?

Please insert text here

Other

58. What other measures or mechanisms would you recommend:

a. to improve the monitoring of the operation of the 1980 Convention;

Please insert text here

b. to assist States in meeting their Convention obligations; and

Please insert text here

c. to evaluate whether serious violations of Convention obligations have occurred?

Please insert text here

²³ The *Practitioner’s Tool* is available at the HCCH website at www.hcch.net under “Child Abduction Section” then “Guides to Good Practice”.

PART III – NON-CONVENTION STATES

59. Are there any States that you would particularly like to see become a Contracting Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States?

Please explain:

Please insert text here

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

Please insert text here

The “Malta Process”²⁴

61. Do you have any suggestions of activities and projects that could be discussed in the context of the “Malta Process” and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

Please insert text here

²⁴ The “Malta Process” is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at www.hcch.net under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS

Views on priorities and recommendations for the SC

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:

- (i) Countries (particularly in Africa) which have acceded to The Hague Convention should be encouraged to ratify it based on innovative incentives.
- (ii) The Hague Conference should have at least 2 Offices in Africa to promote the work of The Hague Conference; for The Hague Conference to be visible in Africa where there is a reluctance to accede to or ratify The Hague Convention (Child Abduction).

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:

Please insert text here

Bilateral meetings

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:

Please insert text here

Any other matters

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

Please insert text here