

**ESSENTIAL CONSIDERATIONS
WHEN EMIGRATING WITH MINOR
CHILDREN**

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"No amount of money or success can take the place of time spent with your family."



"If I'm an advocate for anything, it's to move. As far as you can, as much as you can. Across the ocean, or simply across the river. Walk in someone else's shoes or at least eat their food. It's a plus for everybody". – Anthony Bourdain

SA is losing skills – 1 million have emigrated

Monday | 25 April | 2022

By Reon Janse van Rensburg

According to the United Nations' (UN's) Department of Economic and Social Affairs (Desa), 914 901 South Africa

27 Jan

Checkers runs ads in UK, Australia – to remind expats of 'better lifestyle' in SA

Compiled by Marelise van der Merwe

news24

DOORNELOU

☰ BANKING BUSINESS FINANCE MOTORING INDUSTRY NEWS PROPER

South African businesses in a panic over emigration

Staff Writer 8 March 2023

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16 Sep 2022

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SA may lose 53% of graduates to emigration, survey shows

Antony Sguazzin

Bloomberg NEWS

Comments

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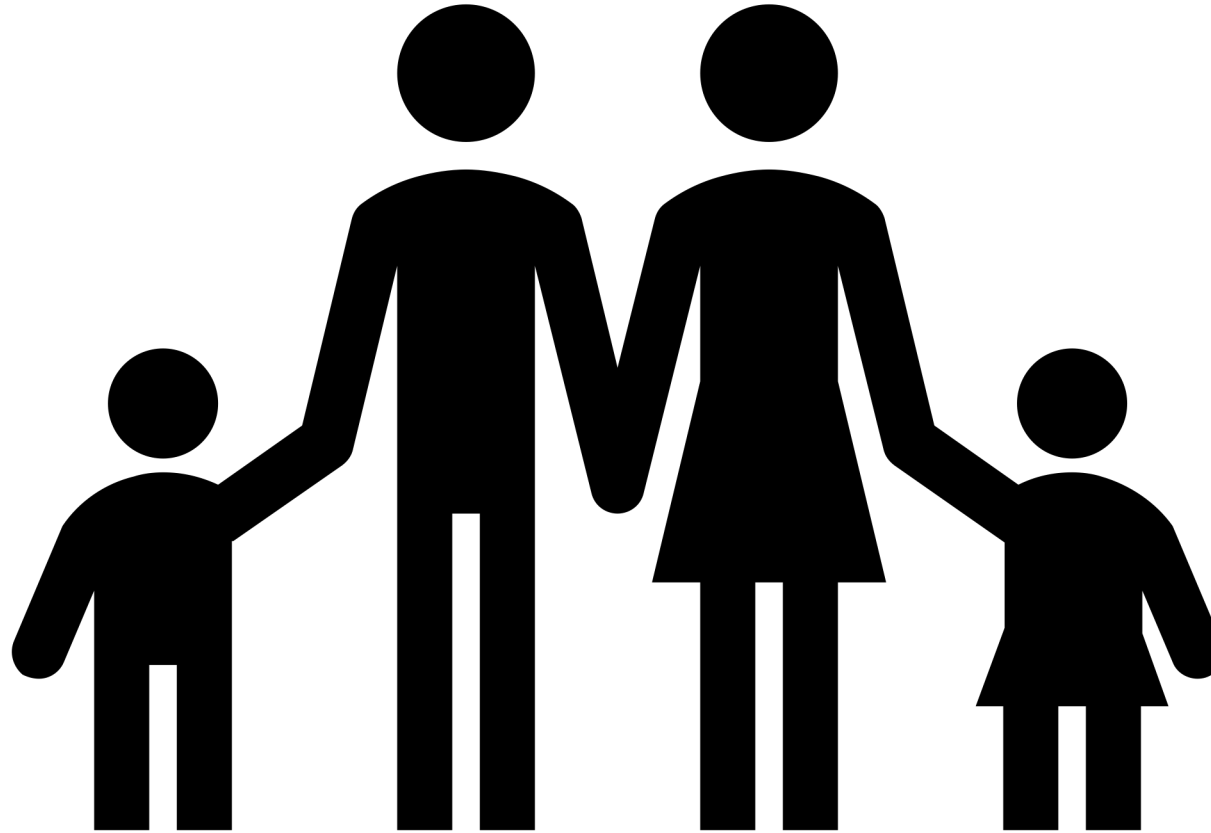
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PART 1

Let's Meet the Expat Family Unit



THE CONCENTRATED EXPAT FAMILY UNIT

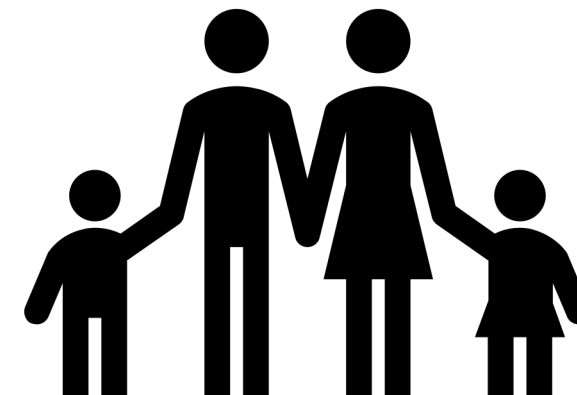


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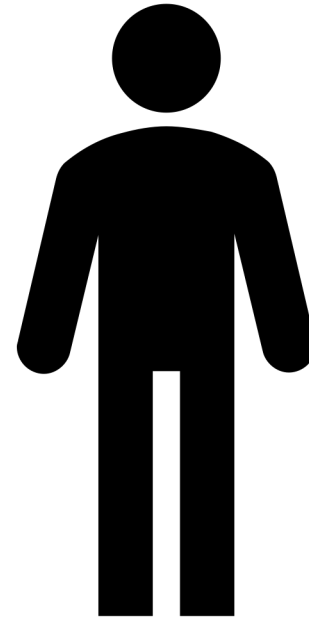
THE CONCENTRATED EXPAT FAMILY UNIT



A concentrated expat family unit refers to a family structure in which a small group of expatriates, typically consisting of parents and their dependent children, reside together in a foreign country for an extended period of time. This family unit often lives in close proximity, shares resources, and relies on each other for support while living abroad. The term "concentrated" emphasizes the close-knit nature of this family structure, as this family unit lives abroad together.



THE SEPARATED EXPAT FAMILY UNIT



THE SEPARATED EXPAT FAMILY UNIT



A separated expat family unit refers to a family structure in which one or more parents who hold parental responsibilities and rights live separately from their minor children while residing abroad. This often occurs due to circumstances that require one parent to be in a different location than the rest of the family, such as work, divorce, and Visa concerns.

In this family structure, the child is usually separated from one of the co-holders of parental responsibilities and rights, which can create unique challenges for maintaining family relationships and ensuring that the child's needs are met. Guardianship is a particularly difficult issue.





PART 2

Let's Look at

the Legal

Principles



PART 2a

The Children's Act, 2005

SECTION 7 – BEST INTERESTS OF THE CHILD

ALWAYS OUR STARTING POINT

(a) the nature of the personal relationship between

- (i) the child and the parents, or any specific parent; and
- (ii) the child and any other caregiver or person relevant in those circumstances;

(b) the attitude of the parents, or any specific parent, towards

- (i) the child; and
- (ii) the exercise of parental responsibilities and rights in respect of the child;

(c) the capacity of the parents, or any specific parent, or of any other caregiver or person, to provide for the needs of the child, including emotional and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from

- (i) both or either of the parents; or
- (ii) any brother or sister or other child, or any other caregiver or person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child

- (i) to remain in the care of his or her parent, family and extended family; and
- (ii) to maintain a connection with his or her family, extended family, culture or tradition;

SECTION 7 – BEST INTERESTS OF THE CHILD

ALWAYS OUR STARTING POINT

(g) the child's

- (i) age, maturity and stage of development;
- (ii) gender;
- (iii) background; and
- (iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

(j) any chronic illness from which a child may suffer;

(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;

(l) the need to protect the child from any physical or psychological harm that may be caused by

- (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
- (ii) exposing the child to maltreatment, abuse, degradation, ill treatment, violence or harmful behaviour towards another person;

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.



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SECTION 7 – BEST INTERESTS OF THE CHILD

ALWAYS OUR STARTING POINT

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.



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SECTION 18 (3, (4) & (5) - GUARDIANSHIP

(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must

(a) administer and safeguard the child's property and property interests;

(b) assist or represent the child in administrative, contractual and other legal matters; or

(c) give or refuse any consent required by law in respect of the child, including

(i) consent to the child's marriage;

(ii) consent to the child's adoption;

(iii) consent to the child's departure or removal from the Republic;

(iv) consent to the child's application for a passport; and

(v) consent to the alienation or encumbrance of any immovable property of the child.

(4) Whenever more than one person has guardianship of a child, each one of them is competent, subject to subsection (5), any other law or any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or responsibility arising from such guardianship.

(5) Unless a competent court orders otherwise, the consent of all the persons that have guardianship of a child is necessary in respect of matters set out in subsection (3) (c).



SECTION 31(1) – CHILD PARTICIPATION

- (a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.
- (b) A decision referred to in paragraph (a) is any decision
- (i) in connection with a matter listed in **section 18 (3) (c)**;
 - (ii) **affecting contact** between the child and a coholder of parental responsibilities and rights;
 - (iii) regarding the assignment of guardianship or care in respect of the child to another person in terms of section 27; or
 - (iv) **which is likely to significantly change, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's wellbeing.**



SECTION 28 – TERMINATION / SUSPENSION

- (1) A person referred to in subsection (3) may apply to the High Court, a divorce court in a divorce matter or a children's court for an order
- (a) **suspending** for a period, or **terminating, any or all** of the parental responsibilities and rights which a specific person has in respect of a child;
or
 - (b) extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.





PART 2b

The Immigration Act, 2002

SECTION 9 – ENTRY / DEPARTURE FROM REPUBLIC

(3) No person shall enter or depart from the Republic-

(a) unless he or she is in possession of a valid passport, and in the case of a minor, has his or her own valid passport;

(b) except at a port of entry, unless exempted in the prescribed manner by the Minister, which exemption may be withdrawn by the Minister;

(c) unless the entry or departure is recorded by an immigration officer in the prescribed manner; and

(d) unless his or her relevant admission documents have been examined in the prescribed manner and he or she has been interviewed in the prescribed manner by an immigration officer: Provided that, in the case of a child, such examination and interview shall be conducted in the presence of the parent or relative or, if the minor is not accompanied by the parent or relative, any person of the same gender as the minor.





PART 2c

South African Passports and Travel Documents Act, 1994

public with success... and...
To be sure, once we project this fall...
dimension into a dimension lower than its own, say, the di...
of the businessman or the playboy for whom succ...

Section 4

- (1) The Minister may make regulations regarding-
- (a) the manner in which application is to be made for the issue of a South African passport or travel document, or for the renewal thereof, including-
 - (i) any particulars or information which is to be furnished in the application;
 - (ii) any documents which are to accompany any such application or are to be produced when making any such application;
 - (iii) any forms which are to be used in any such application; and
 - (iv) the taking of fingerprints.



Goodbye

PART 3

Leaving

South Africa



PART 3a

The Concentrated Expatriate Family

DOCUMENTS REQUIRED FOR CHILD TRAVELLING WITH BOTH PARENTS

- *valid passport*
- *copy of a birth certificate / equivalent document or passport containing the details of the parent or parents of the child*





PART 3b

The Separated Expatriate Family



DOCUMENTS REQUIRED FOR CHILD TRAVELLING WITH ONE PARENT

- *valid passport*
- *copy of a birth certificate/equivalent document*
- *parental consent letter*
- *copy of the passport / identity document of the absent parent*
- *contact details of the absent parent*
- *where applicable*
 - *copy of a court order granting full parental responsibilities and rights or legal guardianship in respect of the child.*
 - *copy of a death certificate of the deceased parent*





PART 4

Emigration by consent vs emigration by Court Order

INTERNATIONAL RELOCATION WITH A MINOR CHILD

ABDUCTION

RELOCATION BY CONSENT

OPPOSED
RELOCATION

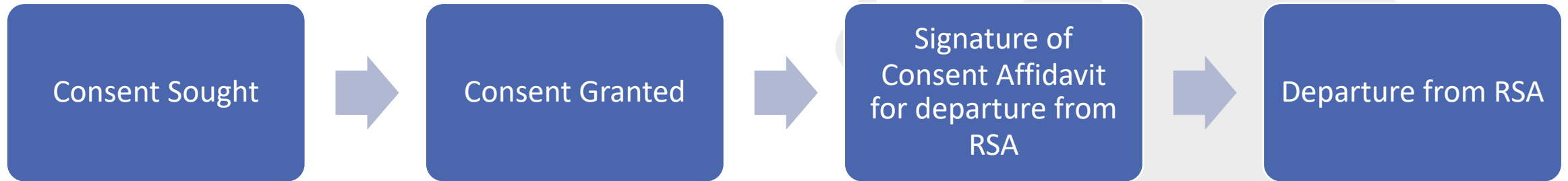
Hague
Convention

Informal

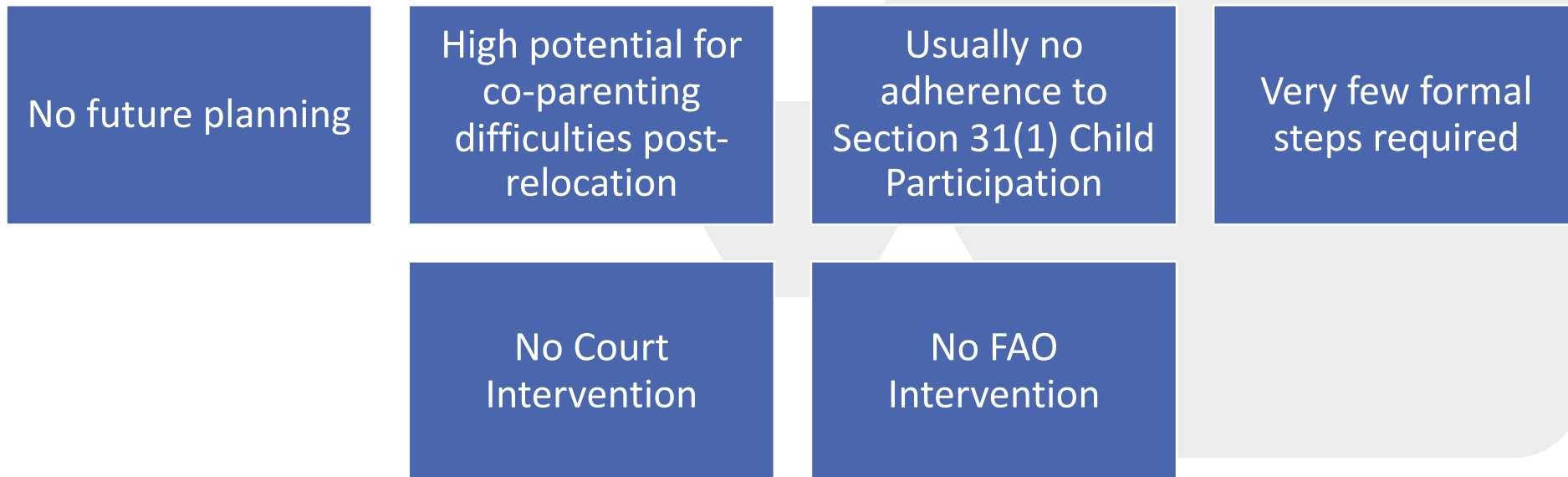
Formal

Court
Process

EMIGRATION BY CONSENT – INFORMAL STRUCTURE



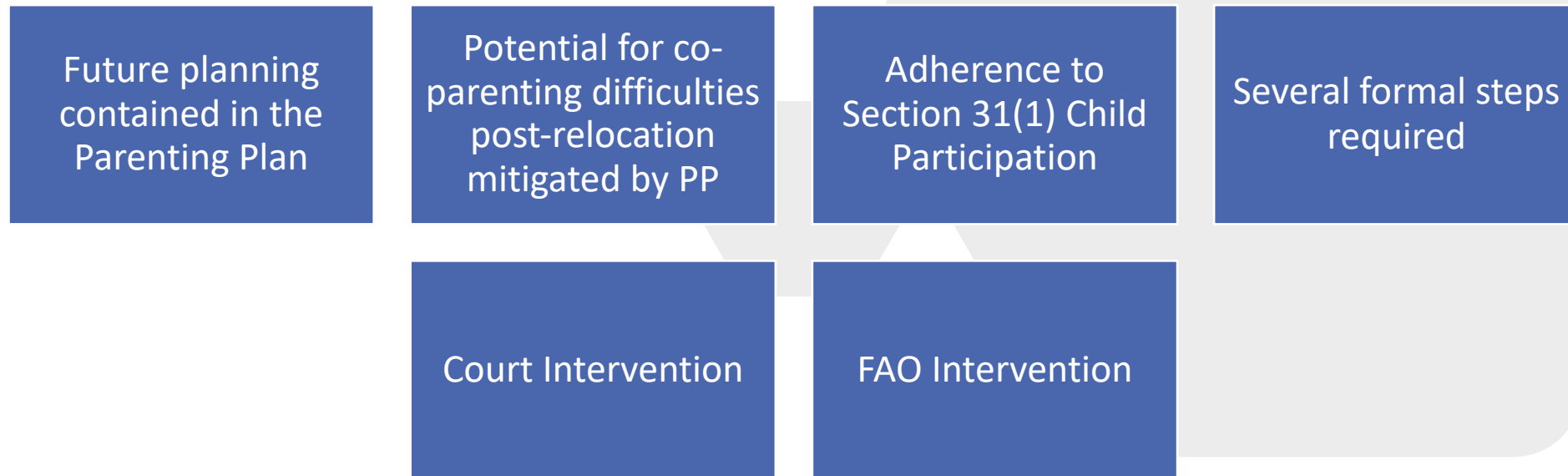
CHARACTERISTICS



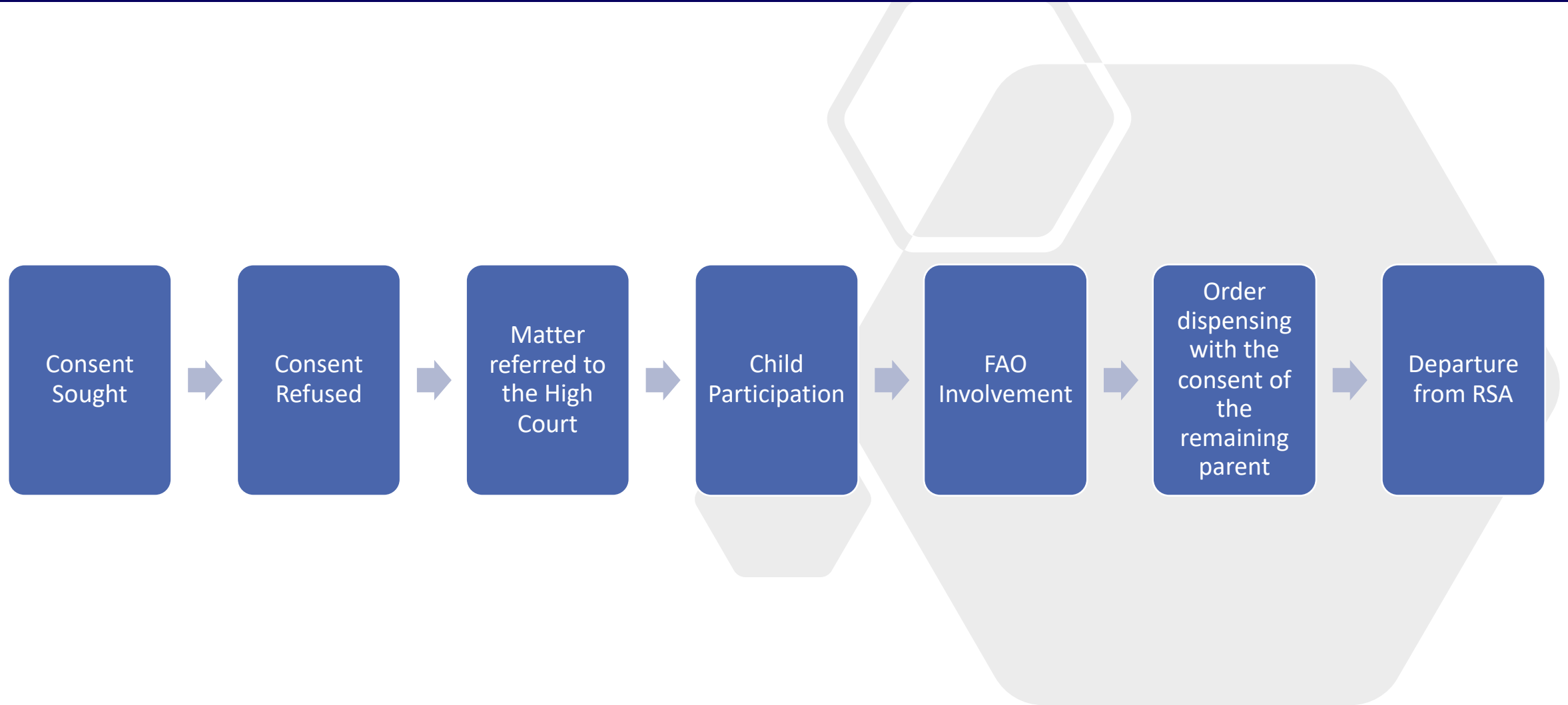
EMIGRATION BY CONSENT – FORMAL STRUCTURE



CHARACTERISTICS



EMIGRATION WITHOUT CONSENT – COURT PROCESS



EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

F v F (9985/2022) [2022] ZAGPJHC 202 (6 April 2022) – Adams J

Facts:

- Applicant seeks orders to take her two minor daughters to the United Kingdom without respondent's consent.
- A court order is already in place granting both parents full parental rights and responsibilities, with the children living primarily with the applicant.
- Respondent withdrew his consent for the relocation of the children, demanding the applicant to withdraw a criminal charge against him first.

Legal principles:

- The best interests of the children are the first and paramount consideration.
- Both parents have a joint primary responsibility for raising the child.
- The custodial parent's decision to emigrate is shown to be bona fide and reasonable.
- The welfare of the children is best served by them being raised in a happy and secure atmosphere.

Finding:

- The respondent's consent is dispensed with in respect of the minor children's visa applications and removal from South Africa to the UK.
- The applicant is granted leave to relocate the minor children outside of South Africa to the UK.
- The respondent is entitled to exercise contact with the minor children while they reside in the UK, subject to certain conditions.
- Respondent's S18(3)(c)(iii) & (iv) rights are terminated
- The respondent must pay the applicant's costs of the urgent application.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

OM v MC (2022/031103) [2023] ZAGPJHC (3 March 2023) – F. Bezuidenhout AJ

Facts:

- Father concedes that relocating daughter to Australia with mother is in her best interest
- Dispute is over format and timing of reunification process between father and daughter
- Applicant tenders electronic media contact between father and daughter twice per week, subject to minor child's expressed views and therapist's recommendations
- Respondent seeks intervention of independent psychologist to advise on a parenting plan, prepare minor child for emigration and facilitate a meeting before departure
- Parties disagree on commencement date and who should conduct reunification process
- Applicant objects to another psychologist and wants current therapist to conduct process
- Parties cannot agree on costs
- History of sporadic contact between respondent and minor child
- Interim order in 2015 appointed psychologist to facilitate contact regime, but process failed
- Applicant decided to relocate to Australia after graduation, but minor child not interested in relationship with father
- Parties agreed on independent psychologist, but respondent objected to the choice
- Minor child is consulting current therapist and has formed a strong therapeutic bond
- Respondent alleges parental alienation by applicant, including changing minor child's surname without consent
- Respondent wants relationship with daughter maintained despite relocation

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

OM v MC (2022/031103) [2023] ZAGPJHC (3 March 2023) – F. Bezuidenhout AJ

Findings:

- The court interpreted the questions of law with the best interests of the child as the overriding consideration, as required by the Constitution and the Children's Act.
- The High Court has wide powers to establish what is in the best interests of a child and is not limited by evidence presented or contentions advanced by respective parties.
- The court conducted a chamber interview with the minor child to understand her emotional position in relation to the imminent relocation and the process to rebuild a relationship with her father.
- Both parents' involvement is key to a child's development, and reunification therapy is a form of family therapy intended to reunite a child with a parent or parents with whom the bond has been broken.
- Reunification work can be long-term, and in order for it to be effective, it cannot occur remotely or with time limitations.
- The court found it improper for O'Mahony to fulfil both the role of therapist for the child and reunification expert, as it may compromise the relationship of trust between the minor child and her therapist.
- The court did not grant costs in favour of either party, as both could have pursued a different way to resolve the matter.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

OM v MC (2022/031103) [2023] ZAGPJHC (3 March 2023) – F. Bezuidenhout AJ

Order:

- The applicant and respondent will have full parental responsibilities and rights of the minor child
- The applicant is authorized to permanently remove the minor child from South Africa to relocate to Australia
- The respondent must sign documents and do necessary actions for the minor child's passports, permits, and visas for the move within three days of being asked. If the respondent fails to comply with the requirements, the applicant's signature is sufficient for the passports and visas, and the applicant can sign the Parental Consent Letter
- The minor child's primary residence and care will continue with the applicant in Australia, and the respondent will contribute to her maintenance needs as per court order
- The minor child will consult with psychologist Claire O'Mahony for therapeutic intervention before and after the relocation
- Before the minor child's departure from South Africa, the parties will attend a meeting with an independent clinical psychologist to advise on co-parenting, prepare the minor child, construct a parenting plan, and monitor the reunification process
- The independent psychologist must be an expert in parental alienation and will be nominated by the chairperson of the Gauteng Family Law Forum within 7 days
- The costs of the independent psychologist and parenting plan construction will be borne by the respondent
- The applicant will provide counselling for the minor child in Australia and forward reports to the respondent
- The applicant will inform the respondent about emergency contacts, educational progress, extramural activities, and health concerns of the minor child
- Each party will pay their own costs

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

JB v RE (9202 / 2022) [2022] ZAWCHC (17 January 2023) – Wille J

Facts:

- The applicant seeks permission to permanently relocate with their minor child to Lyon, France.
- The respondent refused to provide consent for the relocation or for the minor child to accompany the applicant on a holiday to Lyon.
- The application was initially divided into two parts: allowing the minor child to go on holiday and seeking an investigation into the best interests of the minor child.
- The court granted an order for the minor child to go on holiday, confirmed the appointment of the applicant's expert and reserved the right for the respondent to appoint an expert.
- Both experts recommended that the applicant be permitted to relocate with the minor child.
- The respondent opposed the application and requested it to be dismissed with costs.
- The applicant amended her relocation plans, which were discussed with the experts.
- The applicant previously wrote to the respondent explaining her motivations for relocating and provided information on schooling abroad, financial stability, and opportunities for her career.
- The applicant's plans for relocation were amended to include a financial contribution from a previous partner and friend and to relocate to a larger and less remote destination abroad.
- The experts confirmed that the applicant's reasons for relocating were bona fide and that she was the minor child's primary carer.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

JB v RE (9202 / 2022) [2022] ZAWCHC (17 January 2023) – Wille J

Findings:

- Both experts recommended that the applicant be permitted to relocate with the minor child
- The applicant is the minor child's primary carer and there is no basis for the respondent's claims of alienation
- Extensive telephonic, email, and electronic contact with the respondent will be encouraged
- The interests of the minor child are paramount
- The respondent's objections are mostly technicalities and unsupported claims of personality disorder and alienation
- The applicant's proposed relocation is bona fide and reasonable, and in the minor child's best interests
- Failure to grant the relocation order would put a blight on the minor child's potential for happiness and stability
- The advantages of the relocation far outweigh the disadvantages, and the respondent's motivation for opposing the relocation is unclear

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

JB v RE (9202 / 2022) [2022] ZAWCHC (17 January 2023) – Wille J

Order:

- Applicant granted leave to remove child to Lyon, France and will be in primary care of applicant.
- Joint decisions about major issues concerning X will be made by both parties.
- X will attend International School of Lyon, and the applicant will assume full responsibility for X's schooling costs.
- Applicant and X will stay in Air BnB for first three months, then secure appropriate accommodation not more than 20 km from X's school.
- Residency and contact orders will be enforced under the Hague Convention with Helena's place of habitual residence being Lyon, France.
- X cannot be permanently removed from Lyon, France without the prior written consent of the respondent.
- Both parties must comply with French Immigration and Travel Regulations and sign necessary documentation.
- The parties must appoint a mediator or parenting coordinator in France and one in South Africa, and each will be a clinical psychologist or lawyer with at least ten years' experience in disputed family law matters.
- The parenting coordinators are authorized to assist the parties in implementing and complying with the provisions of this order, mediate joint decisions in respect of X, make recommendations in respect of any dispute arising regarding contact, and make directives binding on the parties and X until a Court of competent jurisdiction orders otherwise.
- The applicant and respondent shall bear the costs of the South African and the French-based PCs in equal shares.
- No order as to costs.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

D v D (14582/2022) [2022] ZAGPJHC 1009 (19 December 2022) – Mia J

Facts:

- The applicant and first respondent are married with a thirteen-year-old child.
- The applicant wants to relocate with the child to Croatia, and has applied for an order to that effect.
- The first respondent opposes the relocation and the urgency of the application.
- The child has expressed a desire to relocate with the applicant.
- The Family Advocate has recommended that the child be allowed to relocate with the applicant.
- The first respondent's concerns about the child's safety in Croatia can be assuaged by regular contact and the option to return to South Africa if necessary.
- The child has a better relationship with the applicant than with the first respondent.

Legal Principles:

- The best interests of the child are of paramount importance in matters concerning the child.
- Each case must be decided on its own merits.
- When the interests of the child and an adult are not congruent, the adult's interests must yield to what promotes the child's best interests.
- The principle applicable to relocation is that the interests of the child are the first and paramount consideration.
- In most cases, if the custodian parent wishes to emigrate, a court will not lightly refuse leave for the children to be taken out of the country if the decision is shown to be bona fide and reasonable.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

Order: **D v D (14582/2022) [2022] ZAGPJHC 1009 (19 December 2022) – Mia J**

- The applicant is granted leave to remove the minor child, I[...]D[...], permanently from South Africa to Croatia.
- The respondent is ordered to sign all documents necessary for the relocation and to take all steps required to enable the applicant to apply for passports and visas.
- The respondent is ordered to sign all documents necessary for lawful removal of the child from South Africa.
- Both parties will retain full parental responsibilities and rights under Section 18(2) of the Children’s Act.
- The child will primarily reside with the applicant in Croatia and the applicant is awarded primary care giver rights.
- An appropriate professional will be appointed to consult with the child and determine the way forward if the child expresses a desire to return to South Africa.
- The respondent will maintain contact with the child as follows:....
- The applicant shall solely maintain the child.
- The applicant is authorized to sign any necessary documentation.
- The applicant will inform the respondent of the child's address, school, progress, medical needs, and itinerary if leaving Croatia.
- The respondent and child shall attend two bonding and integration therapy sessions with a psychologist or social worker appointed by the respondent.
- A mediator will be appointed to assist with any disputes arising over parental rights and responsibilities.
- The applicant is to obtain a mirror Court Order of this Court Order within three months of relocation.
- The respondent is entitled to obtain a mirror Court Order in Croatia if the applicant fails to comply with order 13 within the prescribed period.
- The respondent will pay the costs of the application.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

C.F v S.G (538/2022) [2022] ZAWCHC 204 (20 October 2022) – Cloete J

Facts:

- The mother seeks court permission to relocate to the UK with their daughter.
- The father opposes the application, citing severance of his bond with the child.
- The parties co-own a restaurant business in Cape Town and have had several legal disputes.
- Experts assessed both parties and recommended continuous monitoring of the father's alcohol dependency and psychotherapy.
- Pettigrew recommended relocation, while Campbell recommended against it.
- Pettigrew's evidence suggested that delaying relocation would harm the child, and relocation would be in the child's best interests.
- Other relevant factors include the mother's lack of support system in Cape Town, a job offer in the UK with a higher salary, and family support in the UK.

Legal Principles:

- The court must take an overall view to determine if the custodial parent's decision is reasonable.
- The child's best interests are paramount but are not absolute and must be considered in relation to other rights.
- The custodial parent's rights involve fundamental rights to dignity, privacy, and freedom of movement.
- Limitations apply to the best-interests injunction in consideration of other rights.
- Each case must be decided on its own facts.

EMIGRATION WITHOUT CONSENT – SOME DECIDED CASES

C.F v S.G (538/2022) [2022] ZAWCHC 204 (20 October 2022) – Cloete J

Order:

- The applicant mother is granted leave to remove the parties' minor child, M, from South Africa and to relocate with her to the United Kingdom.
- The respondent father's signature will be dispensed with, if required, for various necessary documents related to M's relocation, schooling, travel visas, and medical procedures.
- The respondent is awarded co-guardianship rights in respect of M, except for relocation or holiday travel to other countries from the UK.
- The applicant mother has the right to make major decisions for M's education, medical procedures, medication, religious needs, with the respondent's views taken into account.
- The respondent father is granted reasonable rights of supervised contact with M, including two two-week holidays in London, video contact three times per week, and visits that may be increased to a maximum of eight hours over time.
- The applicant mother shall inform the respondent of M's physical address, schools, school reports, and hospitalization or major surgery.
- The respondent father shall be breathalyzed at his cost prior to each contact session with M until such time as an alcohol addiction specialist has certified that he is rehabilitated.
- The respondent father's maintenance obligations in respect of M will reduce to R3 250,00 per month payable on or before the first day of each month following the applicant's relocation with M.
- The terms of the parenting plan entered into between the parties on 13 September 2022 are made an order of this Court.
- Each party shall pay their own costs



PART 5

Challenges post- emigration



POST-EMIGRATION CHALLENGES

Jurisdiction

- Section 44 – Children’s Act, 2005
- Section 6 (2) – Maintenance Act, 1998

Conflict of Laws

- Laws between countries vary. If the laws are inconsistent with one another, which system is to be preferred?

Practical Difficulties

- Contact (Expense, Time, Location)
- Major Decisions and co-parenting
- Guardianship [Section 18(3)(c)]; if SA citizenship retained

MIRROR ORDERS

A mirror order is an order made by a foreign court that mirrors or reflects the terms of an order made by a domestic court in relation to family law matters such as divorce, and the exercise of Parental Responsibilities and Rights. The purpose of a mirror order is to ensure that the terms of the foreign court's order are recognized and enforceable in the domestic jurisdiction. By obtaining a mirror order, a party can avoid the need to relitigate the same issues in both jurisdictions and ensure that their rights and obligations are protected in both places.



RENEWAL OF PASSPORTS AND VISITS TO SA

(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must

(a) administer and safeguard the child's property and property interests;

(b) assist or represent the child in administrative, contractual and other legal matters; or

(c) give or refuse any consent required by law in respect of the child, including

(i) consent to the child's marriage;

(ii) consent to the child's adoption;

(iii) consent to the child's departure or removal from the Republic;

(iv) consent to the child's application for a passport; and

(v) consent to the alienation or encumbrance of any immovable property of the child.

(4) Whenever more than one person has guardianship of a child, each one of them is competent, subject to subsection (5), any other law or any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or responsibility arising from such guardianship.

(5) Unless a competent court orders otherwise, the consent of all the persons that have guardianship of a child is necessary in respect of matters set out in subsection (3) (c).



RENEWAL OF PASSPORTS AND VISITS TO SA

(1) A person referred to in subsection (3) may apply to the High Court, a divorce court in a divorce matter or a children's court for an order

(a) **suspending** for a period, or **terminating, any or all** of the parental responsibilities and rights which a specific person has in respect of a child;
or

(b) extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.



Maintenance Court – International Issues



Whenever it appears to any court in the Republic that any person against whom it has, before or after the commencement of this Act, made a maintenance order, is resident in a proclaimed country, that court shall transmit to the Minister a certified copy of the order for transmission through diplomatic channels to an authority of such country recognized for the purpose by the Minister.

Section 7
RECIPROCAL ENFORCEMENT OF
MAINTENANCE ORDERS ACT
80 OF 1963

(1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under the Maintenance Act, 1998, in the absence of any person resident in a proclaimed country who may be legally liable to maintain any person in the Republic, provided the evidence of all witnesses at the enquiry is read over to and signed by them.

*(2) The court holding the enquiry may **make a provisional maintenance order only**, against the person so resident and shall, with a view to confirmation of the provisional maintenance order, forward to the Minister for transmission through diplomatic channels to an authority of the proclaimed country recognized for the purpose by the Minister, a **certified copy of the order together with the depositions of witnesses, a statement of the grounds on which the order might have been opposed and such information as may be available for the identification and location of the person against whom the order has been made.***

Section 8
RECIPROCAL ENFORCEMENT OF
MAINTENANCE ORDERS ACT
80 OF 1963

Maintenance Court – International Issues



RECIPROCAL ENFORCEMENT AGREEMENTS

Australia

Capital Territory - New South Wales - Northern Territory - State of Queensland South Australia - Tasmania - State of Victoria - Western Australia

Botswana

Canada

Alberta - British Columbia - Province of Manitoba – North-West Territories - Province of Ontario

Cocoa (Keeling) Islands

Cyprus

Fiji

Germany

Guernsey (Bailiwick of)

Hong Kong

Isle of Jersey

Isle of Man

Kenya

Lesotho

Malawi

Mauritius

Namibia

New Zealand

Nigeria

Norfolk Island

Sarawak

Singapore

St Helena

Swaziland

United Kingdom

England - Northern Ireland - Scotland - Wales

United States of America

California - Florida

Zambia

Zimbabwe

- A contracting state is bound to set up an administrative body known as the **“Central Authority”**, which has the duty of tracing the child and taking steps to secure the child’s return.
- In South Africa the Chief Family Advocate is designated as Central Authority.
- The Central Authority assists in both “outgoing” cases **(when a child has been wrongfully taken from South Africa to a foreign country)** or retained in a foreign country, as well as “incoming” cases **(when a child has been wrongfully brought to, or retained in South Africa)**
- A party may apply for the return of a child, or access to a child to the Central Authority.

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION



Albania
Argentina
Armenia
Austria
Bahamas
Belarus
Belgium
Belize
Bosnia and Herzegovina
Brazil
Bulgaria
Burkina Faso
Canada
Chile
Colombia
Costa Rica
Croatia
Cyprus
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Fiji
Finland
France
Georgia
Germany

Greece
Guatemala
Honduras
Hong Kong (China)
Hungary
Iceland
Ireland
Israel
Italy
Japan
Latvia
Lithuania
Luxembourg
Macau (China)

Malta
Mauritius
Mexico
Moldova, Republic of
Monaco
Montenegro
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Peru
Poland
Portugal
Republic of Korea (from 1 June 2015)
Romania

Saint Kitts and Nevis
San Marino
Serbia
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
The Former Yugoslav Republic of Macedonia (FYROM)
Trinidad and Tobago
Turkey
Turkmenistan
Ukraine
United Kingdom
United States of America
Uruguay
Uzbekistan
Venezuela
Zimbabwe



PART 6

Mediating

Emigration

Matters

MEDIATING EMIGRATION MATTERS – TOP TIPS

Research and understand the laws and requirements of the destination country before mediating any emigration matters.

Ensure that children are given a meaningful opportunity to participate in the mediation process.

Plan ahead to ensure that all necessary arrangements are made before the emigration date.

If you are not an attorney who specializes in expat work, work with one who can provide guidance and support throughout the process.

Consider the need for mirror orders, which are orders issued in both the home and destination countries, to ensure adequate provisions for enforcement.

Identify and include safeguards to protect the interests of all parties involved in the emigration process.

Encourage open and honest communication between parties to promote understanding and trust.

Be respectful of cultural differences and ensure that all parties are aware of any potential challenges that may arise.

Keep the best interests of any children involved as the top priority throughout the process.

Consider the emotional impact of emigration on all parties involved, and work to provide appropriate support and resources as needed.





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