



## Child Abduction

*South Africa is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. The Convention was incorporated into South African Law by Act 72 of 1996 and came into operation in South Africa on 1 October 1997 when the Regulations to the Act were promulgated.*

*The Children's Act 38 of 2005 has now incorporated the HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION into the act.*

### SCOPE OF THE CONVENTION

#### *Article 1*

The objects of the present Convention are—

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

#### *Article 2*

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

#### *Article 3*

The removal or the retention of a child is to be considered wrongful where—

- (a) it is in 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 resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in subparagraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

#### **Article 4**

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

#### **Article 5**

For the purposes of this Convention—

- (a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;
- (b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

### **What to do if your child is abducted?**

The Hague Convention gives you the option to approach the Chief Family Advocate in South Africa, or the Central Authority of the country where the child has been abducted to. The South African Central Authority being the Chief Family Advocate will request the following documents: original/certified copies of guardianship rights i.e. birth certificate, court order granting such rights; recent photographs of the abductor and the child; a sworn statement setting out the facts and circumstances around the alleged abduction; and copies of pleadings filed in pending litigation in South African courts, if applicable. You will also be required to complete a prescribed form which is used by central authorities in most of the contracting countries.