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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 65, 1997

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ACT, 1996
(ACT No. 72 OF 1996)

COMMENCEMENT

Under section 6 of the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996), I hereby fix **1 October 1997** as the date on which the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Twenty-fifth day of September, One thousand Nine hundred and Ninety-seven.

N. R. MANDELA

President

By Order of the President-in-Cabinet:

A. M. OMAR

Minister of the Cabinet

PROKLAMASIE*van die***President van die Republiek van Suid-Afrika****No. R. 65, 1997****WET OP DIE HAAGSE KONVENSIE OOR DIE SIVIELE ASPEKTE VAN INTERNASIONALE
KINDERONTVOERING, 1996 (WET No. 72 VAN 1996)****INWERKINGTREDING**

Kragtens artikel 6 van die Wet op die Haagse Konvensie oor die Siviele Aspekte van Internasionale Kinderontvoering, 1996 (Wet No. 72 van 1996), bepaal ek hierby **1 Oktober 1997** as die datum waarop genoemde Wet in werking tree.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad, op hede die Vyf-en-twintigste dag van September Eenduisend Negehonderd Sewe-en-negentig.

N. R. MANDELA**President**

Op las van die President-in-Kabinet:

A. M. OMAR**Minister van die Kabinet**

GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE
DEPARTEMENT VAN JUSTISIE**No. R. 1282****1 October 1997****HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ACT, 1996**
(ACT No. 72 OF 1996)**REGULATIONS**

The Minister of Justice has, under section 5 of the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996), made the regulations in the Schedule.

SCHEDULE**Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates—

“**applicant**” means any person, institution or body vested with parental authority that applies for assistance under the Convention;

“**Chief Family Advocate**” means the Chief Family Advocate referred to in section 3 of the Act;

"Family Advocate" means a Family Advocate contemplated in section 4 of the Act;

"respondent" means a person who removed or retained a child, or who prevented the exercise of rights of access; and

"the Act" means the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996).

Representation of applicant

2. An application for assistance made by an applicant to the Chief Family Advocate shall, unless the contrary is proved, be deemed to constitute authorisation by the applicant of the Chief Family Advocate or a Family Advocate to exercise any power and perform any duty conferred or imposed on him or her under the Convention, and to appear on the applicant's behalf in any proceedings that may be necessary under the Convention.

Appointment of persons by the Chief Family Advocate

3. (1) Where no Government department can grant the assistance sought or where the Chief Family Advocate considers it necessary to give effect to the provisions of the Convention he or she may, subject to any condition he or she may deem appropriate, appoint any person or persons to assist him or her, or a Family Advocate, to exercise any power or perform any duty conferred or imposed upon the Chief Family Advocate under the Convention.

(2) The appointment and any conditions thereof shall be in writing and in a certified copy or duplicate original thereof shall be handed to the person concerned: Provided that in urgent cases the appointment may be made orally but shall subsequently be confirmed in writing without delay.

Obstruction of Chief Family Advocate, Family Advocate or person appointed

4. Any person who hinders or obstructs the Chief Family Advocate, a Family Advocate or a person appointed by the Chief Family Advocate in terms of regulation 3 in the exercise of his or her powers or the performance of any duty conferred or imposed on him or her under the Convention, the Act or these regulations shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Court appearances

5. The Chief Family Advocate or a Family Advocate shall appear on behalf of an applicant in any court proceedings that may be necessary to give effect to the provisions of the Convention, where the applicant does not—

- (a) qualify for legal aid in terms of the Legal Aid Act, 1969 (Act No. 22 of 1969), read with Article 25 of the Convention; or
- (b) wish to appoint a legal representative of his or her choosing.

Fees of Chief Family Advocate or Family Advocate

6. The Office of the Family Advocate shall, where the Chief Family Advocate or a Family Advocate appears on behalf of an applicant in any court proceedings, be entitled to the following fees:

- (a) Appearance in court by the Chief Family Advocate or a Family Advocate: R300,00 per day.
- (b) Per hour or part of an hour actually spent by the Chief Family Advocate or a Family Advocate on the perusal, consideration or drafting of any legal process, subject to a maximum amount of R300,00 per day: R50,00.
- (c) Per hour or part of an hour actually spent by the Chief Family Advocate or a Family Advocate in consultation with any witness, subject to a maximum amount of R300,00 per day: R50,00.

Fees of person appointed by Chief Family Advocate

7. (1) Any person appointed in terms of regulation 3 who is not an officer in the Public Service shall for assistance thus rendered by him or her be entitled to the following remuneration:

- (a) Where he or she is a tracing agent or some other person appointed to locate a child or any other person: R280,00 if such child or other person is located.
- (b) Where he or she is a social worker or some other person appointed to investigate and report on the social background, living conditions or other circumstances of a child or to obtain any other information or to harbour, keep safe or escort a child and, for the purposes of rendering such assistance—
 - (i) is obliged to rent overnight accommodation or is absent for a period of 24 hours or longer from the city or town where he or she normally works or resides:
 - (aa) an all-inclusive amount of R65,00 per day; or
 - (bb) the actual expenses reasonably incurred by him or her in respect of accommodation and meals, and a special compensation of R20,00 per day for incidental expenses;
 - (ii) is absent for a period of less than 24 hours from the city or town where he or she normally works or resides and is not obliged to rent overnight accommodation: an all-inclusive amount of R40,00 per day;
 - (iii) makes use of public transport: an amount equal to the actual cost of such transport for the forward and the return journey by the shortest convenient route: Provided that the Chief Family Advocate shall first give his or her consent for the mode of public transport to be used;
 - (iv) makes use of private transport: an amount for the forward and the return journey by the shortest convenient route calculated at R1,10 per kilometre in the case of a vehicle with an engine swept volume of 2 150 cm³ or less, R1,14 per kilometre in the case of a vehicle with an engine swept volume from 2 151 cm³ to 2 500 cm³, inclusive, R1,27 per kilometre in the case of a vehicle with an engine swept volume from 2 501 cm³ to 3 500 cm³, inclusive, or R1,42 per kilometre in the case of a vehicle with an engine swept volume exceeding 3 500 cm³.

(2) When submitting a claim for actual expenses incurred by him or her in respect of meals and accommodation, the person shall submit the necessary receipts, vouchers or any other proof in support of his or her expenses to the Registrar of the High Court.

(3) The decision of the Registrar of the High Court regarding the amounts payable in terms of this regulation shall be final.

Recovery of expenditure

8. (1) Where an application for the return of a child has been successful, the Chief Family Advocate may recover from the applicant the expenses incurred or to be incurred by the Chief Family Advocate in bringing about the return of the child.

(2) Where an application for the return of a child or concerning rights of access has been successful and no order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant by the Chief Family Advocate, the Chief Family Advocate may recover such expenses or costs from the respondent.

(3) Any expenses or costs recovered by the Chief Family Advocate in terms of subregulation (1) or (2) shall accrue to the State Revenue Fund.

(4) Where an application for the return of a child or concerning rights of access has been successful and an order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant by the Chief Family Advocate or to pay the fees of the Chief Family Advocate contemplated in regulation 6, such expenses, costs or fees shall accrue to the State Revenue Fund.

Title

9. These regulations shall be called the **Hague Convention on the Civil Aspects of International Child Abduction Regulations, 1997**, and shall come into operation on 1 October 1997.

No. R. 1282**1 Oktober 1997****WET OP DIE HAAGSE KONVENSIE OOR DIE SIVIELE ASPEKTE VAN INTERNASIONALE KINDERONTVOERING, 1996 (WET No. 72 VAN 1996)****REGULASIES**

Die Minister van Justisie het, kragtens artikel 5 van die Wet op die Haagse Konvensie oor die Siviele Aspekte van Internasionale Kinderontvoering, 1996 (Wet No. 72 van 1996), die regulasies in die Bylae uitgevaardig.

BYLAE**Woordomskrywing**

1. In hierdie regulasies het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg word, die betekenis aldus daaraan geheg en, tensy uit die samehang anders blyk, beteken—

“**applikant**” 'n persoon, instelling of liggaam beklee met ouerlike gesag wat aansoek doen om bystand kragtens die Konvensie;

“**die Wet**” die Wet op die Haagse Konvensie oor die Siviele Aspekte van Internasionale Kinderontvoering, 1996 (Wet No. 72 van 1996);

“**Gesinsadvokaat**” 'n Gesinsadvokaat bedoel in artikel 4 van die Wet;

“**Hoofgesinsadvokaat**” die Hoofgesinsadvokaat vermeld in artikel 3 van die Wet; en

“**respondent**” die persoon wat die kind verwyder of aangehou het, of wat die uitoefening van regte van toegang verhoed het.

Verteenwoordiging van applikant

2. 'n Aansoek om bystand deur 'n applikant by die Hoofgesinsadvokaat gedoen, word, tensy die teendeel bewys word, geag die magtiging uit te maak deur daardie applikant van die Hoofgesinsadvokaat of 'n Gesinsadvokaat om enige bevoegdheid uit te oefen of enige plig na te kom wat kragtens die Konvensie verleen of opgelê word, en om namens daardie applikant te verskyn in enige verrigtinge wat kragtens die Konvensie nodig is.

Aanstelling van persone deur die Hoofgesinsadvokaat

3. (1) Waar geen Staatsdepartement die gevraagde bystand kan verleen nie of waar die Hoofgesinsadvokaat dit nodig ag om aan die Konvensie uitvoering te gee, kan hy of sy, behoudens enige voorwaarde wat hy of sy dienstig ag, 'n persoon of persone aanstel om hom of haar of 'n Gesinsadvokaat by te staan om enige bevoegdheid uit te oefen of plig na te kom wat die Hoofgesinsadvokaat kragtens die Konvensie verleen of opgelê word.

(2) Die aanstelling en enige voorwaardes daarvan moet skriftelik wees en 'n gesertifiseerde afskrif of duplikaatoorspronklike daarvan moet aan die betrokke persoon oorhandig word: Met dien verstande dat in dringende gevalle die aanstelling mondeling gedoen kan word, maar onverwyld daarna skriftelik bevestig moet word.

Belemmering van Hoofgesinsadvokaat, Gesinsadvokaat of aangestelde persoon

4. Iemand wat die Hoofgesinsadvokaat, 'n Gesinsadvokaat of 'n persoon kragtens regulasie 3 deur die Hoofgesinsadvokaat aangestel, belemmer of hinder in die uitvoering van sy of haar bevoegdhede of die nakoming van enige plig hom of haar verleen of opgelê kragtens die Konvensie, die Wet of hierdie regulasies, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

Verskynings in hof

5. Die Hoofgesinsadvokaat of 'n Gesinsadvokaat verskyn namens die applikant in enige hofverrigtinge wat nodig is om aan die bepalings van die Konvensie uitvoering te gee indien die applikant—

- (a) nie in aanmerking kom nie vir regshulp ingevolge die Wet op Regshulp, 1969 (Wet No. 22 van 1969), gelees met Artikel 25 van die Konvensie; of
- (b) nie 'n regsverteenvoerder van sy of haar keuse wil aanstel nie.

Gelde van Hoofgesinsadvokaat of Gesinsadvokaat

6. Die Kantoor van die Gesinsadvokaat is, waar die Hoofgesinsadvokaat of 'n Gesinsadvokaat namens 'n applikant in enige hofverrigtinge verskyn, geregtig op die volgende gelde:

- (a) Verskyning in die hof deur die Hoofgesinsadvokaat of 'n Gesinsadvokaat: R300,00 per dag.
- (b) Per uur of gedeelte van 'n uur werklik deur die Hoofgesinsadvokaat of 'n Gesinsadvokaat bestee aan die deurlees, oorweging of opstel van prosesstukke, onderworpe aan 'n maksimumbedrag van R300,00 per dag: R50,00.
- (c) Per uur of gedeelte van 'n uur werklik deur die Hoofgesinsadvokaat of 'n Gesinsadvokaat deurgebring in konsultasie met 'n getuie, onderworpe aan 'n maksimumbedrag van R300,00 per dag: R50,00.

Gelde van persoon deur Hoofgesinsadvokaat aangestel

7. (1) 'n Persoon kragtens regulasie 3 aangestel wat nie 'n beampte in die Staatsdiens is nie, is, vir bystand deur hom of haar in daardie verband gelewer, op die volgende vergoeding geregtig:

- (a) Waar hy of sy 'n opsporingsagent of ander persoon is wat aangestel is om 'n kind of enige ander persoon op te spoor: R280,00 indien sodanige kind of ander persoon opgespoor word.
- (b) Waar hy of sy 'n welsynswerker of ander persoon is wat aangestel is om die maatskaplike agtergrond, lewensomstandighede of ander omstandighede van 'n kind te ondersoek en daarvoor verslag te doen, of om enige ander inligting te bekom, of om 'n kind te huisves, te beveilig of te begelei, en vir die doeleindes van die verlening van sodanige bystand—
 - (i) genoodsaak is om huisvesting vir die nag te huur of vir 'n tydperk van 24 uur of langer afwesig is van die stad of dorp waar hy of sy normaalweg werkzaam of woonagtig is:
 - (aa) 'n allesinsluitende bedrag van R65,00 per dag; of
 - (bb) die werklike uitgawes redelikerwys deur hom of haar aangegaan ten opsigte van huisvesting en maaltye, asook 'n spesiale vergoeding van R20,00 per dag vir bykomstige uitgawes;
 - (ii) vir 'n tydperk van minder as 24 uur afwesig is van die stad of dorp waar hy of sy normaalweg werkzaam of woonagtig is en nie genoodsaak word om huisvesting vir die nag te huur nie: 'n allesinsluitende bedrag van R40,00 per dag;
 - (iii) gebruik maak van openbare vervoer: 'n bedrag gelykstaande met die werklike koste van sodanige vervoer vir die heen-en-terug-reis langs die kortste geskikte roete: Met dien verstande dat die Hoofgesinsadvokaat eers sy of haar goedkeuring verleen vir die soort openbare vervoer wat gebruik gaan word;
 - (iv) gebruik maak van private vervoer: 'n bedrag vir die heen-en-terug-reis langs die kortste geskikte roete, bereken teen R1,10 per kilometer in die geval van 'n voertuig met 'n enjinslagvolume van 2 150 cm³ of minder, R1,14 per kilometer in die geval van 'n voertuig met 'n enjinslagvolume van 2 151 cm³ tot en met 2 500 cm³, R1,27 per kilometer in die geval van 'n voertuig met 'n enjinslagvolume van 2 501 cm³ tot en met 3 500 cm³, of R1,42 per kilometer in die geval van 'n voertuig met 'n enjinslagvolume van meer as 3 500 cm³.

(2) Wanneer 'n persoon 'n eis indien vir werklike uitgawes deur hom of haar ten opsigte van maaltye en huisvesting aangegaan, moet hy of sy die nodige kwitansies, fakture of ander bewyse ter ondersteuning van sy of haar uitgawes aan die Griffier van die Hooggeregshof voorlê.

(3) Die beslissing van die Griffier van die Hooggeregshof betreffende die bedrae betaalbaar, is finaal.

Verhaal van uitgawes

8. (1) Waar 'n aansoek om die teruggawe van 'n kind suksesvol was, kan die Hoofgesinsadvokaat die uitgawes aangegaan of wat aangegaan staan te word deur die Hoofgesinsadvokaat vir die teruggawe van die kind, van die applikant verhaal.

(2) Waar 'n aansoek om die teruggawe van 'n kind of rakende regte van toegang suksesvol was en geen bevel teen die respondent gemaak is nie vir die betaling van enige van die uitgawes of koste deur of namens die applikant deur die Hoofgesinsadvokaat aangegaan, kan die Hoofgesinsadvokaat sodanige uitgawes of koste van daardie respondent verhaal.

(3) Enige uitgawes of kostes deur die Hoofgesinsadvokaat ingevolge subregulasie (1) of (2) verhaal, val die Staatsinkomstefonds toe.

(4) Waar 'n aansoek om die teruggawe van 'n kind of rakende regte van toegang suksesvol was en 'n bevel teen die respondent gemaak is vir die betaling van enige van die uitgawes of koste deur of namens die applikant deur die Hoofgesinsadvokaat aangegaan, of vir die betaling van die gelde van die Hoofgesinsadvokaat bedoel in regulasie 6, val sodanige uitgawes, koste of gelde die Staatsinkomstefonds toe.

Titel

9. Hierdie regulasies heet die **Regulasies betreffende die Haagse Konvensie oor die Siviele Aspekte van Internasionale Kinderontvoering, 1997**, en tree in werking op 1 Oktober 1997.

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