

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1996 CONVENTION**

Wherever your replies to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1996 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
<i>For follow-up purposes</i>	
Name of contact person:	Adv P.J. Seabi-Mathope
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PART I – FOR STATES PARTIES

Recent developments in your State

1. Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases of international child protection? Where possible, please state the reason for the development in the legislation / rules, and, where possible, the results achieved in practice.

- No
 Yes, please specify:
Please insert text here

2. Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1996 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities² in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and other relevant instruments:

Please insert text here

3. Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child protection:

Please insert text here

Scope

4. Have competent authorities in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 2** (meaning of "child")_or **Article 3** (meaning of "protective measures")?

- No
 Yes, please specify:
Please insert text here

Jurisdiction

5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction under **Articles 5, 6, 7 or 10**?

- No
 Yes, please specify:

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

² The term "relevant authorities" is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1996 Convention. Whilst in the majority of States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

Please insert text here

6. Have competent authorities in your State experienced any challenges, or have questions arisen, in implementing and / or applying **Articles 8 and 9**?

- No
 Yes, please specify:
 Please insert text here

7. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Articles 8 and 9**?³

- No
 Yes, please describe them and also provide a link or attach them, preferably translated into English or French:
 Please insert text here

8. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 11**? (See also Question No 35.)

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied Article 11:
 Please insert text here

9. Have competent authorities in your State experienced any challenges, or have questions arisen, with respect to the application of **Article 11**?

- No
 Yes, please describe:
 Please insert text here

10. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 12, 13 or 14**?

- No
 Yes, please describe:
 Please insert text here

Applicable law

11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Articles 15, 16, 17 or 18**?

- No
 Yes, please describe:
 Please insert text here

12. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

- No
 Yes, please describe them:
 Please insert text here

Recognition and enforcement

13. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** from the perspective of the requested State?

- No
 Yes, please describe:
 Please insert text here

14. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 24**?

- No
 Yes, please describe and also provide a link or attach them, preferably translated into English or French:

³ See, e.g., Direct Judicial Communications - [Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications \(2013\)](#).

Please insert text here

15. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 24** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No
 Yes, please describe:
Please insert text here

16. Please describe the "simple and rapid procedure" (see **Article 26(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

- a) Which authority declares enforceable or registers a measure of protection taken in another State Party?
b) What time frames are applied to ensure that the procedure is rapid?
c) Is legal representation required?

Please explain:
Please insert text here

17. Are you aware of any challenges, or have questions arisen, in applying **Article 26** in your State?

- No
 Yes, please describe:
Please insert text here

18. Are you aware of any challenges, or have questions arisen, in applying **Article 28** in your State?

- No
 Yes, please describe:
Please insert text here

Co-operation

19. Are you aware of any challenges, or have questions arisen, in applying **Article 30** in your State (e.g., in relation to the timeliness of responses to requests)?

- No
 Yes, please describe:
Please insert text here

20. In your view, would it facilitate the task of Central Authorities under **Article 30(2)** if States Parties provided information as to their laws and available services in relation to the practical implementation of the 1996 Convention, e.g., in the form of a Country Profile or a similar tool published on the HCCH website?

- No
 Yes, please describe the type of information that would be useful to include (e.g., information with respect to the availability of certain protective measures under internal law (e.g., in relation to **Article 3(e)**), or the procedures applied under, e.g., **Articles 23, 24, 26, 31 or 33**, or information on Central Authority services provided):

Please insert text here

21. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31(b)** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the 1996 Convention applies? Please explain:

Please insert text here

22. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (e.g., has your State been requested to accept a child under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the Requested State)?

- No
 Yes, please describe:

Please insert text here

23. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining reports or information under **Articles 32, 33 or 34**?

- No
 Yes, please describe:
 Please insert text here

24. Do authorities in your State use a standard template when providing a report on the (situation of the) child under **Article 32 or 33**?

- No
 Yes, please attach the template to your response (preferably translated into English or French):
 Please insert text here

25. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 35**?

- No
 Yes, please describe:
 Please insert text here

26. Does your State impose charges, as provided under **Article 38(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No
 Yes, for the following types of services (e.g., translation, legal assistance):
 Please insert text here

27. Have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 38(1)**?

- No
 Yes, please describe:
 Please insert text here

28. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, does your Central Authority provide assistance to **individuals** habitually resident in your State who request it in connection with the following matters? If so, please specify the nature of the assistance provided.

a) A request to organise or secure effective exercise of **rights of access** in another State Party (requested State)⁴

1. None
 2. Assistance in obtaining information on the operation of the 1996 Convention
 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
 4. 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
 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
 6. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
 7. Assistance in providing or facilitating the provision of legal aid and advice
 8. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State
 9. Referral to other governmental and / or non-governmental organisations for assistance
 10. Provision of regular updates on the progress of the application
 11. Other, please specify:

⁴ See in this context, e.g., the [Practical Handbook](#) on the Operation of the 1996 Child Protection Convention, sections 11(E)(d) and 13(B) (2014).

Please insert text here

- b) A request to secure the return to your State of a child subject to **parental abduction** where the 1980 Convention is not applicable

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. 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
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 7. Assistance in taking provisional / urgent measures of protection to prevent further harm to the child
- 8. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 9. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 10. Assistance in providing or facilitating the provision of legal aid and advice
- 11. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 12. Assistance in obtaining private legal counsel or mediation services
- 13. Referral to other governmental and / or non-governmental organisations for assistance
- 14. Regular updates on the progress of the application
- 15. Other, please specify:
Please insert text here

- c) A request to secure the return to your State of a **runaway child** (see **Article 31 c)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. 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
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in discovering the whereabouts of a runaway child
- 7. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 8. Assistance in providing or facilitating the provision of legal aid and advice
- 9. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 10. Assistance in obtaining private legal counsel
- 11. Referral to other governmental and / or non-governmental organisations for assistance
- 12. Regular updates on the progress of the application
- 13. Other, please specify:
Please insert text here

- d) A request for a **report on the situation of a child** habitually resident in another State Party (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a)**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. 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
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Other, please specify:
Please insert text here

e) A request that the competent authorities of another State Party decide on the **recognition or non-recognition** of a measure taken in your State (see **Article 24**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. 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
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:
Please insert text here

f) A request that the competent authorities of another State Party **declare enforceable or register for the purpose of enforcement** measures taken in your State (see **Article 26**)

- 1. None
- 2. Assistance in obtaining information on the operation of the 1996 Convention
- 3. Assistance in obtaining information on the relevant laws and procedures in the requested State
- 4. 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
- 5. Transmission of the request to the Central Authority or to the competent authorities in the requested State
- 6. Assistance in obtaining private legal counsel
- 7. Regular updates on the progress of the request
- 8. Other, please specify:
Please insert text here

29. With the understanding that services provided by Central Authorities under the 1996 Convention may vary, if your Central Authority were to receive a request of assistance from **another Central Authority** on behalf of an individual residing abroad, in connection with the following matters, please specify the nature of the assistance that your Central Authority provides or would provide if the situation was to arise.

a) A request to organise or secure effective **exercise of rights of access**

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State

- 3. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- 5. Assistance in obtaining private legal counsel or mediation services available in your State
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:
Please insert text here

b) A request to secure the return to the State of habitual residence of a child subject to parental abduction where the 1980 Convention is not applicable

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a child who has been wrongfully removed or retained
- 4. Assistance in taking provisional measures of protection to prevent further harm to the child
- 5. Assistance in securing the voluntary return of the child or in bringing about an amicable resolution of the issue
- 6. Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 7. Assistance in providing or facilitating the provision of legal aid and advice
- 8. Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 9. Assistance in obtaining private legal counsel or mediation services
- Referral to other governmental and / or non-governmental organisations for assistance
- 10. Regular updates on the progress of the application
- 11. Other, please specify:
Please insert text here

c) A request to secure the return of a runaway child (see **Article 31 c**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws and procedures in your State
- 3. Assistance in discovering the whereabouts of a runaway child
- Assistance in initiating judicial or administrative proceedings with a view to obtaining the return of the child
- 4. Assistance in providing or facilitating the provision of legal aid and advice
- Assistance in providing such administrative arrangements as may be necessary and appropriate to secure the safe return of the child
- 5. Assistance in obtaining private legal counsel
- 6. Referral to other governmental and / or non-governmental organisations for assistance
- 7. Regular updates on the progress of the application
- 8. Other, please specify:
Please insert text here

d) A request for a report on the situation of a child habitually resident in your State (e.g., a child returned as a result of child abduction proceedings or a child who has moved as a result of a relocation) (see **Article 32 a**)

- 1. None
- 2. Providing information on the operation of the 1996 Convention and / or on the relevant laws in your State
- 3. Preparing and transmitting the requested report
- 4. Transmission of the request to the competent authorities in your State

5. Other, please specify:
Please insert text here

e) A request that the competent authorities of your State decide on the recognition or non-recognition of a measure taken in another State Party (see **Article 24**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
 3. Transmission of the request to the competent authorities in your State
 4. Assistance in obtaining private legal counsel
 5. Other, please specify:
Please insert text here

f) A request that the competent authorities of your State declare enforceable or register for the purpose of enforcement measures taken in another State Party (see **Article 26**)

1. None
 2. Providing information on the operation of the 1996 Convention and / or relevant laws in your State
 3. Transmission of the request to the competent authorities in your State
 4. Assistance in obtaining private legal counsel
 5. Other, please specify:
Please insert text here

30. Where the habitual residence of a child present in your State cannot be established, have authorities in your State used any of the provisions of **Chapter V** in determining the child's place of habitual residence?

- No
 Yes, please specify:
Please insert text here

31. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No
 Yes, please describe:
Please insert text here

32. Have judges in your State used direct judicial communications in cases falling under the 1996 Convention?

- No
 Yes, please specify in relation to which specific matters (e.g., transfer of jurisdiction, placement of a child):
Please insert text here

General provisions

33. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 40** for the delivery of a certificate indicating the capacity in which a person having parental responsibility or entrusted with protection of the child's person or property is entitled to act and the powers conferred upon him or her?

- No
 Yes, please describe:
Please insert text here

34. Which authorities in your State are competent to issue such certificates? Please specify:
Please insert text here

Special categories of children

Children subject to international parental abduction

35. Have authorities in your State experienced any challenges, or have questions arisen, in relation to the application of the 1996 Convention in cases of child abduction where the 1980 Convention was not applicable (see Question Nos 28 b) and 29 b) above)?

- No
 Yes, please describe:
 Please insert text here

36. In cases of child abduction where both the 1980 Convention and the 1996 Convention were applicable, have authorities in your State made use of provisions under the 1996 Convention in addition to or instead of provisions of the 1980 Convention?

- No
 Yes, please specify the provisions and explain:
 Please insert text here

37. In cases of parental child abduction, whether or not the 1980 Convention is applicable, have authorities in your State used the co-operation provisions in **Chapter V** of the 1996 Convention to determine whether adequate measures of protection are available in the State of the habitual residence of the child (e.g., to facilitate the safe return of the child)?

- No
 Yes, please explain:
 Please insert text here

38. In cases of parental child abduction, have competent authorities in your State taken measures of protection under **Article 11**, as an alternative to measures of protection in the form of mirror orders or undertakings, to facilitate the safe return of the child? (See also Question No 5.)

- No
 Yes, please explain:
 Please insert text here

Children subject to international relocation

39. Are you aware of any use being made of provisions of the 1996 Convention in cases where a parent wishes to relocate with his or her child to another State?

- No
 Yes, please explain:
 Please insert text here

International access / contact cases involving children

40. 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?⁵

- No
 Yes, please explain:
 Please insert text here

Unaccompanied, separated, and internationally displaced children

41. Are you aware whether authorities in your State have used the provisions of the 1996 Convention in relation to the protection of internationally displaced children (such as refugee children, trafficked children, sexually exploited children, or unaccompanied children) and / or children whose habitual residence cannot be established?

- No
 Yes, please specify:
 Please insert text here

⁵ The Explanatory Report (Lagarde) on the 1996 Convention notes that co-operation under Article 35(1) between authorities of States Parties with respect to rights of access "serves in a certain way to complete and reinforce the co-operation, which is not always effective, provided for the same purpose between Central Authorities" under Article 21 of the 1980 Convention. Explanatory Report, paragraph 146 (1997).

Miscellaneous

42. Is there any other comment that your State wishes to make relating to the practical operation of the 1996 Convention? If so, please specify:

Please insert text here

PART II – FOR NON-STATES PARTIES

43. Is your State currently considering signing and ratifying or acceding to the 1996 Convention?

- No
 Yes

44. In considering how your State would implement the 1996 Convention, have you encountered any issues of concern?

- No
 Yes, please explain:

Resource constraints especially, financial and human capital.

PART III – FOR BOTH STATES PARTIES AND NON-STATES PARTIES

45. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 1996 Convention? Please specify and list in order of priority:

None identified at this stage.

46. Do you have any observations or comments to share concerning the Practical Handbook on the Operation of the 1996 Child Protection Convention? Please specify:

None at this stage.

