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The Judges' Newsletter

on International Child Protection

Special Focus

Conference "15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family Relocation"

Embassy of Canada in Washington, D.C.

2-4 April 2025

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Foreword

This edition of the *Judges' Newsletter on International Child Protection* is dedicated to the Conference "15 Years of the HCCH Washington Declaration - Progress and Perspectives on International Family Relocation", which took place from 2 to 4 April 2025 at the Embassy of Canada in Washington, DC.

The Conference, jointly organised by the Embassy of Canada in Washington, DC, the International Academy of Family Lawyers (IAFL) and the HCCH, took place following Conclusions & Recommendations (C&R) Nos 53 - 55 of the Eighth Meeting of the Special Commission (SC) on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Conventions, encouraging the promotion of the 2010 Washington Declaration.

The conference was attended by over 200 participants (in person and online), representing 44 HCCH Members and five non-Member Contracting Parties to the 1980 Child Abduction, the 1996 Child Protection, and/or the 2007 Child Support Conventions. The conference was also attended by Fellows of the IAFL, as well as representatives from other Observer organisations to the HCCH.

The conference consisted of eight sessions, bringing together experts from over 20 States. The first session set the scene by outlining the harmful effects of international child abduction and presenting international family relocation as a potential tool to help prevent it, in some cases. The second session provided the state of play of international family relocation. The next four sessions facilitated an exchange of experiences among officials from States with specific relocation procedures, States following specific case law or guidelines in relocation cases, and States utilising best interests assessments as guidelines in relocation cases. These were followed by a session highlighting recent research and policy work on international family relocation. Finally, the last session discussed the use of alternative dispute resolution and other services in cases of international family relocation. Some of the presentations made during the conference are available on the conference's dedicated page on the HCCH website.

Among other things, the discussions underscored the enduring practical relevance of the 2010 Washington Declaration in promoting common principles for cross-border family relocation proceedings.

This Newsletter aims to serve as a useful repository for the remarks and contributions of the speakers, all of whom have submitted their contributions in writing for the purpose of this Newsletter. The Permanent Bureau is extremely grateful to all the speakers for having prepared and shared their contributions in writing for this Newsletter.

It is hoped that those who were not able to attend the conference, and those who have an interest in the subject matter, will find this Newsletter interesting and helpful.

The views expressed by the authors in this Newsletter are their own and may not reflect those of the HCCH.

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2 - 4 April 2025

Welcome and opening remarks

Ms Sarah Cohen, Deputy Head of Mission, Embassy of Canada in Washington, DC

Bonjour et bienvenue à tous. I am Sara Cohen, Deputy Head of Mission at the Embassy of Canada to the United States and I have the honour of leading a team who deal with foreign and national security.

On behalf of Ambassador Kirsten Hillman, it is a great pleasure to welcome you to our Embassy for this event marking 15 years since the Washington Declaration on International Family Relocation. This is a timely, important opportunity to advance our mutual cooperation and coordination on family relocation issues.

I am very pleased we have been able to partner with the Hague Conference on Private International Law and the International Academy of Family Lawyers to make this event happen.

You will be hearing from Christophe Bernasconi, Secretary General of the HCCH and Rachael Kelsey, President of the IAFL in a few minutes, so I will keep my remarks short. But I want to take this opportunity to thank Dr. Bernasconi and Ms. Kelsey for being here and for the leadership of their organisations on this important file. And to thank their teams who worked so hard to make this event happen. Thank you.

Our world is more connected than ever. In ever greater numbers, people are traveling, working and making their lives far from where they were born. And in today's world, even here in North America, this connectedness can present challenges.

I spend a lot of time reflecting on the Canada-US relationship. It is a unique relationship that is built on connections and the movement of people across our shared border.

Our best estimate is that about 1 million Canadians live in the United States. Those Canadians work, study, marry and have children in the communities they now call home and with the partners they meet here.

Unfortunately, as you in this room know, not every chapter of life ends with a fairy tale "happily ever after". Some relationships will break down. Some children will live through divorce or parental separation. Families who experience those life events in adoptive countries, or where parents come from different places, face challenges other families don't.

Almost every day, consular officials in this building and at our Embassies and consulates around the world receive calls from Canadians looking for help or advice about securing legal custody rights for their children or how to go about bringing their children back to Canada because of a family breakdown.

You know these stories much better than I do. The children and parents who need help are your clients as lawyers or mediators, they are the parties you see in your courtrooms, you provide services to support them, you conduct research on their situations, or you develop policies and legislation to help them.

Relocation is one of the most litigated family law issues and one the hardest to settle. In Canada, this has prompted federal legislators to adopt a framework to help parents and courts resolve disputes over relocation in the best interests of the child. You will hear about these efforts later today as well as tomorrow morning.

Canada is a strong supporter of the Hague Conference on Private International Law. We became a member of the HCCH in 1968 and have been active in the work of the organization since then. We recognize that harmonizing private international law and fostering international legal cooperation is critical to the lives of families and children around the world.

That's why I am so pleased our Embassy has been able to lend its support to this event. And to see so many of you here from around the world gathering to learn and share your expertise.

So, once again, welcome. I'm confident the next 2 days will be useful and that you will find opportunities to make connections with colleagues and counterparts that will contribute to your work for years to come.

Merci beaucoup.

Ms Rachael Kelsey, President of the IAFL

The IAFL is honoured to be part of this important meeting and we are most grateful to you, Sara, and your colleagues at the Embassy for hosting us.

Without cutting across what Christophe is to say, the potential of the Declaration that we are here to reflect on, and examine what more can be done with, has yet to be reached. All of us here in person or online are actors within the civil, and sometimes criminal, family justice system. We are practitioners, judges, and individuals who work within the government and the third sector. We are all involved in different ways in situations that see children being moved across borders – sometimes unilaterally and in a clandestine fashion, and sometimes with cooperation and consent.

Thanks to the incredible work that has been done by the HCCH and many states, in the last 50 years we have two multilateral conventions, in the 1980 Child Abduction Convention and 1996 Child Protection Convention, which,

respectively, assist in circumstances where there is international child abduction and where there is a need for civil measures to protect children in cross border situations.

But both of those conventions often only kick in after the event. Those of us who are practitioners, and I'm sure the judges who are participating also, understand that by the time one gets to court intervention utilising the 1980 or 1996 Conventions, that we are often dealing with damage limitation, rather than prevention, when it comes to vulnerable children and their families.

What we have in the Washington Declaration is the potential for prevention- where there may be a cross border family relocation, the vision embodied in the Declaration principles offer the possibility of cooperation and agency on the part of parents; meaningful participation by children and young people affected, and a managed and proper process within the civil family justice system.

During the course of this event, we will have the opportunity to reflect again on the work that was done 15 years ago, share how we work within our individual jurisdictions, learn from each other, and build relationships of trust that will support us in the international work that we all find ourselves dealing with. This meeting has the potential to be transformative for individual children who are part of international families, and, indeed, in a more prosaic fashion, for our family justice systems themselves, which are under increasing pressure in the fragile global climate that we find ourselves in.

The task then, that we have set ourselves for this meeting is on all fours with the task that we have set ourselves, at the IAFL- our strap line is, "connecting colleagues: cultivating knowledge: creating solutions".

Since 1986 we have operated as a not for profit organisation based here in the US, with a mission that remains unchanged over nearly 40 years, "To improve the practice of law and

the administration of justice in the area of divorce and family law throughout the world". We are now just under 1,100 fellows from over 70 jurisdictions. We are primarily practitioners, but we also have a significant, and increasing, number of academics, members of the judiciary and individuals who are in related disciplines and whose work sees them making a major contribution to international family law.

Increasingly in recent years, we have sought to develop the policy side of the work that we do. We are honoured now to have Observer status on many of the family law Hague Conventions and at the European Judicial Network. We have participated in judicial training, most recently in Kenya and Zambia. We have been granted permission to intervene in cases before the US Supreme Court, the Supreme Court of the United Kingdom, the Constitutional court of the Slovak Republic, the Supreme Court of Portugal and the Cour de Cassation in France. We have facilitated meetings for stakeholders involved in family justice, for example in Accra, following Ghana's accession to the 1993 Intercountry Adoption Convention we hosted the first meeting of stakeholders who would be working on the integration of the Convention.

We take very seriously our responsibility as senior actors within the family justice system to connect colleagues, to cultivate knowledge between us and to do all we can to try and play a part in creating solutions for the individuals and families with whom we work.

To that end, it will be unsurprising that we are wholly supportive of this important meeting and honoured to be part of it. By my calculations, in the room today there will be individuals from over 30 different jurisdictions, and that is before one takes account of the significant online participation.

We look forward to a fruitful meeting and are grateful for the invitation to participate. I will not cut across the thanks that I know that Christophe will give shortly, but it is appropriate that I mark the IAFL's particular gratitude to the many individuals at the Permanent Bureau, who have worked tirelessly on bringing everybody together today, and, indeed, on so many other family law related areas. We are acutely aware of what you have been able to deliver to the international family law community on meagre resources. Individually, and collectively, you are an inspiration to us. Thank you, Christophe, Philippe, Laura, Nietta and your other colleagues back in the Hague.

Dr Christophe Bernasconi, Secretary General of the HCCH

Thank you, Deputy Head of Mission Sarah Cohen and thank you, IAFL President Rachael Kelsey, for these kind words.

A warm welcome, also from our side, myself and my colleagues Philippe, Laura, and Ignacio here with us today, as well as Nietta joining us online. Welcome to the 2025 Washington Conference, marking 15 years since the adoption of the 2010 Washington Declaration.

Almost to the day, 15 years ago, in March 2010, more than 50 judges and other experts from across the globe gathered here in Washington, D.C. to examine the complex issue of cross-border family relocation. It is nice to see that a few of those experts are here with us again today.

As we know, that historic and fruitful 2010 meeting gave rise to the Washington Declaration on International Family Relocation: a document of high quality – practical, thoughtful, and forward-looking. Its aim was, and remains, to encourage cooperation, and to foster a degree of continuity and coherence in relocation proceedings around the world.

The 2010 Conference was another important initiative championed by our former colleague, William Duncan, whose dedication to this field remains an inspiration. I am sure William is pleased to know that we are back in Washington to resume our discussion on the Declaration and to explore how we can strengthen its visibility and impact in practice.

Looking back over the past 15 years, it is fair to say, however, that the Declaration's impact in practice has not been as broad or as deep as we had hoped. The full potential of the Declaration has yet to be realised. This is not a reflection on the

Declaration itself – which continues to offer most valuable guidance, but rather a call to all of us to give this instrument the visibility and traction it deserves - and that parents and children need.

Lawful, well-considered relocation pathways, when available and accessible, can help prevent wrongful removal or retention, offering families a safe and legitimate framework within which they can continue to co-parent, or parent, across borders.

The 2010 Washington Declaration put the best interests of the child at the very heart of its considerations, recognising that any decision involving international relocation must prioritise the child's welfare. This principle must continue to guide our discussions and actions as we explore how to ensure that the rights of children are protected in every relocation case.

This includes, of course, situations where allegations of domestic violence are present. In light of the HCCH's work programme, well known to all of you, I cannot help but point out that domestic violence or abuse is expressly addressed by the Washington Declaration. I look forward to hearing from the experts, 15 years later, about the impact of domestic violence or abuse on relocation matters.

In expressly recognising the fundamental right of the child to maintain continued contact with both parents, the Washington Declaration also ensures that any decision regarding relocation takes into account the child's need to preserve meaningful relationships with both parties, if and when in accordance with the best interests of the child.

Over the next couple of days, we will reflect on the past 15 years: on the progress achieved, on legislation, jurisprudence, and procedures that resonate with the Declaration's vision.

We will also take a clear-eyed look at what still needs to be done – and how we can further enhance cooperation and consistency in this area, always keeping the best interests of children at the heart of our work.

And we shall also consider the importance of the 1996 Child Protection Convention, when it comes to organising lawful relocations.

There is much for us to consider and discuss together.

Let me now express my deepest gratitude to the IAFL, for its initiative and leadership in proposing this Conference. To President Kelsey, of course, but in particular also to Carolina Marín Pedreño, who first shared the idea during the eighth meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions, held in October 2023.

We are also immensely grateful to the Embassy of Canada, our generous hosts, for welcoming us into these beautiful premises and supporting every aspect of this event. Madam Deputy, please convey my heartfelt thanks to H.E. Ambassador Hillman. Thank you, Samuel, Adrian, and Helene, for your invaluable efforts.

My appreciation also goes to the Steering Committee, composed of IAFL Members, representatives from the Government and Embassy of Canada, and

my colleagues at the Permanent Bureau. Carolina, Melissa, Heather, Rachael, Emmanuelle, Samuel, Adrian, Helene, Philippe, Laura, and Nietta – thank you all.

And finally, to all our sponsors, listed on the agenda: your generous contributions have made this Conference possible. On behalf of the HCCH, I thank you wholeheartedly for your support.

Mr Philippe Lortie, First Secretary at the HCCH

Welcome everyone. It's nice to see so many friends of the HCCH here today and I very much look forward to meeting those of you who are joining us for the first time.

Many thanks again to our hosts and members of the steering committee from the government of Canada, the IAFL and my colleagues at the HCCH for developing the program for the next three days. As per the title of the conference, the objective of the program is to review the progress made during the past fifteen years of the Washington Declaration and to talk about future perspectives. Most importantly, the goal is to promote the use of the 2010 Washington Declaration. Some of you here today are well placed to help, as you were there fifteen years ago, when the Declaration was drafted.

Session 1 will set the scene regarding the harmful effects of international child abduction and the role of international family relocation in helping to prevent them. We will begin with a historical perspective, with Diana Bryant – the Chair of the drafting committee for the Washington Declaration - providing us with some insights into its drafting. Then, Dr Ruth Zitner will speak to us about the impact of child abduction on children as well as relocation and Dr Jorge Guerra will talk to us about the impact of depriving children from parental contact. Finally, to end the session, Professor Robert George will provide us with an overview of the reasons why parents seek international family relocation.

Session 2 will provide the state of play regarding international family relocation. Laura and I will provide you with an overview of the HCCH Conventions and tools that are available in this area. Afterwards, Dr Nishat Hyder-Rahman will provide us with an overview of how applicant parents experience relocation proceedings to return to the country they consider home. Her insights will bring attention to the challenges in this area that need to be addressed. Finally, Genevieve Laurence will talk to us about the development of the new relocation procedure found in Canada's Divorce Act, which we hope will inspire other States.

Sessions 3 – 6 will be dedicated to an overview of the procedures, case law and guidelines available in different States. Attendants at this conference come from States who were also represented back in 2010 during the drafting of the Washignotn Declaration, namely Argentina, Australia, Brazil, Canada, France, Germany, India, Mexico, Spain, United Kingdom and the United States of America. However, some States are missing - Egypt, New Zealand and Pakistan were present during the drafting in 2010 but, regrettably, could not be with us at this conference. We also have some new States who, since 2010, have developed

some experience in this area, namely Chile, Hungary, South Africa, the United Arabic Emirates and the Netherlands. To assist speakers in their preparations for Sessions 3 – 6, we have developed some guidelines – some targeted questions pertaining to international family relocation and the 2010 Washington Declaration. They will be addressing these questions in their presentations. These guidelines have been reproduced as an introduction to Sessions 3 -6 later on in this Newsletter.

Finally, during Session 7, we will have an overview of the research and policy work being done in the area of international family relocation. We will hear from ISS and two other organisations - AIJUDEFA and IAFL - that have recently conducted surveys in the area. Finally, Professors Marilyn Freeman and Nicola Taylor will share their recent research on the issue.

Finally, in closing the conference, Session 8 will be dedicated to discussions about the use of alternative dispute resolution and other services in cases of international family relocation. In that respect, we will hear from Roz Osborne, from GlobalARRK, about the services they provide to individuals who want to relocate with their children. We will also hear about the use of mediation in the area and the resulting benefits compared to court procedures from Allison Shalaby of Reunite. IAFL Fellow and mediator Marzia Ghigliazza will speak about the Reunite pilot project in Italy and Alex Jones, lawyer and mediator with experience in handling international relocation cases will speak to us about his own practice.

At this stage, I would like to introduce you to our master of ceremonies, Ms Heather Hostetter, who will keep us on track and organised over the next three days. Thank you so much.

Session 1 –Setting the scene: The harmful effects of international child abduction and international family relocation as a potential tool to help prevent it

The Washington Declaration on International Family Relocation – 15 years Later

Diana Bryant, former Chief Justice of the Family Court of Australia and Member of the IHNJ, Chair of the Board of the 9th World Congress on Family Law & Children's Rights and Chair of the Drafting Committee for the March 2010 Washington Declaration on International Family Relocation

It is a great pleasure to be here, among so many familiar faces and I'm honored to have been invited to attend and participate in this Conference.

In 2010, as we know, a number of representatives from States and invited experts, among others, attended the first meeting to discuss the issue of the determination of relocation cases in various jurisdictions. The meeting was arranged by the HCCH and hosted by the US State Department here in Washington DC. The connection between international child abduction cases and the need for transparent and consistent cross-border relocation proceedings was becoming better understood.

It was thought that the process should be one which focused on the best interests of the child in each individual case, rather than having presumptions which shifted the onus from being purely about best interests and left one or the other party dissatisfied with the outcome. Presumptions also meant that important elements were more easily overlooked. By this time, in 2010, all jurisdictions were seriously looking into and re-evaluating their relocation processes. So, the issue of having simply a best interest test with some guidelines or relevant matters was well and truly on the table for the meeting.

Nevertheless, it was a big task, and a big ask to expect that we could hope to leave with unanimity when some jurisdictions would have to entirely upend their current approach to international relocation cases. That we did agree on the principles contained in the Washington Declaration and the jurisdictions did change their approaches to relocation cases.

The meeting's success was a testament to those who were present. Among them were giants of the implementation of the 1980 Child Abduction Convention. There are too many to mention, but if you look at the Judge's Newsletter of the time, you will see who they are. I mention particularly Hans van Loon, William Duncan and Nigel Lowe. The late Robin Diamond as well as Marilyn Freeman and Nicola Taylor provided important research findings, as they continue to do today. I am happy to see that some of those present in 2010 are present at this conference.

I must admit that, as Chair of the drafting committee, I did not expect consensus to be reached so easily, but those who were present were very experienced and very committed. The important outcome of the meeting, the Washington Declaration, was not lost on the international legal community. In recognition of this, the International Family Justice Judicial Conference held in Hong Kong in August 2012 passed the following resolution: "The participants see every merit in moving to a more certain system in order to resolve

international family relocation disputes. The form of that system should now be given consideration. The conclusions of specialist academics in the field regarding guidelines, resolutions or presumptions for international family relocation, and noted by the future interdisciplinary work in this field, is encouraged." In a similar vein, the sixth World Congress on Family Law and Children's Rights in 2013 resolved that the international family law community should be encouraged to develop child relocation guidelines to achieve consistency of approach between jurisdictions wherever possible, in collaboration with judicial and legal representatives, academics, social scientists, and other interested stakeholders. Fifteen years later, it's important that we consider the extent to which we've achieved that aspiration, and to consider whether those principles need any changes to reflect societal changes.

Today I think the interplay between relocation applications / processes and the 1980 Child Abduction Convention is even more important. Firstly, the profile of abducting parents has changed since 1980. Nowadays it is more commonly a mother wishing to return to her country of origin for many reasons. Secondly, the understanding of the impact on children of family violence towards or between parents is better understood and may more commonly be a factor in a parent's wish to relocate. Thirdly, the changing nature of legislation to reflect parental involvement has changed from a binary form of custody versus access to a much more nuanced form of joint parenting and joint parenting rights, increasing the number of parents with rights of custody. Finally, increased mobility on the internet has led to increased opportunities for people to form new relationships across borders.

Try as we may to achieve perfection, the exception under Article 13(1)(b) of the 1980 Convention poses difficulties in dealing with family violence. Having chaired the Working Group to develop the Guide to Good Practice on Article 13(1)(b) for six years, I'm acutely aware of the difficulties that arise with courts having to deal with the impact of family violence in the context of the Convention's aim of a child's swift return to the country of habitual residence, and in particular, providing a consistent approach across jurisdictions to family violence in the context of the Convention. These complexities and divergences between jurisdictions, led to the result that the Guide to Good Practice mainly focuses on process.

It seems to me is that it is so much better for parties to litigate these issues in a court dealing with relocation, where the best interests of the child are being considered with the assistance of guidelines or relevant considerations with no presumptions or onuses to overcome or no exceptions to establish.

It will be interesting to see what has occurred since 2010, what the future holds, and most importantly, whether we can improve what we started 15 years ago. The research findings since 2010 will also be of crucial importance and once again, the Permanent Bureau has put together the most experienced experts to inform the deliberations. I would like to congratulate and the International Academy of Family Lawyers, the Embassy of Canada and the HCCH for organising this conference and the Embassy of Canada for hosting us so hospitably.

The impact of child abduction and relocation on children

Dr. Ruth Zitner, Psy.D.

When I meet with parents in the office of my clinical practice, they sometimes ask me, what is the most important thing they can do to support their children's healthy psychological development. I tell them that the key is reliability, predictability, and consistency. So, keep these three concepts in mind as we navigate the complex topic of international abduction and the experience that combines trauma, separation, cultural dislocation, and the long term effects of experiencing of such a distressing event.

Abduction has multi layered effects on the emotional, social, and cognitive development of children. It affects their sense of security, identity, relationships, and emotional resilience. The first, and most immediate impact a child may experience when abducted internationally is fear and confusion. The abduction itself is often sudden and may be violent. For many children, this can feel like being ripped from everything familiar. Their family, their home, their friends, their language, and their school. Children may experience acute stress and disorientation. They may not understand why are they being taken, where they are going or whether they will see their other parent, family members and friends again.

If a child is separated from a primary caregiver, the absence of a stable and nurturing figure is distressing. This kind of loss can cause severe anxiety, especially in younger children who are still forming basic attachments. For children, the inability to understand what's happening or why it's happening creates a profound sense of helplessness. They lack the coping mechanisms that we adults have, and their world can quickly become overwhelming and chaotic.

These impacts in younger children may be harder to pinpoint, but can present as extreme clinginess, difficulty sleeping, regression in functioning or difficulties in establishing routines. Once a child has been abducted, the emotional consequences can be severe. Children are more vulnerable to developing mental health disorders after experiencing trauma. This is particularly true for international abduction cases. Children who experience abduction may develop chronic stress, manifesting as depression, anxiety or behavioral difficulties. They may experience symptoms of post-traumatic stress disorder, such as flashbacks, nightmares, and hypervigilance to their environment. The uncertainty of their situation combined with the trauma of being taken can lead to heightened levels of anxiety or emotional numbing that persist long after the abduction. Abducted children may be told that their left behind parent and siblings don't love them anymore or may even be dead.

When a child is separated from a parent for a long period, they may may begin to feel less connected to them. The taking parent may attempt to paint the left behind parent in a negative light, deepening the rift between the child and their caregiver as time goes on. Memories of the left behind parent and other family members may fade or become blurry and confused. The child might also struggle with loyalty conflicts, as they may love both of their parents, but also may experience guilt over their desire to maintain relationships with both parents or to reunite with one parent while feeling loyalty to the other. A child who has experienced abduction may also be taught to fear those who could help them like police officers, teachers, school personnel, and doctors.

Depending on the age of the child at the time of the abduction, they may not even know about their before life the abduction, or be aware of their full identity. Some children don't find out about their story of origin until they've reached adulthood.

The trauma of separation can affect the child's ability to form healthy attachments to others in the future and they may struggle to trust people. One of the most unique aspects of international abduction is the cultural and social dislocation that children experience. Often, abducted children are taken to a country where they do not speak the language, do not understand the culture, and may even face hostility, discrimination and circumstances that can further exacerbate feelings of isolation and fear. Children may lose touch with their heritage, their customs, and the familiar way of life they once knew, which can lead to confusion over their identity as they are forced to adapt to a new cultural environment that does not feel like home. In a foreign country, children may feel isolated, they might not be able to make new friends due to language barriers, and they may be surrounded by people who don't understand them or their needs. Adopting to a new schooling system, adopting to new social norms, new environments can cause cognitive disorientation. They may struggle to learn effectively or fit in, which can lead to feelings of failure or inadequacy.

Children who are abducted internationally often find themselves torn between two worlds - adapting to a new culture, language, social system, while trying to maintain ties to their past. They may experience confusion about who they are, where they belong, and how they see themselves within their family. This can lead to feelings of being adrift, loss of identity, stress which can manifest in mood disorders or difficulty with self-image.

A significant factor in the psychological impact of international child abduction is the process of legal and diplomatic intervention. These cases often involve complex legal battles and children may remain in uncertain conditions for extended periods of time. Delay in reunification or establishing contact with the left behind parent can cause further emotional strain. Even in cases where children end up returning to their State of habitual residence, children may still feel a sense of insecurity, as the prolonged separation from primary caregivers can result in attachment disorders.

Understanding these profound psychological impacts can help us to create targeted interventions and therapies to help children and their families. I want to conclude by reminding us that children are often resilient and, when given the right supports, can heal. Remember those three concepts that I spoke of: reliability, consistency, and predictability. By combining legal protections, psychological support, and societal awareness, we can help mitigate the psychological scars of abduction and ensure that children grow up with the emotional resilience they deserve.

The impact of depriving children of parental contact

Dr. Jorge Guerra, Member of the International Association for the Maintenance of the Best Interest of the Child (IAMBIC), International Council on Shared Parenting (ICSP)

Abstract:

Fifteen years after the HCCH Washington Declaration, cross-border parental contact deprivation remains a pressing concern in international family law. This article examines the long-term psychosocial effects of such deprivation through a mixed-methods study comparing adults who grew up in intact families, separated families, and those who experienced an unjustified but intentional loss of parental contact. Drawing, among other frameworks, on theories of attachment and conflict psychology, this contribution highlights the profound and enduring impact of unresolved family conflict — not only on the affected children, but also on the estranged parent and extended family members, often across generations. What is presented here is only an overview of the broader societal consequences of cross-border parental contact deprivation. At the same time, the study exposes several systemic inconsistencies. The findings call for a critical reassessment of current practices in legal and social systems, emphasising the need for early mediation, comprehensive professional training, and a more nuanced understanding of children's needs.

Introduction: The Blind Spot in Professional Practice

It all began with a seemingly simple question: what do professionals working within the family support system (FSS) have in common — and in what ways do they differ from other professions? At first glance, this may appear an innocent inquiry. Yet it quickly exposed a significant blind spot within the methodologies and operational frameworks of modern family law and child protection systems.

In contrast to professions such as electricians, physicians, engineers, or educators, where standardised training, regulated procedures, and outcome-based evaluations are firmly established, the field of family conflict intervention often lacks mechanisms to systematically assess the long-term effects of its actions. Within the FSS, key actors like judges, court-appointed experts, guardians ad litem, and child welfare professionals are regularly tasked with decisions that may have profound, even life-altering, consequences for children. However, the effectiveness of these interventions is seldom evaluated in a structured or scientific manner. Their real-world impact on child development and well-being remains largely anecdotal, shaped more by individual narratives than by empirical analysis. This absence of reliable feedback loops not only undermines the ability of the system to learn from its own practices, but it also raises a deeper, more unsettling question: are we truly acting in the best interests of the child, or merely assuming that we are? In the absence of rigorous evaluation, our work remains opaque, difficult to refine, and vulnerable to systemic inertia. Scientific progress, whether through statistical modelling, theory-building, or evidence-based policy, requires data. Without it, decision-making in this domain often rests on fragmented, inconsistent grounds. The result is a system in which there is little capacity to recognise patterns, correct mistakes, or build on successful approaches.

Moreover, the social consequences of these decisions remain largely invisible. The effects are felt not only by the children themselves, but often reverberate across entire family systems, parents, siblings, extended relatives, and sometimes persist across generations. And yet,

despite these limitations, professionals across the FSS share a common aspiration: to protect vulnerable children and support their long-term wellbeing amidst family breakdown and parental conflict.

To genuinely pursue this goal, however, we must be willing to confront uncomfortable questions that have long been ignored or sidelined. What are the actual long-term consequences of depriving a child of contact with one of their parents? How does growing up with limited or no access to a parent affect a child's emotional, psychological, and social development? To what extent is the current family support system effective in preventing such deprivation — or in mitigating its harmful consequences when prevention fails? And perhaps most importantly: what can we learn from these realities in order to design and implement relocation practices that are truly child-oriented, developmentally sound, and ethically responsible?

The Quest: Going the Path

In 2010, the Hague Conference on Private International Law (HCCH) adopted the Washington Declaration, reaffirming the centrality of the best interests of the child in cases of international child abduction and parental separation. While the Declaration marked a significant normative milestone, its implementation has been uneven. Today, many children across jurisdictions are still deprived of meaningful contact with one of their parents — not as a result of abuse or neglect, but due to unresolved conflicts, systemic inertia, or misapplied legal frameworks.

As was shown before, we do not have much data on the effects of parental contact deprivation on children. The present study aims to provide exactly that: retrospective feedback on the decisions and interventions made by FSS professionals. By listening to the voices of adults who experienced various forms of family restructuring or disruption during their childhood, we gain valuable insight into the long-term implications of those decisions.

The investigation further draws a troubling parallel to international child abduction. It must be highlighted that forced relocations across cultural, linguistic, and social boundaries, or maybe isolation to avoid prosecution — when paired with parental conflict and the absence of support —may result in an even deeper instability for affected children. In such cases, the vulnerability of the child is not only magnified by the loss of a parent, but also by the loss of familiar surroundings, support figures, and identity anchors.

Moreover, the social impact of parental contact deprivation extends far beyond the child. The ripple effects often involve siblings, grandparents, new partners, and even entire communities. In highly contentious cases, 3 to 8 people are directly affected — and the indirect consequences for society (e.g., mental health costs, loss of productivity, long-term dependency) are difficult to quantify, but substantial. Recognising the collective nature of this issue underscores the urgent need for systemic reform.

Theoretical Framework

The study is informed primarily by two interrelated theoretical lenses: attachment theory and conflict psychology.

- Attachment Theory: John Bowlby's attachment theory posits that early relationships with caregivers are foundational to later emotional regulation and social competence. Disruptions in attachment, especially abrupt or unjustified severance, can lead to maladaptive outcomes

such as anxiety, depression, or identity confusion.

- Conflict Psychology**:** High-conflict family environments, particularly those involving loyalty conflicts and parentification, are risk factors for long-term psychological distress. Exposure to chronic conflict, especially when a child is used as a pawn, can severely impair development.

The Study: Opening Pandora's Box

To address these questions, a retrospective scientific study was initiated. It focused on adults who had experienced different parental constellations during their childhood. The central aim was to explore the long-term consequences of parental contact deprivation, especially in cases involving the *intentional and unjustified severance of parental bonds* (IUSPB). The guiding question: *what long-term effects result from parental contact deprivation, particularly in cases of intentional and unjustified severance of parental bonds?*

The study categorised participants into three distinct groups:

- Group A**:** Adults who grew up in intact families with both parents present.
- Group B**:** Adults whose parents had separated, but maintained mutual parental involvement.
- Group C**:** Adults who experienced parental deprivation, alienation if preferred, or else who have experienced an intended but unjustified severance of the parental bonds resulting in long-term or permanent erasure of the ties to one parent.

All participants were drawn from a comparable German cultural context. Key criteria for inclusion were the absence of documented domestic violence (criminal conviction), in order to isolate possible effects of separation and alienation from other forms of abuse or neglect.

The mixed-methods study combined quantitative analysis of life satisfaction and health indicators with qualitative interviews. It allowed for a comparison of the psychosocial outcomes among the three groups, illuminating patterns that might otherwise remain hidden. The working hypotheses were straightforward:

- Hypothesis 1**:** Life satisfaction and psychological/physical health would be lowest in Group C (alienated children), followed by Group B (separated children), and highest in Group A (intact families).
- Hypothesis 2**:** The degree of life satisfaction and health of Group A would be higher than that of Group B.

Data collection included Likert-scale surveys and semi-structured interviews, coded thematically and triangulated for reliability.

Results and Interpretation: The Long Shadow of Separation

Quantitative Findings: Life Satisfaction, Mental and Physical Health

The findings confirmed the first hypothesis with compelling clarity: formerly alienated children (Group C) exhibited significantly poorer outcomes in both psychological and physical health compared to the other two groups. This group presented markedly higher rates of clinical diagnoses, including:

- Depression: 9 out of 17 participants

- Bipolar disorder: 9 participants
- Substance abuse: 5 participants
- Dissociative symptoms and PTSD: frequently reported
- Involvement in criminal behaviour or proceedings: highest among all groups

In addition to clinical diagnoses, participants in Group C consistently reported lower levels of life satisfaction and poorer physical health. These effects extended beyond subjective wellbeing, manifesting in measurable disruptions to life trajectories, including:

- Higher dropout rates from school or vocational programmes
- Greater employment instability
- Increased difficulty in forming and maintaining long-term relationships

Moreover, 12 participants from Group C reported a noticeable drop in academic or professional performance, compared to only 5 in Group B and none in Group A.

Interestingly, symptoms related to performance pressure were reported almost exclusively by participants in Group A, suggesting a distinct psychological burden within intact families — one centred less on loss and more on achievement expectations.

Qualitative Findings: Identity, Belonging, and Emotional Injury

The qualitative interviews offered crucial depth to the numerical data. Narratives from Group C participants repeatedly expressed experiences of rootlessness, identity fragmentation, and emotional longing. Many described adolescence as a period marked not only by developmental challenges, but also by a profound sense of loss and incompleteness. One participant reflected that:

> "I knew what my dad looked like from photos in my grandmother's album. But I never knew who he really was. I never knew where my character came from. Especially during puberty, when you're searching for identity, it felt like something fundamental was missing."

Others articulated the pain of emotional ambivalence, and feeling forced to align with one parent at the psychological expense of the other. Themes of unresolved grief, internalised guilt, and persistent self-doubt were frequent. Many participants expressed a lingering sense of injustice, not only from the parent who was absent, but from a system that failed to protect their right to a balanced and meaningful parental relationship.

Explanatory Factors

One plausible explanation for these results lies in the gradual increase in exposure to parental conflict across the three groups, from A (intact families) to C (alienated children). Children in Group C were not only more frequently exposed to conflict, but were also more deeply involved in it — whether by being pressured to take sides, used as emotional confidants, or burdened with adult-like responsibilities.

In parallel, these children received significantly less access to core protective factors, including:

- Affection from both parents
- Shielding from high-conflict dynamics
- Opportunities for secure bonding
- Regular and meaningful parental contact

This erosion of emotional safety and relational continuity likely compounded their psychological vulnerability, leaving many participants with enduring emotional injuries that persisted well into adulthood.

Causal Explanation of the Results

The stark difference between the groups invites several interpretive insights to be definitively, but also specifically, clarified. Which of the following factors are responsible for the results above, and to what extent, need to be concretely explained through further research:

- It can be a higher Conflict Exposure (quantity, quality of conflicts) that grows between A and C and/or;
- Emotional Involvement of children in the parental conflict: Many were placed in binds of loyalty, forced to assume adult roles or cut ties with a parent and/or;
- Attachment Disruption: The loss of a caregiver without proper explanation or closure inflicted lasting psychological wounds and/or;
- Bad mouthing of the other parent, or guilty thoughts ("it was you, darling, that did not want so see Daddy/Mummy!" Or "it was my fault I could not see Daddy/Mummy anymore!".

And it should not be forgotten that in the context of the conference, children can be even more affected: Cultural Displacement (or plain isolation). In cases of cross-border or intercultural abduction, children faced additional disorientation through the loss of language, familiar routines, and extended family structures.

Impact on Parents, Other Close Contacts, and the Future Generations: The Forgotten Victims

The emotional suffering of the parent deprived of contact with his/her child is often overlooked in public discourse. Yet other studies of the presenter also included interviews with parents who had been forcibly excluded from their children's lives. Their narratives were marked by despair, helplessness, and enduring grief:

> "I no longer know what his voice sounds like. I don't know how tall he is. This is more painful than death. There's no closure. It never ends."

Other parents described the experience as a form of psychological violence, a never-ending trauma characterised by economic ruin, social isolation, and emotional devastation. These findings underscore the need to view contact deprivation not just as a child protection issue, but as a public health crisis with wide-ranging social consequences.

"This is more burdensome than death. It doesn't end; there's no closure."

These findings reveal a crucial truth: it's not only the children who suffer, but also the parents and by extension, larger society. Each high-conflict family situation affects not just one child, but 3 to 8 people on average. The ripple effects, emotional, financial, and social, are enormous and often transgenerational.

It means, as a result, that the social impact of high-conflict separations extends beyond the child-parent dyad. For each case, multiple individuals — siblings, grandparents, new partners — are affected. Moreover, the financial and psychological toll on society is immense.

There is also a transgenerational dimension: unresolved childhood trauma often reverberates into adulthood, affecting future relationships and parenting behaviour. Addressing these issues is not only a matter of justice but of public health.

Family Support System (FSS): Mandate vs. Outcome

The findings cast a critical light on the functioning and perceived effectiveness of the FSS. Although its formal mandate is to safeguard the welfare of children, the actual outcomes often fall short of this objective. Statistical analysis suggests that the FSS has no significant — or only a negligible — effect on the measured long-term wellbeing of children affected by parental contact deprivation.

In stark contrast to its intended function, the perception of the FSS among affected families is consistently, and often strongly, negative. Participants in the study recalled feeling unheard, unprotected, and in some cases instrumentalised by professionals who appeared more focused on fulfilling procedural or legal obligations than on responding to the emotional realities and needs of the children involved.

This gap between institutional intention and experienced outcomes reveals a paradoxical role: while the FSS is designed to protect children, it may — at least from the clients' perspective — inadvertently contribute to harm. Participant narratives frequently pointed to a disconnect between the actions (or inactions) of professionals and the real-life consequences for families. One mother described how the system's passivity during critical phases of her child's estrangement resulted in lasting, irreversible consequences.

The study identifies several structural and systemic weaknesses that may account for this discrepancy, including:

- Fragmented responsibilities across institutions and professionals, leading to blurred accountability
- Insufficient training in trauma-informed, attachment-based, or conflict-sensitive approaches
- Limited resources, including time constraints, staff shortages, and bureaucratic hurdles
- Over-reliance on procedural compliance at the expense of substantive engagement with the child's lived experience
- Lack of systematic feedback loops or outcome evaluations to guide professional practice and improvement

Together, these factors hinder the system's ability to fulfil its protective mandate. They also contribute to a sense of helplessness and mistrust among families who, instead of being

supported, often feel abandoned or re-traumatised by the very structures meant to assist them.

This could be due to several reasons, including:

1. Legal traditions (conceived to deal with other challenges in other contexts).
2. Legal inconsistencies (e.g., custody law vs. criminal procedures).
3. Resource limitations and structural issues (e.g., time, financial resources, personnel, lack of inter-professional training).
4. Conceptual challenges, such as translating emotional complexity into legal categories.
5. Role confusion among FSS actors, some of whom may inadvertently escalate conflict rather than resolve it.

One particularly troubling finding was that the FSS could sometimes, for all those reasons above, become a secondary source of child endangerment — by misinterpreting loyalty conflicts or by reinforcing polarisation between the parents.

Towards a Child-Centred Approach: Lessons and Outlook

To move forward, a paradigm shift is necessary. Legal frameworks must be complemented by psychological insight and restorative practices. Some key takeaways include:

- Mediation as a Primary Tool**:** Structured mediation can reframe conflicts, reduce hostility, and foster co-operative parenting.
- Parents as Resources**:** Rather than viewing parents as adversaries, they should be engaged as experts on their own children's needs.
- Feedback Mechanisms**:** Systematic evaluation of interventions is essential to improve outcomes and accountability.
- Cultural Sensitivity**:** Especially in cross-border or abduction cases, language, cultural context, and identity factors must be taken into account.

Some recommendations can be made in this regard

1. Mandatory evaluation of professional interventions in family court cases.
2. Comprehensive training in attachment, trauma, and systemic conflict.
3. Child-centred mediation early in the separation process.
4. Procedural reforms to bridge the gap between legal intent and psychosocial outcomes.
5. Support structures for children to safely express ambivalence or fear.
6. Feedback loops within the FSS to assess long-term consequences of interventions.

Finally, children must be seen not merely as passive subjects of protection, but as active participants whose perspectives matter. One guiding quote from *Le Petit Prince* captures the challenge:

> "Grown-ups never understand anything by themselves, and it is tiresome for children to always have to give them explanations."

It is time we began to truly listen. And not only at the time where children and their parents and families are entrusted to us.

Conclusion

Fifteen years after the Washington Declaration, the promise of protecting children's best interests remains only partially fulfilled. This study highlights the urgent need for reflection and reform. Depriving children of contact with a parent, especially without just cause, leaves long-lasting scars. It is imperative that legal, psychological, and social systems work together to ensure that protection does not come at the cost of connection.

This essay was based on the presentation held at the HCCH Conference in Washington on 2 April 2025, as part of the symposium "Progress and Perspectives on International Family Relocation."

Overview of international family relocation

Professor Robert George KC, University College London, King's Counsel at Harcourt Chambers

Introduction

This paper is not about relocation *law*, but rather aims to give a sense of who the people are that are involved in relocation cases, which variables may impact on case outcomes, and what the experience of relocation litigation is like. In preparing this paper, I drew on research in England and Wales, Canada, Australia and New Zealand in particular. This research provides us with important insights, but my aim in this paper is merely to give an overview of what the research can tell us from a wide-angle lens. Notably, most of the research that I draw on in this paper has been published since the 2010 Washington Declaration, and so the drafters of that Declaration did not have the benefit of the insights that we have now.

The legal approaches in the countries that I am drawing on here are not all the same, and indeed the approaches taken in response to the issue of relocation have markedly changed over time. Judy Cashmore and Patrick Parkinson once aptly noted that, '[t]he one widely held position is that the best interests of the child ought to be the paramount consideration, but different jurisdictions have, beneath that over-arching determinant, a range of considerations that give content to the idea of "best interests", and direct the judge to structure his or her reasons by reference to a checklist of factors'.[1] I agree, but I would add that I think it goes further. The factors that influence judicial decision-making in relocation cases are intensely linked to societal and cultural values. Some are obvious, like the wider societal and family law approach to post-separation child care arrangements: the more that a particular jurisdiction has moved in its thinking to favour shared care after parental separation, the more likely it is in any given case that shared care is in place before a relocation application is brought, but also the more likely it is that the judge's thinking about relocation comes through a lens of favouring shared care.[2] But, in my view, there are other considerations. The *attitudinal* difference between English and New Zealand lawyers in one of my relocation studies was marked. Considering an identical factual scenario of a proposed 12-hour relocation to California, English participants in the study were far more positive about the benefits that California offered, whereas New Zealanders thought that the child's life was good where he was.[3] To what extent does this reflect wider societal values and different countries' self-images, the English (at least at the time) idolising life in the USA, while New Zealanders more commonly find it hard to understand why anyone would want to live anywhere but New Zealand?

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1 J. Cashmore and P. Parkinson, "Children's 'Wishes and Feelings' in Relocation Disputes" (2016) vol. 28, *Child and Family Law Quarterly,* pp. 151-152.

2 *Cf.* English and New Zealand family judges' and lawyers' comments on shared care in a study from 2008-09, in R. George, *Relocation Disputes: Law and Practice in England and New Zealand,* Oxford, Hart Publishing, 2014, pp. 69-70; see also F. Mackenzie, *Uneasy Trends in Relocation Law,* LLM Thesis, Victoria University of Wellington, 2009, p. 2 (quoted in R. George, *ibid*., p. 21).

3 R. George (*op. cit.* note 2), pp. 61-62.

Turning to the research, there are a number of features of relocation cases that can be brought out that develop our understanding. I take it in two broad areas: what might be termed biographical information about case characteristics, and then lived experiences of relocation disputes.

Biographical characteristics about relocation cases

Starting with overall case outcomes, in the English 2012 study the overall success rate was that 66% of international cases were permitted to relocate. At the time, the sample of internal relocations was small, but the patterns were similar with 70% of judicially determined applications ending with relocation being allowed.[4] However, the law in England and Wales in relation to internal relocation has changed significantly since that study: whereas the law previously said that internal relocation applications would be refused only in 'truly exceptional' cases,[5] the law now makes clear that there are no starting points or presumptions and that the same best interests analysis applies to domestic relocations as seen in international cases.[6]

There are reasons to think that this pattern is no longer reflective of the position in England and Wales, with a significant reduction in success rates perceived by practitioners in the 13 years since the study was done. There are no up to date statistics, but an informal poll of practitioners in October 2024 suggested a success rate of international applications closer to 35 or 40%, which also fits with my own anecdotal experience. It is certainly not possible to advise any client of an easy win, and even clearly meritorious applications are a hard fight.

In terms of the position in other countries, data from Canada in the period 2005-10 showed an overall success rate of 68%; but Huberman's more recent study in British Columbia shows an overall success rate of 50%, though (i) there is a marked gender divide with father applications rarely being successful, and (ii) within the sub-sample of mother applications, the success rate for international applications was slightly higher than for domestic ones (60% versus 53.8%).[7] New Zealand studies between 2005 and 2013 suggested fluctuating success rates for relocation applications of between 35% and 50% in general, but with international applications typically more successful than domestic ones with rates up to 68%.[8]

We can now turn to try to unpick, to some extent, what is going on beneath the surface of those headline numbers. First, and significantly, the vast majority of applications are brought by mothers.[9] A number of studies in different jurisdictions reflect this pattern. For example, a

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4 See R. George and O. Cominetti, "Domestic Relocation: Key Findings from the 2012 Study" [2013] *Family Law,* pp. 1573-1574.

5 See, *e.g.*, *Re B (Prohibited Steps Order)* [2007] EWCA Civ 1055, [2008] 1 FLR 613, [7].

6 *Re C (Internal Relocation)* [2015] EWCA Civ 1305, [2016] Fam 253.

7 M. Huberman, *Between Court and Context: Relocation Cases in British Columbia,* LLM Thesis, University of British Columbia, April 2022, pp. 66-67.

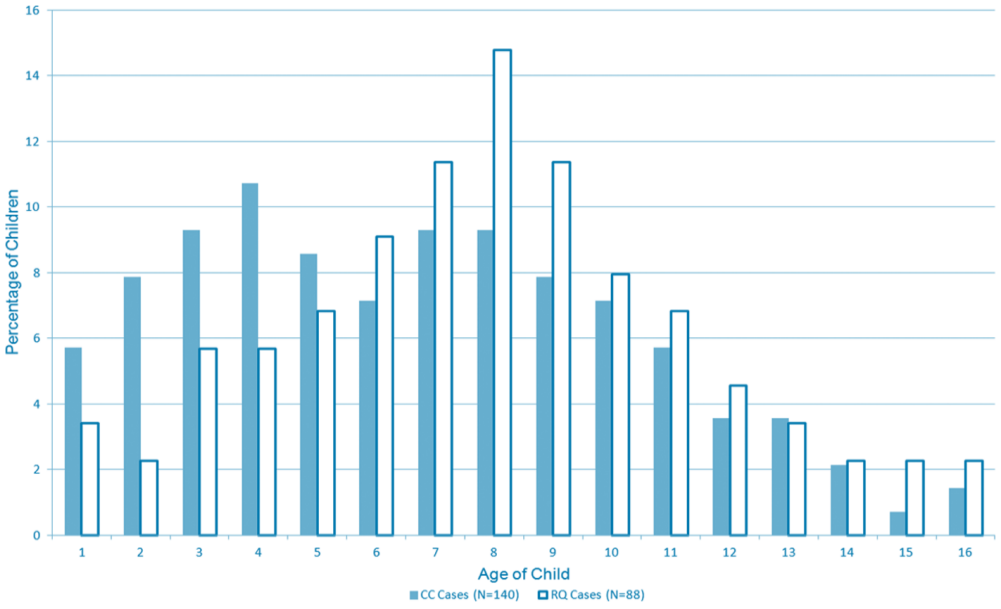
8 M. Henaghan, "The Conundrums of Relocation", *London Metropolitan University Conference*, July 2013; see also id., "Relocation Cases – The Rhetoric and Reality of a Child's Best Interests: A View from the Bottom of the World" (2011), vol. 23, *Child and Family Law Quarterly,* p. 226.

9 This overarching reality is reflected in the samples found in qualitative studies as well, though it should be noted that such studies do not aim to have a statistically representative sample. By way of examples, in an

2012 study in England and Wales found that 93% of applications were brought by mothers, 5% by fathers, and 2% by grandparents.[10] A Canadian study based on cases from 2001 to 2010 similarly found that 92% of applicants were mothers, 7% were fathers, and 1% were by non-parents.[11] There is some evidence to suggest that this pattern may be changing – Magel Huberman's 2022 study of just over 200 cases in British Columbia from 2013-2021 found 86% mother, 12% father and 2% where both parents were seeking to relocate to different locations.[12]

Children in the cases range across the entire age range from newborns to near-adults, with a mean age of around 7, and relatively few children over 11 compared to those younger than that.[13] Figure 1 shows the spread of children's ages in two linked English studies from 2012, by way of example. Unsurprisingly, there are different complications to cases with children at different ages, with a particular factor being the increased weight given to children's views, wishes and feelings as they get older.

Figure 1: Bar chart showing the percentage of children of each age in each of the CC and RQ samples[14]



English study all the applicant parents interviewed were mothers and all respondent parents were fathers (R. George and A. Gallwey, "How Do Parents Experience Relocation Disputes in the Family Courts?" (2016) vol. 38, *Journal of Social Welfare and Family Law,* p. 394), while a New Zealand study of 100 families involved in relocation had just two fathers who had been the ones seeking relocation compared to 58 mother applicants (N. Taylor, M. Gollop and M. Henaghan, *Relocation Following Parental Separation: The Welfare and Best Interests of Children,* Dunedin, University of Otago, 2010, 87).

10 R. George, "How Do Judges Decide international Relocation Cases?" (2015), *Child and Family Law Quarterly* 377, p. 381

11 N. Bala and A. Wheeler, "Canadian Relocation Cases: Heading Towards Guidelines" (2012) vol. 31, *Canadian Family Law Quarterly* 271, p. 289.

12 M. Huberman (*op. cit.* note 7).

13 R. George (*op. cit.* note 2), pp. 381-382.

14 Taken from R. George (*ibid.*), p. 382.

A concern that many parents have in the lead-up to a relocation application is what impact existing child arrangements / physical custody arrangements may have on the relocation. In the English 2012 court study, some variation in case outcomes can be seen based on existing child care arrangements, but the numbers are not that dissimilar as between different types of arrangement, other than where the child is having no direct contact at all with one parent – in those cases, all relocation applications in the sample were allowed.[15] By contrast, in Huberman's British Columbia study, she finds a marked difference between cases where the applicant can be said to be the child's primary carer in the run-up to the relocation hearing (65.7% allowed) versus arrangements categorised as shared care (21.9% allowed).[16]

The English data also seem to suggest some differences in outcome based on the applicant's current relationship status. Those where the applicant is in a new relationship, particularly when engaged or married, seem to have a higher success rate than those where the applicant is single.[17] Relationship status also correlates with nationality – none of the single applicants was British, whereas 14 of the 19 married or engaged applicants were; and consequently, there is also a link between relationship status and the reason for wanting to relocate, with the non-British, single applicants more likely to be wanting to move for family support and to 'go home'.

Considering destinations of proposed relocations, some jurisdictions draw a significant distinction between internal moves within that country and international moves. Research studies in England have typically focused on international cases (in part because, until 10 years ago, there was no significant body of internal relocation cases, the shift in approach following a 2015 Court of Appeal decision,[18] as noted above). For international cases from England and Wales, there are typically three clusters of destinations: relatively short-haul European destinations; North America; and Australasia. These three groups account for around 80% for application, with other destinations seen less commonly. Broadly speaking, the further you want to relocate, the harder it is to succeed.[19]

The extent to which internal relocations are now litigated in England and Wales is hard to assess. The 2012 research project (which was focused on international cases) collected cases in the sample at a rate of about one internal cases for every five international ones,[20] but that may not have been representative at the time and in any case anecdotally it seems that internal relocation cases are now litigated more frequently than they were 13 years ago. Other countries see a higher proportion of internal relocations – for example, around two thirds of cases in New Zealand are proposed internal moves,[21] and Huberman's British Columbia study revealed just 17.2% international applications, with nearly half (46.5%) of applications being about moves within British Columbia and the remaining cases being to other Canadian provinces (34.3%).

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15 R. George (*op. cit.* note 2), p. 383.

16 M. Huberman (*op. cit.* note 7), p. 73.

17 R. George (*op. cit.* note 2), p. 384.

18 *Re C (Internal Relocation)* [2015] EWCA Civ 1305, [2016] Fam 253.

19 R. George (*op. cit.* note 2), p. 385.

20 R. George and O. Cominetti (*op. cit.* note 4), reporting the findings of 22 court judgments and 30 questionnaire responses.

21 R. George, (*op. cit.* note 2), p. 117.

Most applicants in relocation cases have multiple reasons for wanting to move,[22] and the reasons that applicant mothers give are often quite different from the reasons that respondent fathers think the mothers have.[23] The key finding from the English 2012 data is that cases where the move is motivated by a wish for a better life as a general, abstract proposition, sometimes termed 'lifestyle cases', have a notably lower chance of being allowed. I would add that this category of case has largely disappeared in the English cases, as far as I am aware. In Huberman's British Columbia study, those wanting to move for work or study reasons had a higher success rate (75%) than those moving for a new relationship (42%), Those who had both reasons were in between (50%), while those seeking to return home and have family support were likewise closer to the overall 50% average.[24]

Parents' and children's perspectives

It is important to be aware that the research evidence about the consequences of relocation for children is 'somewhat mixed', as Nicola Taylor notes.[25] As she puts it:

Some studies reveal beneficial effects of relocating while others report negative outcomes for children. The research in this field is highly diverse and negative outcomes associated with relocation may be explained by other factors that lead to frequent residential mobility. … Whether relocation will have a positive or negative impact on a child depends on many variables, and will be determined by the combination of risk and protective factors present in each individual case.[26]

In an Australian study with 33 children involved in relocation cases, Judy Cashmore and Patrick Parkinson showed, perhaps unsurprisingly, that different children viewed the idea of relocation differently before it happened, while relationships between the child and the moving parent's new partner were a particularly complicating factor influencing the child's perspective. While those children who did move generally showed good locational adjustment, for example making friends and settling into new schools, there was a more complicated picture in terms of the ongoing relationship with the non-moving parent with

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22 N. Taylor, M. Gollop and M. Henaghan (*op. cit.* note 9), p. 26; P. Parkinson, J. Cashmore and J. Single, "Mothers Wishing to Relocate with Children: Actual and Perceived Reasons" (2011) vol. 27, *Canadian Family Law Journal* 11; R. Kaspiew, J. Behrens and B. Smyth, "Relocation Disputes in Separated Families Prior to the 2006 Reforms: An Empirical Study" (2011) vol. 86, *Family Matters* 72, p. 74; M. Huberman (*op. cit.* note 7), p. 77.

23 P. Parkinson, J. Cashmore and J. Single (*op. cit.* note 22).

24 M. Huberman (*op. cit.* note 7), pp. 79-80.

25 N. Taylor, "Relocation Disputes Following Parental Separation: Determining the Best Interests of the Child", in E. Sutherland and L-A. Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child,* Cambridge, CUP, 2017, p. 287.

26 N. Taylor (*ibid.*), p. 287, notes omitted, citing B. Horsfall and R. Kaspiew, "Relocation in Separated and Non-Separated Families: Equivocal Research Evidence from Social Science Literature" (2010) vol. 24, *Australian Journal of Family Law* 34; N. Taylor and M. Freeman, "International Research Evidence on Relocation: Past, Present and Future" (2010) vol. 44, *Family Law Quarterly* 317; M. Gindes, "The psychological effects of relocation for children of divorce" (1998) vol. 15, *Journal of the American Academy of Matrimonial Lawyers* 119; W. Austin, "Relocation, Research, and Forensic Evaluation, Part 1: Effects of Residential Mobility on Children of Divorce" (2008) vol. 46, *Family Court Review* 137; and P. Parkinson, N. Taylor, J. Cashmore and W. Austin, "Relocation, Research, and Child Custody Disputes" in L. Drozd, M. Saini and N. Olesen (eds), *Parenting Plan Evaluations: Applied Research for the Family Court*, 2nd ed., USA, OOUP, 2017.

some, especially primary school aged children, missing their fathers a great deal.[27] Children in the New Zealand study generally seemed to fare better after relocation, even when they faced initial challenges,[28] possibly reflective of the relatively shorter distances involved with intra-New Zealand moves compared to intra-Australian moves as experienced by Cashmore and Parkinson's sample children. Notably, whereas parents may view relocation cases in a rather 'black and white' way, children can (depending on age and understanding) have a rather more nuanced view, reflecting that they may well feel torn about the decision:

children grapple with the complexity and poignancy of what is being asked of them including leaving their non-resident parent behind, the loss of their school, friends, wider family members, and familiar surroundings, while simultaneously starting afresh in a new location with many aspects of their lives and coping with the travel between their parents' homes on a regular, or more infrequent, basis.[29]

Finally, to add the perspective of parents into the understanding, the position in England has long been that parents have considered these disputes to be a particularly strong example of the gendered nature of family court cases. Marilyn Freeman's 2009 paper showed concern from fathers that the court's approach equated the interests of children with the interests of their mothers,[30] a concern that continued to be felt by fathers even after substantial changes to the legal approach to relocation in England.[31] New Zealand fathers reported feeling 'like expendable accessories in their children's lives', while mothers saw relocation law as infringing their own rights and tying them to their former partners in a way that they saw as highly unfair.[32] In an Australian study of mothers whose relocation applications were refused, perspectives on that decision five years later were mixed: some said that they had adjusted to the decision and taken a positive attitude; some were ambivalent, saying they had adjusted to but not accepted the decision; and a third group had not adjusted at all, continuing to feel trapped and resentful of the decision.[33] An English study of parents' experiences similarly saw unsuccessful applicants describing their situations in vivid language, such as feeling that they were 'in prison here until [our child] is 16 – another 11 years'.[34]

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27 J. Cashmore and P. Parkinson, "Children's 'Wishes and Feelings' in Relocation Disputes" (2016) vol. 28, *Child and Family Law Quarterly* 151.

28 N. Taylor, M. Gollop and M. Henaghan (*op. cit.* note 9), p. 140.

29 N. Taylor (*op. cit.* note 25), p. 289.

30 M. Freeman, *Relocation: The Reunite Research*, London, Reunite, 2009.

31 R. George and A. Gallwey (*op. cit.* note 9), p. 403.

32 N. Taylor, M. Gollop and M. Henaghan (*op. cit.* note 9), p. 95. On the different ways in which relocation law affects men and women, see J. Behrens, "A Feminist Perspective on B v. B (The Family Court and Mobility)" (1997) vol. 2, *Sister in Law* 65 and S. Boyd, "Gendering the Best Interests Principle: Custody, Access and Relocation in a Mobile Society", in H. Niman and G. Sadvari (eds) *Family Law: The Best Interests of the Child,* Ottawa, Law Society of Upper Canada, 2000.

33 P. Parkinson and J. Cashmore, "When Mothers Stay: Adjusting to Loss after Relocation Disputes" (2013) vol. 47, *Family Law Quarterly,* p. 65.

34 R. George and A. Gallwey (*op. cit.* note 9), p. 409.

The impact of relocation litigation itself is also not to be underestimated. For the children of parents in an English study, it was common to consider the process for the child as emotionally damaging, with children described by their parents as being 'too old for their age'.[35] For the adults, the relocation litigation itself is usually highly stressful and often distressing, with the high stakes of the outcome combined with a common feeling that they were not able to talk about the issues that they thought were important. Respondent parents who had successfully opposed the relocation were also often concerned that there would be a repeat application in the future,[36] a view that reflects the findings of other studies, such as the New Zealand research showing that a third of refused applicants re-applied later.[37]

Conclusions

There is a lot that we do not know about relocation cases, and the picture is likely to be shifting at quite a rapid pace, so the extent to which studies that are even just a few years old still reflect the position now is unclear. However, in so far as it is possible, we should take into account what we know about the people actually involved in relocation disputes when considering what guidance to issue or what policy position to adopt. The likelihood is that, unlike in the context of international child abduction where there is a clear, generally agreed policy response, relocation disputes are less susceptible to generalisations.

There are many sides to the debate – the importance to children of happy carers, the importance to children of positive relationships with their parents, the importance of meaningful gender equality, the importance of parents' and children's rights, the importance of freedom of movement in a global society, and so on – and because, trite as it is to say, every case is different, it is impossible to say that any one approach is inherently better than all the others.[38]

The nuances of each family's particular situation means that two cases which may, on the surface, appear quite similar, can in fact be very different and justifiably call for different outcomes.[39] The one factor on which countries are generally agreed is that decisions should be made based on the welfare or best interests of the particular child concerned. But part of the reason that this principle can be agreed is that its substantive content lies in the eye of the beholder. As the Permanent Bureau commented in 2012, and linking back to the start of this paper,[40] when thinking about its substantive meaning the welfare principle has 'no commonly accepted definition …, be it on an international or even national level'.[41] Going

35 *Ibid.*, p. 408.

36 *Ibid.*, p. 409.

37 N. Taylor, M. Gollop and M. Henaghan (*op. cit.* note 9), p. 138.

38 R. George, "The International Relocation Debate" (2012) vol. 34, *Journal of Social Welfare and Family Law* 141, p. 150.

39 For example, practitioners are clear that "the personalities of the parties as they presented themselves to the court could be crucial": R. George (*op. cit.* note 2), p. 173; see also at p. 119.

40 See text at note 1.

41 "Preliminary Note on International Family Relocation", Prel. Doc. No 11 of January 2012 for the attention of the Special Commission of January 2012 on the practical operation of the HCCH 1980 Child Abduction Convention and the HCCH 1996 Child Protection Convention (available on the HCCH website, www.hcch.net, under "Child Abduction Section" and "Special Commission meetings on the practical operation of the Convention").

further than that is difficult, but there is value in the discussion, and in encouraging those states that do not have a child-focused relocation jurisdiction to consider reforms to bring one into effect. Having the best available information front and centre will help to allow those tasked with reforming the law, issuing guidance and making policy to do so in as informed a way as possible.

Session 2 - International family relocation - State of play

HCCH Conventions

Philippe Lortie, First Secretary at the HCCH

To begin with, as Diana Bryant has mentioned, it is highly important for States to have elements of the 2010 Washington Declaration within their domestic laws or procedures. Being a Contracting Party to the relevant HCCH Conventions allows for the enforcement in one Contracting Party of court decisions rendered, or agreements reached, in another Contracting Party.

Three HCCH Conventions are relevant in the area – the 1980 Child Abduction Convention, the 1996 Child Protection Convention and the 2007 Child Support Convention. Combined, these three instruments provide a global framework for cross border legal cooperation on international family relocation issues. Relocation decisions and / or relocation agreements having the force of law will benefit from higher legal predictability and certainty if the States concerned are Parties to these three Conventions.

The 1980 Child Abduction Convention seeks to protect children from the harmful effects of wrongful removal or retention across borders. We heard about these effects from Dr Zitner earlier on. According to the 1980 Convention, the removal or retention of a child across borders is wrongful when it is in breach of custody rights that are actually being, or would have been, exercised. Based on the underlying principle that the authorities of a child's State of habitual residence are generally best placed to resolve the merits of a custody dispute, the Convention provides for a procedure to return children who have been wrongfully removed or retained to their State of habitual residence.

When a court is seized of a relocation request, the judge will look into whether the State the applicant seeks to relocate to is a Contracting Party to the 1980 Convention, as it provides remedies for when custody agreements or decisions (including relocation agreements and access arrangements) have been breached. There is another advantage of being Party to the 1980 Convention – Article 21 provides that Central Authorities under the 1980 Convention must assist parties with organising or securing the effective exercise of rights of access, which may include initiating or assisting with the initiation of proceedings to protect (i.e., enforce) those rights of access. In this endeavour, direct judicial communications via, for example, the International Hague Network of Judges (IHNJ) is highly beneficial in expediting the process.

The rules under the 1996 Child Protection Convention enable authorities to determine where the jurisdiction lies to take protective measures for a child and which laws are applicable to those measures. The Convention also provides rules for the recognition and enforcement of such measures across borders. The 1996 Convention covers a wide range of protective measures, which can relate to parental responsibility and access / contact, among other things. If a relocation agreement reached by the parties is turned into a court decision or homologated by a court, it can be enforced under the 1996 Convention.

Under Article 5 of the 1996 Convention, the authorities in the child's State of habitual residence have primary jurisdiction to take measures for the protection of the child, which can include relocation orders. These authorities also have the jurisdiction to give a relocation agreement force of law (via homologation or by incorporating it into a court decision). After the relocation

has taken place, the habitual residence of the child will shift to the State where they have relocated. However, any access / contact arrangements made in the previous State of habitual residence can remain in place by virtue of Article 14 of the Convention.

Under the 1996 Convention, jurisdiction can be transferred from one Contracting Party to another, which can be useful in the context of international relocation. It may be that the relocation agreement is being negotiated in one jurisdiction, but the parties would prefer for that agreement to have force of law in another jurisdiction; perhaps the jurisdiction of the intended relocation. Jurisdiction can be transferred under Article 8 or 9 in order for the State of destination to give the agreement force of law. The Convention provides for plenty of flexibility in this regard.

Under Article 15(1) of the 1996 Convention, the law applicable in the context of relocation requests (as with any other request made under the Convention) will be the law of the State whose authority was seized. Exceptionally, the law of another State can be applied if the situation has a substantial connection to that State. Article 15(3) of the Convention provides that, where the habitual residence shifts, perhaps after a relocation has taken place, the conditions of application of any measures of protection taken in the former State will be subject to the laws of the new habitual residence.

According to Article 16(2), if the relocation agreement contains provisions governing parental responsibility, those will be governed by the law of the State of the child's habitual residence at the time when the agreement takes effect.

Under Article 23 of the Convention, measures taken in the current or former State of habitual residence (provided they have not been modified, replaced terminated by the current State of habitual residence) will be recognised by operation of law (*i.e.,* automatically) in all other Contracting Parties, unless one of the grounds for refusal of recognition is raised. Parties can also request the advance recognition (or non-recognition) of measures under Article 24.

Article 35(1) enables the authorities of one Contracting Party to request assistance from the authorities of another Contracting Party with the implementation of measures, especially those measures relating to access / contact rights. Under Article 35(2), the authorities of a Contracting Party in which the child does not habitually reside (in the event of relocation this may be the former State of habitual residence) may gather information or evidence and may make a finding on the suitability of a parent to exercise access and on the conditions under which access is to be exercised.

Provisions such as these help to ensure the continuity of measures of protection in place for the child, which helps to eliminate gaps in their protection. This, in turn, adds to the necessary stability and consistency in the lives of children.

Finally, the 2007 Child Support Convention. This is a robust instrument drafted to facilitate the cross-border recovery of child support, by providing for cooperation between the authorities of Contracting Parties. Under the Convention, applications may be made for the establishment of a maintenance decision, for the recognition and enforcement of a maintenance decision, or for a child support order to be modified. It is understood that a relocation agreement may include provisions regulating child support – in fact, this should be encouraged.

The 2007 Convention provides for effective access to procedures and has a broad system of recognition and enforcement of maintenance decisions. An agreement, in writing, relating to the payment of child support or spousal support which has been formally drawn up or has been registered as an authentic instrument by a notary or a competent authority (Art. 3(e)(i)) or that has been authenticated by, or concluded, registered or filed with a competent authority ,

and may be the subject of review and modification by a competent authority (Art. 3(e)(ii)) can also be recognised and enforced (Art. 30). This is key in the area of international family relocation.

We hope that practitioners will encourage their State representatives to consider being Parties to these three key HCCH Conventions, to assist families in their international family relocation cases.

HCCH Tools

Laura Martinez-Mora, First Secretary at the HCCH

The aim of this presentation is to provide an overview of the tools developed by the HCCH to support the operation and implementation of several Family and Child Protection Conventions, with a particular focus on international family relocation.

Over the years, a wide range of tools have been developed by the Members of the HCCH and the Contracting Parties to the relevant Conventions. These tools are available on the HCCH website, and are typically in English, French and Spanish, the three official languages of the HCCH.

At the outset it is important to recall that, while the HCCH Conventions themselves are legally binding on the States that are Parties to them, the accompanying tools - such as Explanatory Reports, Guide to Good Practices, Handbooks and Toolkits - are not legally binding. Rather, they are intended to assist Contracting Parties in interpreting and implementing the Conventions.

One of the most relevant tools available in the context of international family relocation is the *2010 Washington Declaration on International Family Relocation*. This document provides valuable and practical guidance on best practices in this area.

The Declaration emphasises the importance of having **legal procedures** concerning international family relocation and strongly encouraging parties to use them and not to act unilaterally (para. 1). It also highlights the need for the person seeking to relocate with the child to **provide reasonable notice** of their intention to relocate before commencing proceedings or, where proceedings are unnecessary, before relocation occurs (para. 2).

The Declaration also provides a helpful **list of factors** when deciding on a relocation request (paras 3 to 6). Among these factors (not ranked in any particular order of priority) are the best interests of the child; the right of the child to maintain personal relations and direct contact with both parents in a regular manner; the views of the child; practical arrangements; reasons for seeking or opposing relocation; any history of family violence or abuse; care and contact arrangements; custody and access determinations; the impact of the grant or refusal of relocation on the child; the relationship between the parents and commitment to facilitate a relationship; and mobility.

The Declaration also underlines how the **1980 Child Abduction and 1996 Child Protection Conventions** provide a framework for relocation. It also mentions that promoting **agreements** between the parties should be a major goal (para. 8). In addition, relocation orders issued in the State of origin - along with any conditions attached - should be **enforceable** in the State of destination (para. 9). This may be achieved, for example, through mirror orders. Furthermore, the Declaration warns against the **modification of the arrangements** by the authorities in the State of destination, unless substantial changes affecting the best interests of the child have occurred (para. 10). Lastly, the Declaration strongly supports the use of **direct judicial communications** as a valuable tool to enhance cooperation and resolve cross-border issues efficiently, **research** and the **promotion** of these principles (paras 11 to 13).

In addition to the 2010 Washington Declaration itself, HCCH has developed **Guides to Good Practice** and **other tools** that refer to international family relocation. Much of the information and good practices contained in the various HCCH tools originate from the Conclusions and Recommendations adopted by the **Special Commission on the practical operation of the**

1980 and 1996 Conventions (SC). For example, at its most recent meeting in **October 2023**, the Special Commission noted that "the expeditious determination of international family relocation applications may strengthen the aim of the 1980 Child Abduction Convention of deterring international child abduction" (2023 SC, C&R No 53) .

In relation to the Guides to Good Practice on the 1980 Child Abduction and 1996 Child Protection Conventions, I would like to refer to the ones that are most relevant to international family relocation.

While the ***Guide to Good Practice Part I: Central Authority Practice*** does not address international family relocation in detail, one of its Appendices includes the Conclusions and Recommendations adopted at the Fourth Meeting of the SC, held in 2001. This was the first time the topic of relocation was discussed in a SC. At that meeting, the SC noted that courts take significantly different approaches to relocation cases, which by then were occurring with a frequency not contemplated in 1980 when the Convention was originally drafted. The SC recognised that a highly restrictive approach to relocation applications may have an adverse effect on the operation of the 1980 Convention (2001 SC, C&R No 7.3).

The ***Guide to Good Practice Part III: Preventive Measures*** makes several references to international family relocation. In its chapter on "Proactive measures: where there is a heightened risk of abduction", the Guide recalls the adverse effects of a highly restrictive approach to relocation. It further adds that such an approach may encourage abduction, as parents may feel they have no viable legal alternative to relocation (chapter 2.2). Building on this, the Guide explains how to safeguard the rights of the contact parent during relocation as well as the rights of the custodial parent when a child is involved in contact, access or visits abroad (chapters 2.2.1 and 2.2.2). The Guide also highlights the benefits of being a Party to the 1996 Child Protection Convention for transfrontier contact and access (chapter 2.2.1). Finally, it underscores the importance of providing and disseminating information (including raising awareness of protective measures) as well as training and cooperation which are key for the successful operation of HCCH Conventions (chapters 4 and 5).

Focusing now on the ***Guide to Good Practice: Transfrontier Contact Concerning Children***, it is interesting to note the reasons behind this Guide which are explained in its Introduction. While the 1980 Convention aims at ensuring that rights of custody and of access are effectively respected, the provisions in the Convention itself are rather limited. The 1996 Convention tried to fill some gaps, but this was not enough. Therefore, over the years there were discussions about the desirability and potential usefulness of having further tools to ensure the effective exercise of access / contact rights between children and their parents. Among those possible tools were a protocol to the 1980 Convention or a Guide to Good Practice. At the 2002 SC on the practical operation of the 1980 Convention, it was concluded that it was premature to begin work on a Protocol, but it was recommended to work on a Guide (2002 SC, C&R No 2). This eventually led to the General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children, which contains an entire chapter on relocation and contact (chapter 8). This Guide highlights, among other things, the utility of advance recognition of relocation and / or contact agreements / decisions under the 1996 Convention (chapters 3 and 8.3), mirror orders as well as direct judicial communications (chapter 8.4). The Guide further emphasises the importance of the courts / authorities in the State of relocation, giving maximum respect to the terms and conditions of a contact order made in the context of relocation proceedings (chapters 3, 8.2 and 8.5).

The ***Guide to Good Practice Part V: Mediation*** (Introduction, Chapters 1, 2, 5 and 12) is also an important tool as mediation can be of great help in relocation cases, in particular when the

left-behind parent is, in principle, willing to agree to a relocation if their contact rights are secured. The Guide speaks about the use of mediation as a way to prevent international child abductions, where one of the parents wishes to relocate to another State. It also explains the effects of making a mediated agreement legally binding and enforceable in all cases, including cases where relocation is envisioned.

The most recent Guide - the ***Guide to Good Practice Part VI: Article 13(1)(b)*** - makes some limited references to relocation, mostly in the context of the State of habitual residence being best placed to decide on matters of custody and access, which includes questions of possible relocation (chapter 1), and in the context of promoting amicable resolutions, which may involve an international relocation (chapter 3).

Another very important tool is the ***Practical Handbook on the Operation of the 1996 Convention***, which highlights that children who relocate internationally with their families particularly benefit from the application of the rules under the 1996 Convention. The Handbook provides several useful practical examples which involve international relocation and specifically addresses the issue in the "Special Topics" chapter (chapter 13).

The most recent HCCH tool, the ***Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*** deals with mediated agreements under the 1980, 1996 and 2007 Conventions. It also contains a chapter devoted to cross-border relocation which speaks about implementing and enforcing (mediated) agreements that include relocation arrangements (chapter IV).

Finally, I would like to underline the key role of **Direct Judicial Communications**, in particular under the **International Hague Network of Judges**. Such communications can be used, for example, to establish a relocation order, to recognise and enforce a relocation order, to replicate a relocation order if this cannot be done via a mirror order and, where necessary and possible, to modify relocation orders and arrangements.

A GlobalARRK study of how applicant parents experience relocation proceedings to return to the country they consider home

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1. Introduction

This paper briefly presents some of the key findings from a recent GlobalARRK survey on the lived experiences of parents applying for international relocation for their child,[1] in order to return to the country that they consider home. The survey was developed with the aim of gathering insights into the lived experience of applicant parents across the world, and thus gain a deeper, more holistic of understanding of the legal process for international relocation from the applicant's perspective. The complete results of the survey and analysis have been published as a report.[2] Parts of the report were presented at the *15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family Relocation* conference,[3] specifically, the results relating to the length of proceedings, the cost of proceedings and domestic abuse. This paper summarises the presentation that was delivered at the conference.

The remainder of this section sets out the survey methodology, the structure and content of the survey, and an overview of the results. Section 2 focuses on the length of proceedings, and the impact of the length of proceedings on the applicant parent and their child. Section 3 focuses on the cost of proceedings, and the impact of these costs on the applicant parent and their child. Section 4 presents findings on the occurrence and impact of domestic abuse (DA) in the context of relocation proceedings. Section 5 synopsises the main challenges faced by applicant parents pursuing relocation. Finally, section 6 concludes this paper by setting out recommendations to improve procedure, policy and practice pertaining to international family relocation, in light of the survey insights.

1.1 Study Methodology

Data for this study was gathered via an online survey that consisted of both multiple choice and open questions. The target survey population was 'stuck parents', based anywhere in the world, seeking international relocation.[4] This specific population was reached via the

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1 Purely for reasons of readability 'child' is referred to rather than "child/ren" throughout this paper.

2 N. Hyder-Rahman, R. Osborne, *A study of how applicant parents experience relocation proceedings to return to the country they consider home,* A GlobalARRK Report, 2025 (available: https://www.globalarrk.org/wp-content/uploads/2025/03/RELOCATION-REPORT-20032025.pdf (last accessed 15 September 2025)).

3 *15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family Relocation,* 2-4 April 2025, Washington DC, USA.

4 A "stuck parent" is defined here as a parent who has moved abroad and is unable to return to the country they consider "home" with their child because the child's other parent refuses to give permission to move the child out of the country where the child is considered habitually resident. Moving the child without the permission of the other parent (or court) is unlawful and could trigger the application of the HCCH 1980 Child Abduction Convention. The parent who wishes to move with their child – but does not have the agreement of the other parent to move the child – is thus "stuck".

GlobalARRK service user base.[5] Data was collected at two timepoints. Firstly, during the period May - June 2024; results from this initial data collection were published in GlobalARRK's first *Relocation Report*[6] and subsequently presented at the HCCH's *Forum on Domestic Violence.*[7] Secondly, data was collected during the period December 2024 - January 2025. The final dataset for the purposes of the report at hand comprised of results from both data collections. The survey was voluntary, conducted anonymously, and the participants' consent was taken to analyse and publish results.

1.2 Survey Questions

The survey aimed to be comprehensive in order to capture the lived experiences of applicant parents as fully as possible. Survey participants were asked whether or not they had applied for relocation, and the reasons behind their decision. They were asked about practical matters relating to the length of time and cost of proceedings, as well as the evidence needed for the relocation application. They were also asked about whether they had experienced DA, whether this was disclosed, and the impact it had on proceedings. Participants were asked about the main challenges they faced during relocation proceedings, the outcome of their proceedings, and their feelings after the case ended. Finally, participants were asked about how relocation proceedings could be improved.

1.3 Survey Results: An Overview

Although this is a qualitative study, designed to offer in-depth insights into the specific experiences of applicant parent participants, a brief overview of the survey responses in numerical terms is nonetheless helpful. GlobalARRK received a total of 168 survey responses. This included 3 duplicate responses which were removed from the dataset, resulting in a dataset comprising 165 responses. The survey participants were based in 32 different jurisdictions around the world. 160 participants indicated that they were mothers, and 5 indicated that they were fathers. 153 participants considered themselves 'stuck', 8 considered themselves "maybe stuck" and 4 considered themselves 'not stuck'. 64 participants had applied for relocation, and a further 30 were working towards a relocation application. 40 participants had completed relocation proceedings; of those, 16 were successful in their application, 23 were unsuccessful, and 1 participant reached an out-of-court settlement.

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5 GlobalARRK is a UK-based charity dedicated to supporting and advocating for stuck parents, around the world. The decision to limit the survey participant pool to GlobalARRK service users was based on three main reasons. Firstly, the ability to offer appropriate emotional follow-up support to survey participants, due to the risk of raising experiences of trauma in participants. Secondly, feasibility; specifically, the limited time and resources available for an unfunded study. Thirdly, as GlobalARRK is the only charity specialising in supporting stuck parents, a sufficiently large and diverse pool of potential participants was reachable without needing to look further afield.

6 R. Lamont, R. Osborne, *Relocation and Experiences of Lawful Removal Applications,* A GlobalARRK Report, June 2024 (available: https://www.globalarrk.org/wp-content/uploads/2024/06/Relocation-Report-June-2024-FIN.pdf (last accessed 15 September 2025)).

7 *Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention,* 18-21 June 2024, Cape Town, South Africa.

2. Length of Proceedings

Participants were asked about the length of time taken for relocation proceedings. The following tables summarise the length of time taken in ongoing proceedings (table 1) and completed proceedings (table 2):

Table 1. Length of time – ongoing proceedings

Length of time	Number of respondents
0 - 6 months	14
6 - 12 months	5
1 - 1.5 years	3
1.5 - 2 years	5
2 - 3 years	5
3+ years	8

Table 2. Length of time – completed proceedings

Length of time	Number of respondents
0 - 6 months	4
6 - 12 months	8
1 - 1.5 years	7
1.5 - 2 years	8
2 - 3 years	8
3 - 4 years	3
4+ years	2

The experiences of the survey participants reveal that proceedings are lengthy. At the time of data collection, more than half of the participants (a total of 21) had been engaged in ongoing proceedings for more than 1 year, and some for longer than 3 years (a total of 8). Looking to the experiences of participants who had completed proceedings, very few were completed within 6 months (4 in total); for most participants proceedings took somewhere between 1 - 3 years.

2.1 Impact of Lengthy Proceedings

Participants were asked about the impact lengthy proceedings would have on them and their child. Several key themes emerged from their responses. Firstly, the impact on mental health was a common theme: 'mentally it's extremely hard' (Respondent 23). Secondly, the financial impact of lengthy proceedings was repeatedly raised, including the impact of relocation proceedings in the context of other legal proceedings. This point is expressed by Respondent 36:

> "[…] the financial strain is immense as prior to relocation I had family matters proceedings and then financial matters which has cost us not only our sanity but any money I had left, therefore the children are missing out on things as I cannot afford much.:

Thirdly, the ongoing isolation from family, friends, and a support network was another recurring theme – 'it's exhausting and lonely to go through so far from any and all family' (Respondent 98). Fourthly, applicant parents were concerned about the impact of lengthy proceedings on their child's development and their experience of childhood. Some of these concerns were expressed in the context of financial impact, i.e. fewer resources available for the child's health and wellbeing. Participants also expressed concerns about their child's sense of identity and loss of connection with their home language and culture, given the distance and separation from the applicant parent's home country. Furthermore, participants worried that the longer relocation proceedings took, the more difficult an eventual move would be on their child. Finally, the continuing uncertainty of their situation was a recurring theme for participants. This related to both practical matters, such as immigration status, as well as contending with the psychological impact of uncertainty. Respondent 38 summed this up as follows:

> "The not knowing is causing anxiety for everyone, the lengthy times between court dates means you can't start the healing process fully and it's a band aid that is being kept ripped open."

3. Cost of Proceedings

Participants were asked about how they funded their relocation application. The following tables set out the applicants' funding sources for ongoing applications (table 3) and completed applications (table 4):

Table 3. Funding source – ongoing proceedings

Funding source	Number of respondents
I am paying out of my own funds	29
Legal Aid is paying/will pay	7
Women's Legal Services	1
Self-representing	2
Parents/family	4
Own funds + parents	1
Fundraiser + family	1

Table 4. Funding source – completed proceedings

Funding source	Number of respondents
I am paying out of my own funds	22
Legal Aid is paying	11
Legal Aid and own funds	2
Legal Aid and family	1
Parents/family	2
Own funds + family	1
Fundraiser + family	1

These tables show that the majority of survey participants pay legal costs themselves, in whole or in part, in both ongoing proceedings (30 in total) and completed proceedings (25 in total). Although Legal Aid or similar assistance is available, the number of applicant parents who accessed this funding source is considerably lower: 8 in ongoing proceedings, and 14 (full or partial funding) in completed proceedings. Thus, personal resources are a key source of funding according to the experience of the participants.

The survey also asked about the exact costs incurred for both ongoing and completed applications. These results are not reproduced here, partly in the interests of length and partly due to the difficulties in summarising the data given the multiple currencies. The results are available in the published report.

3.1 Impact of Cost

Participants were asked about the impact of paying the costs of relocation application on themselves and their child. Their responses centred on the following matters. Firstly, the relationship between the length of proceedings and costs (see 2.1) returned in context of costs. In short: the longer the proceedings, the more costs incurred, and the greater the impact. Respondent 90 writes that the cost of proceedings 'ruined me, psychologically, emotionally, financially.' Secondly, participants indicated that paying the costs of the relocation application put them in an unhealthy, often precarious, financial situation. Participants reported draining their savings, borrowing money, going into debt, or selling their home to pay the costs. Thirdly, participants point to the immediate and long-term effects of the financial outlay on their child. For example, Respondent 18 writes, 'I had less to spend on caring for them [the children].' Fourthly, the impact of paying costs pushed some participants to into poverty and/or homelessness. Respondent 77 writes:

> "My husband gives us no money. I am going to the foodbank charity. We will soon become homeless."

Other participants reported already being homeless and seeking shelter at a homeless or women's shelter. Finally, the impact of paying these costs negatively affected participants' mental health (e.g. extreme stress) and physical health (e.g. poor health due to poverty, triggering autoimmune conditions).

4. Domestic Abuse

Participants were asked whether they or their child had suffered any kind of family violence since moving abroad. A total of 88 participants responded to this question; 82 responded 'yes', 2 responded 'maybe' and 4 responded 'no'. Thus, 93.2% of those who chose to answer the question, indicated that they/their child had experienced DA. The types of abuse experienced are set out in the table below:

Table 5. Types of Abuse Experienced

	Type of abuse experienced	Number of respondents
1	Physical	38
2	Emotional	85
3	Financial	69
4	Sexual	35
5	Coercive control	76
6	Psychological	78
7	Verbal	65
8	Preventing breastfeeding	1
9	Creating an unsafe environment	1
10	Abuse via institutions and authorities	2
11	Abuse via child	1

Participants were then asked whether they had disclosed DA as part of the relocation application. Of those participants who did not disclose DA, a significant number were advised not to do so by their lawyer:

> "I'm currently preparing for my relocation case, but current advice from my lawyer is not to mention the abuse as part of the relocation case." – Respondent 53

> "My lawyer advised to not paint a bad picture of my ex as to show that we could get along still which would be needed to communicate if relocation was allowed."– Respondent 8

Other participants did not disclose DA 'for fear of more trouble' (Respondent 18) or because they did not think they would be believed:

> "I did not mention abuse because they do not believe women if we mention abuse." – Respondent 72

Of those participants who did disclose DA, the majority reported that the disclosure 'had zero weight' (Respondent 15). Others indicated that 'it fell on deaf ears in court' (Respondent 44) or that it was 'not taken seriously by court at all because I had no bruises' (Respondent 68).

5. Main Challenges of Relocation

Participants were asked about the main challenges they faced during the course of relocation proceedings. Their responses are summarised as follows. Firstly, the length and cost of proceedings posed a key challenge, as outlined in sections 3 and 4 above. Secondly, participants reported experiencing or perceiving bias and discrimination, based on their gender, the gendered role they occupied, their nationality, race or ethnicity. The following quotes are examples of this challenge:

> "The racism and bias from the court against me as expat woman." – Respondent 78

> "Bias. As a woman, an older mom, and an immigrant from a country with unfavourable stereotypes about it, I was assumed to be lying." – Respondent 125

Thirdly, participants reported struggling to find lawyers with expertise in relocation, and furthermore, lawyers with the appropriate expertise who were also willing to accept their case on Legal Aid. Fourthly, continuing or escalating DA throughout the relocation application proceedings was as an ongoing challenge for some participants. Fifthly, during the proceedings, gathering and presenting the required evidence posed a further challenge. Sixthly, participants indicated isolation, uncertainty and the general negative impact on mental health as a persistent challenge. Finally, the practical challenge of managing day-to-day life in difficult circumstances, alongside complex legal proceedings was highlighted as an enduring challenge not to be underestimated.

6. Conclusion & Recommendations

Through the insights gained from the lived experience of the survey participants, several conclusions can be drawn about the process of applying for international relocation. Firstly, the length of time it takes to complete relocation proceedings is too long, and crucially, the longer it takes the worse the impact on the applicant parent. Secondly, the cost of applying for relocation and the limited availability of Legal Aid presents a serious barrier to accessing relocation. The cost of relocation must be seen in context: relocation is often one of a number of legal proceedings that the applicant is going through, and the costs therefore accumulate. Thirdly, of the stuck parents who did manage to access the legal procedure, many of them felt unheard throughout the proceedings. This particularly relates to a lack of understanding on two matters: a) the situation of the stuck parent (i.e. being far from family and friends, living outside their own socio-cultural setting), and b) domestic abuse in all forms (how it operates, the impact it can have). More can and should be done to address these shortcomings and facilitate relocation when the circumstances demand it.

These conclusions can be transformed into specific recommendations for national jurisdictions that fall into two broad categories. Firstly, those that are procedural in nature, seeking to address the issues of length and cost of proceedings. Secondly, those relating to the development and implementation of policy and legal practice, seeking to account for and address the complex situation(s) of 'stuck' applicant parents.

<u>Procedural Recommendations:</u>

1. Reduce the length of relocation proceedings to less than 1 year.

2. Introduce an expedited procedure for those applicants who need to leave urgently.

3. Increase access to Legal Aid for those applicants whose cases have merit but who lack means.

Recommendations for Policy and Practice:

4. Assess applications for relocation based on factors that are weighted in the following order of priority:

i) Whether relocation would help protect the child from harm, recognising that harm to the parent will equate to harm to the child.

ii) Whether the primary/sole carer applicant is able to live in the child's country of habitual residence in order to continue caring for the child. Relevant factors include: immigration status, financial situation, housing situation, safety.

iii) Whether the primary/sole carer applicant is able to function effectively as a parent in the child's country of habitual residence. Relevant factors include: mental health challenges, language barrier, absence of a support network and post-separation abuse.

5. Ensure that in cases involving DA, the requirement placed upon the applicant/relocating parent to 'support and facilitate' a relationship with the non-relocating parent only applies when:

i) It is demonstrably in the child's best interests, and

ii) It is implemented in a trauma-informed manner.

Critically, this requirement should not prejudice relocation applications where there is a history of/ongoing DA.

6. Ensure that law and policy pertaining to relocation is based on trauma-informed principles and informed by those with lived experience and their advocates, via active consultation.

7. Build expertise in international relocation across the legal profession, primarily, lawyers and judges, and the institutions that are involved in relocation proceedings (e.g. social services). Importantly, there must be commitment to overcoming unconscious bias given the diversity within families who face international relocation proceedings.

8. Build expertise in DA and trauma across the legal profession, primarily, lawyers and judges, and the institutions that are involved in relocation proceedings (e.g. social services), with a view to developing best practices for relocation cases.

9. Notwithstanding the fact that relocation is a matter that is currently addressed within national legal systems, aim for greater global consistency in relocation proceedings in line with these recommendations.

Importantly, and in the context of the conference, these recommendations align with the principles articulated in the Washington Declaration. However, they go further, offering critical nuance that draws on the lived experience of stuck parents gathered through this study. In particular, recommendations 4 and 5 offer clarity on the weighting of factors in order to ensure that the safety and welfare of vulnerable children and caregivers is consistently taken into account in relocation cases.

Finally, the findings published in the report and referred to here form a starting point for further and deeper analysis on understanding and improving relocation from a practical perspective.

There remain important themes that emerged within the data that were only touched on very lightly or implicitly in the report (due to constraints of length) and demand further attention. Moreover, there remain important issues that were beyond the scope of survey and report entirely. Through research, engagement and advocacy GlobalARRK hopes to continue contributing to the essential, ongoing discourse on international family relocation.

Relocation under Canada's *Divorce Act*

Geneviève Laurence, Counsel, Family Law and Youth Justice Policy Section of the Department of Justice Canada

Introduction

In 2021, amendments to the Canadian federal law, the *Divorce Act*,[1] came into force providing – amongst other things – a framework to address relocation cases. Previously, the federal Act had been silent on relocation. The amendments were part of a comprehensive update to the *Divorce Act* – an Act that had not been substantially updated in more than 20 years.

Family law in Canada is an area of shared jurisdiction between federal and provincial and territorial governments. The *Divorce Act* applies to married couples who are divorcing or who have divorced. Provincial or territorial legislation applies to unmarried or common-law couples, and married couples who are separated but not divorcing. The relocation provisions described here are in reference to the federal *Divorce Act*.

Relocation before the *Divorce Act* changes

Prior to the *Divorce Act* amendments, the leading case in relocation in Canada was the 1996 Supreme Court of Canada decision of *Gordon v Goetz*.[2] It provided a highly individualised approach to relocation, offering little predictability. This decision did not address issues related to notice of a move, or who must bring an application before a relocation may occur.

Prior to the amendments, however, some patterns in the case law emerged. There are two important patterns to highlight. First, a relocation was more likely to be denied if there was a shared parenting/custody arrangement. Second, where there was a clear primary caregiver for a child, a move was more likely to be approved.[3] Case law also indicated that it was mostly mothers who requested relocation, that the most cited reason was for economic reasons like a career opportunity, and that where family violence was substantiated, a move was significantly more likely to be allowed than in other cases.[4]

Divorce Act and the relocation framework

The relocation scheme provides an orderly process and clarity for parents on the steps to follow if they want to move with the child or move away from the child, while also promoting negotiation and settlement. The new framework provides rules about:

- The steps to follow when a parent plans to move

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1 *Divorce Act*, RSC, 1985, c 3 (2nd Supp.)

2 (1996) 19 RFL (4th) 177 (SCC).

3 D.A. Rollie Thompson, "Heading for the Light: International Relocation from Canada" (2011) vol. 30:1, *CFLQ*; Canada, Department of Justice, *A Study of Post-Separation/Divorce Parental Relocation*, by N. Bala et al. (Ottawa, Department of Justice, 2012).

4 N. Bala (*ibid.*).

- How a court will decide whether a child can or cannot relocate

These rules are meant to help parents come to agreements about relocation and avoid going to court where possible.

Key to the application of these provisions is the concept of "relocation" which is defined as a move — either by a child or a person with parenting time or decision-making responsibility — that could have a significant impact on the child's relationship with a person with parenting time or decision-making responsibility, a person applying for such responsibilities, or a person who has contact with the child under a contact order.

The three broad components of the framework are:

1. Notice of a proposed change of residence or relocation and objection
2. Additional best interests criteria for relocation cases
3. Burdens of proof that will apply in certain relocation cases

If a relocation happens, the child and the non-moving parent may need to travel to be together, which has costs, such as airline or train travel and hotels. The Act allows the court to make an order about whether and how these expenses would be shared between the parents (s 16.95).

The components of the framework are explained below.

1. Notice and objection (s 16.91)

Any move — including a local move — is a change of residence. Under the new framework, a person with parenting time or decision-making responsibility is required to give notice to any person with parenting time, decision-making responsibility or contact of a change of their residence or that of the child. The notice includes information about the new address and contact information.

A court could order that the notice requirements should not apply or could modify the requirements as necessary. The situation of family violence is specifically highlighted as a circumstance where the court could make such an order.

When the move is a relocation and not just a change in residence that will not have a considerable impact on the child's relationships with the people receiving notice, the person proposing the move must include a plan for how they think the parenting arrangement could be changed. If another person with parenting time or decision-making responsibility does not agree to the relocation, they can object. They will be encouraged to negotiate a resolution with the person proposing the relocation. Under the amendments, the parties have a new obligation to try to resolve matters out of court. If a resolution does not seem possible, the person with parenting time or decision-making responsibility who is opposing the relocation could object either by way of a standard form or by bringing a court application.

The notice and objection forms require key information that encourages agreement between the parents. The notice form requires the parent proposing the move to elaborate on how the parenting time or decision-making responsibility (parenting arrangement) could be exercised, requiring them to think about how the current parenting arrangement can continue or needs to change. The objection form requires that parent to include why they object, and their views on the proposal for exercising parenting responsibilities. This back-and-forth on the proposed plan encourages parties to settle any disagreement and propose changes by engaging in a form of negotiation.

If a person with a parenting order objects to the move by way of court application, this commences the process for a court to decide whether the relocation can take place. If, however, they object through a standard form, the person proposing the move will need to bring a court application to seek permission to move. In either case, the court will be required to determine whether the move should be permitted, based on the best interests of the child.

If there is no objection within 30 days after the notice was received, and there is no court order prohibiting the move, the person proposing the move will be entitled to move as of the date proposed in the notice.

2. Additional best interests criteria in relocation cases (s 16.92)

In addition to the general best interests of the child criteria, the *Divorce Act* sets out seven criteria to be considered in all relocation cases. Similar to the general best interests of the child criteria, none of these factors are determinative. They include:

- the reason for the relocation;
- the impact of the relocation on the child;
- the amount of time spent with the child by each person who has parenting time;
- whether there are orders or agreements specifying the geographic area where the child must reside;
- whether notice was given;
- reasonableness of the proposal; and
- whether the parents have complied with existing orders.

Relocation is a highly contested matter in family law. Providing an explicit list of factors that the court must consider is intended to direct the court to matters that are specifically relevant to the best interests of the child in the relocation context. These factors may also help parties to prepare their relocation proposals and objections. No factor is determinative, but factors provide guidance to parents and courts.

3. Burdens of proof (s 16.93)

The ultimate test for whether a relocation should occur remains the best interests of the child. However, to assist parents, lawyers and judges in undertaking a best interests analysis, the amendments added specific burdens of proof.

If parents spend substantially equal time with the child and share responsibility for the care of the child fairly equally, the person proposing the move would have to demonstrate why the move is in the best interests of the child.

If one parent clearly has primary responsibility for the care of the child — that is, the child is in the care of that parent the vast majority of the time — the parent opposing the move would have to demonstrate why the move is not in the child's best interests.

In all other cases, each parent must demonstrate whether the move would be in the best interests of the child. The proposed burdens recognize broad trends in the case law.

The starting points for relocation situations will apply only where the parties have an order, arbitral award or agreement in place and they are substantially complying with the order.

Other aspects of the *Divorce Act* relevant to relocation

Many other changes to the Act relate to or are complementary with the relocation provisions and could be relevant to international relocation.

Best interests of the child (s 16)

Courts have long considered only the best interests of the child in decisions about parenting. This test is also found in provincial and territorial family law, and in the United Nations *Convention on the Rights of the Child.* Parenting arrangements for a child would have to be what is best for that child in that child's particular situation.

The amendments to the Act confirmed the best interests of the child as being the only consideration in matters related to children and included a non-exhaustive list of factors, with the primary consideration being the "child's physical, emotional and psychological safety, security and well-being".

The non-exhaustive list of best interests factors in the Act include:

- the child's needs, given the child's age and stage of development, such as the child's need for stability;
- the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- the history of care of the child;
- the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- any plans for the child's care;
- the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- the ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, in particular with one another, on matters affecting the child;
- any family violence; and
- any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

In relocation cases, courts must also consider the additional best interests factors related to relocation discussed above.

Family violence

Family violence can also be an important consideration in relocation cases.

The Act requires courts to consider the impact of family violence on parenting arrangements, including its impact on the ability and willingness of the person who engaged in family

violence to care for and meet the needs of the child. In cases of family violence, the court must also consider whether to require the parties to co-operate on matters related to the child. If a court is required to decide whether a relocation will be permitted, these will be important considerations.

As well, the Act recognises that in situations of family violence the notice requirements for relocation may not be appropriate. The court can waive or modify the notice requirements for a change of residence for someone with a contact order.

An application to waive or modify the notice requirements can be made without notice to any other party. In some cases, requiring notice of an application for exemption from the notice requirements may not be appropriate. Therefore, applications can be made on an *ex parte* basis, meaning without notice to other parties. When an *ex parte* application is made, the court would decide whether proceeding without notifying other parties is appropriate.

Interaction with the 1980 and 1996 Conventions

The *Divorce Act* is consistent with the 1980 and 1996 Conventions, for example:

- The jurisdictional provisions refer to "habitual residence" of the child.
- The jurisdiction of the court in removal or retention of child cases is limited to the habitual residence of the child, unless specific conditions are met. The aim is to prevent parental child abduction, ensure that decisions about the child are generally made in the child's habitual residence, and encourage compliance with the relocation notice provisions.
- The Act specifically allows courts to include prohibition on removal of child in an order. This may be useful if there is a concern about a risk of abduction.

Conclusion

It is still early days of the new relocation framework and the case law continues to develop. Since their coming into force, six Canadian provinces have passed mirroring legislation.[5]

Public Legal Education and Information materials on relocation are available on the Government of Canada website. These resources provide plain language explanations of the relocation provisions.

Divorce Act Changes Explained – which you can visit at https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/index.html - is similar to documents provided to Parliament when a bill is debated. To help parents, self-represented litigants, lawyers and judges this document provides a plain language explanation of the change and reasons for the change.

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5 Saskatchewan: *Children's Law Act*, S.S. 2020, c. 2 (effective March 1, 2021); New Brunswick: *Family Law Act*, S.N.B. 2020, c. 23 (March 1, 2021); Prince Edward Island: *Children's Law Act*, S.P.E.I. 2020, c. 59 (March 1, 2021); Ontario: *Children's Law Reform Act*, S.O. 2021, c. 4, Schedule 2 (March 1, 2021); Nova Scotia: *Parenting and Support Act*, S.N.S. 2021, c. 15 (April 1, 2022) (replaces 2017 version); Manitoba: *Family Law Act*, C.C.S.M. c. F20 (July 1, 2023).

The fact sheet, "Moving after separation or divorce?", is available in 14 languages.[6] The links to the English and French copies are available here: EN https://www.justice.gc.ca/eng/fl-df/fact5-fiches5.html; FR https://www.justice.gc.ca/fra/df-fl/fiches5-fact5.html.

The Notice and Objection forms are available here: Notice of Relocation Form: https://www.justice.gc.ca/eng/fl-df/divorce/nrf-fad.html; Objection of Relocation Form: https://www.justice.gc.ca/eng/fl-df/divorce/orf-fod.html.

Justice Canada also developed 6 online courses related to the *Divorce Act* changes, including on the relocation changes: https://www.justice.gc.ca/eng/fl-df/cfl-mdf/trai-form/index.html#s5.

There are various other resources available that help parents address relocation: "Making plans: A guide to parenting arrangements after separation or divorce" - a guide to making a parenting arrangement plan (https://www.justice.gc.ca/eng/fl-df/parent/mp-fdp/index.html); and "Parenting Plan Checklist: Information to help you get started" (https://www.justice.gc.ca/eng/fl-df/parent/ppc-lvppp/index.html).

A final resource directed at legal advisers/lawyers to help them identify and respond to family violence – often called screening – is The HELP Toolkit, found here: https://www.justice.gc.ca/eng/fl-df/help-aide/index.html. The Toolkit is intended to help legal advisers inquire about family violence and then integrate that information into practice in terms of advice to clients and referrals to services if appropriate. For example, where family violence is present, the legal adviser may want to consider whether providing notice of a relocation would place a client at risk.

6 It is also available in Arabic, Chinese, Inuktitut, Korean, Persian, Punjabi, Russian, Somali, Spanish, Tagalog, Tamil and Urdu.

For Sessions 3 – 6 the Permanent Bureau prepared the following guidelines / questions, which were shared with speakers in advance of the conference to assist them in their preparations:

1. Is there a specific relocation procedure available in your State?
2. Is the relocation procedure in your State a single procedure or several procedures (e.g., (1) parental responsibility, (2) contact, (3) maintenance)?
3. Is legal assistance available in your State for a relocation procedure? If so, is it subject to a means and / or merits test?
4. Can parties to a relocation procedure represent themselves or do they need legal representation?
5. Is consideration given to whether the State to which a person wants to relocate a Party to the 1980, 1996 and / or 2007 Conventions?
6. Which principles of the Washington Declaration are followed in relocation procedures in your State and which principles are not followed (and why)?
7. What is the impact of DA/DV allegations in relocation procedures in your State?
8. What is the average time frame for a relocation procedure to be decided in your State?
9. What is the average success rate of relocation procedures in your State?
10. Do you foresee / recommend possible improvements for relocation procedures in your State, if so on what aspects?
11. What is the procedure in your State to recognise and enforce a foreign relocation decision or to give effect to a foreign relocation agreement?
12. How do you address non-compliance with relocation decisions or agreements?

Session 3 - States with specific relocation procedures

Canada

Justice Gwen B. Hatch, Associate Chief Justice of the Court of King's Bench of Manitoba (Family Division), Winnipeg, Manitoba, Canada, Member of the IHNJ

On 1 March 2021, amendments to the *Divorce Act* of Canada (R.S.C., 1985, c. 3 (2nd Supp.)) came into force which included new relocation laws. Before these amendments, the *Divorce Act* was silent on relocation.

The significant changes to the *Divorce Act* include a child-focused definition of relocation, mandatory notice of intention to relocate, the application of rebuttable burdens of proof that the relocation is in the best interests of the child in the particular circumstances, and additional best interest factors specific to relocation cases.

Six provinces in Canada have passed parallel laws to mirror the *Divorce Act* relocation provisions. The same relocation principles in the *Divorce Act* apply in those provinces whether or not the parents are married.

Prior to the new relocation laws, courts in Canada applied a "best interests of the child" test which constituted an individualised assessment in each case, in accordance with the principles found in the Supreme Court of Canada's decision in *Gordon v. Goertz*, [1996] 2 S.C.R. 27. Justice McLachlin (as she then was) noted at paragraph 49 of this decision, that the judge is to conduct "a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them"; that "[e]ach case turns on its own unique circumstances"; and that "[t]he focus is on the best interests of the child, not the interests and rights of the parents." She stated:

> "More particularly the judge should consider, inter alia:
>
> a) the existing custody arrangement and relationship between the child and the custodial parent;
>
> b) the existing access arrangement and the relationship between the child and the access parent;
>
> c) the desirability of maximising contact between the child and both parents;
>
> d) the views of the child;
>
> e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
>
> f) disruption to the child of a change in custody;
>
> g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know."

The relocation amendments to the *Divorce Act* clearly provide a framework as to what is in the best interests of the child when a relocation is being considered. The new relocation principles are understandable, not ambiguous, and offer consistency and increased predictability.

Parties are required to engage with each other early on in terms of exchanging parenting plans, often before an application to permit or to prohibit relocation is filed with the court. The new relocation provisions encourage parties and counsel to have settlement discussions.

While the new relocation principles provide structure and guidance for the judicial relocation analysis, as articulated in *Barendregt v. Grebliunas*, 2022 SCC 22 (at para. 123): "In all cases, however, the inquiry remains an individual one. The judge must consider the best interests of the particular child in the particular circumstances of the case."

Child-focused Definition of Relocation

The new relocation laws provide a child-focused definition of relocation, which applies where this is a change in the place of residence of the child or of the parent that is likely to have a significant impact on the child's relationship with the other parent. Section 2(1) of the *Divorce Act* states:

> "In this Act,
>
> [...]
>
> relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child's relationship with
>
> (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
>
> (b) a person who has contact with the child under a contact order."

Mandatory Notice of Intention to Relocate

The mandatory written notice of intention to relocate requirement with timelines in the *Divorce Act* creates an orderly and consistent process and facilitates settlement discussions between the parties. Leave may be granted to dispense with written notice in circumstances such as family violence (see s.16.9(3)).

The parent who wishes to relocate must provide notice of the relocation in writing at least 60 days in advance of the relocation date, under s. 16.9(1). The Notice of Relocation Form indicates the expected date of the relocation, the address of the new place of residence and contact information for the parent and child, and a proposal for how parenting time, decision-making responsibility or contact could be exercised (see s.16.9(2)).

A notice of objection to the move must be filed by the other parent within 30 days of the receipt of the notice to relocate pursuant to s. 16.91(1)(b)(i) of the *Act*. The Objection to Relocation Form sets out the reasons for objection to the move and views on the other parent's proposal respecting parenting time. The person objecting to the move is invited to propose alternate arrangements but is not required to do so.

The exchange and review of proposals by the parties for exercising parenting time encourages early settlement discussions without court involvement.

Both the Notice of Relocation Form and the Objection to Relocation Form are in a print-friendly version in PDF format and a web friendly version and are written in plain language.

The notice requirements and information about the Notice to Relocate Form and the Objection to Relocation Form are included on initiating and responding pleadings.

Relocation is allowed under s. 16.91(1) of the *Divorce Act* to the person who has given notice under s. 16.9 if (1) the relocation is authorised by a court; or (2) if the other person who has received notice of the relocation does not object to the relocation within 30 days thereafter by serving an Objection to Relocation Form or by filing an application for a parenting order under s.16.1(1) or for a variation, rescission or suspension of a parenting order under s. 17(1)(b).

Burdens of Proof

Two rebuttable burdens of proof under s. 16.93 of the *Divorce Act* are triggered depending on the amount of parenting time that the parents each have with the child. The burdens of proof provide certainty and consistency.

Where parents have substantially equal parenting time, the burden of proof that the move is in the best interest of the child is on the parent who intends to relocate (see s. 16.93(1)). The presumption is that the relocation should not be allowed unless the relocating parent can prove that the move will be in the best interests of the child.

Where the relocating parent has the vast majority of parenting time, the burden of proof that the move is not in the best interest of the child is on the parent opposing the relocation (see s. 16.93(2)). The presumption is that the relocation should be allowed unless the parent opposing the relocation can prove that the move will not be in the best interest of the child.

It is important to point out that the two rebuttable presumptions that trigger the burdens of proof apply only where the current parenting time is in substantial compliance with the terms of an order, arbitral award, or agreement (see ss. 16.93(1) and (2)).

In all other cases, both parties have the burden of leading evidence respecting whether the relocation is in the best interest of the child (see s. 16.93(3)).

Additional Best Interest Factors

The new relocation laws add seven specific best interest factors for relocation cases pursuant to s. 16.92(1) of the *Divorce Act*. These factors focus on the relocating parent's plan and whether parenting time has been complied with and encouraged. Section 16.92(1) states:

> "In deciding whether to authorize a relocation of a child of the marriage, the court shall, in order to determine what is in the best interests of the child, take into consideration, in addition to the factors referred to in section 16,
>
> (a) the reasons for the relocation;
>
> (b) the impact of the relocation on the child;
>
> (c) the amount of time spent with the child by each person who has parenting time or a pending application for a parenting order and the level of involvement in the child's life of each of those persons;
>
> (d) whether the person who intends to relocate the child complied with any applicable notice requirement under section 16.9, provincial family law legislation, an order, arbitral award, or agreement;
>
> (e) the existence of an order, arbitral award, or agreement that specifies the geographic area in which the child is to reside;
>
> (f) the reasonableness of the proposal of the person who intends to relocate the child to vary the exercise of parenting time, decision-making responsibility or contact, taking into consideration, among other things, the location of the new place of residence and the travel expenses; and

> (g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order has complied with their obligations under family law legislation, an order, arbitral award, or agreement, and the likelihood of future compliance."

Reasons for relocation may include to be close to family for support, or for employment purposes for the parent or the parent's partner. The impact of relocation upon the child may include the loss of time with the left behind parent, disruption in the relationship with extended family and friends, and the loss of community, school and extracurricular activities.

In addition to these additional best interest factors specific to relocation cases, there are 11 basic best interest factors set out in s. 16(3). Many of these factors were considered before the amendments to the *Divorce Act* but were not statutorily specified. These factors create the framework that wherever in Canada the *Divorce Act* is relevant, they are statutorily mandated to be considered. The list of factors is not exhaustive.

General best interest factors have always been the overriding issue in divorce legislation in Canada. The court is to consider only the best interest of the child, with the primary consideration being the child's physical, emotional and psychological safety, security and well-being, as set out in ss. 16(1) and (2) of the legislation.

Family violence and its impact were considered before but they were not statutorily mandated to be considered. Section 16(3)(j) requires consideration of the ability and willingness of a person who engaged in family violence to care for and meet the needs of the child, and the appropriateness of making an order that would require that person to cooperate on issues affecting the child.

International Relocation Cases by Appeal Courts of Canada

In *Link v. Lenskyj*, 2022 BCCA 341, a decision of the British Columbia Court of Appeal, the mother, who was born in Australia, applied to relocate the child from British Columbia to Australia. The mother and the father lived together in Australia, and then in Ontario and British Columbia in the cities of Toronto and Vancouver.

This case clearly demonstrates the application of the additional best interest factors under s. 16.92(1) including the reasons for the relocation.

The Court of Appeal took into account that before the mother had met the father she had lived and worked in Australia; her brother and his family lived nearby; the mother had wanted to return to Australia before the separation; she wanted to accept a teaching position there and in returning to Australia she would have the benefit of support of family and friends.

In examining the relationships of the parents to the child, the mother had a closer relationship with the child. The father did not suggest that if the child remained with him, he would travel to Australia with the child to facilitate contact with the mother and the child. He led minimal evidence regarding what he would do to support the mother's relationship with the child if she moved to Australia and the child remained with him. The mother was more willing to support the child's relationship with the father than vice versa.

The mother's relocation to Australia was upheld by the British Columbia Court of Appeal.

In *Nurmi v. Nurmi*, 2023 ABCA 123, a decision of the Alberta Court of Appeal, the mother applied to relocate from Alberta to Bulgaria with two children (ages 9 and 4). The mother, who was born in Bulgaria, visited Bulgaria with the children for a few months to see family. The mother and father decided to separate. The mother had a job offer in Bulgaria but did not have a detailed plan concerning parenting time. The mother, who wanted to relocate, was the

primary caregiver of the children. This triggered the presumption under the *Divorce Act* that it was in the best interest of the children to relocate.

The burden fell on the father to demonstrate that relocation would not be in the best interest of the children. Neither parent gave evidence about their plan of care. In the circumstances, the Alberta Court of Appeal dismissed the application to relocate. Either party was entitled to apply to the court at a later date for an order concerning parenting time and decision-making responsibility with appropriate evidence.

This case underlines the importance of each parent presenting evidence of their plan of care in a relocation hearing to establish that their plan is in the best interest of the child.

O'Brien v. Chuluunbaatar, 2021 ONCA 555 is a case under provincial legislation as opposed to the *Divorce Act*, which is federal legislation in Canada. The province of Ontario has legislative relocation amendments that mirror the amendments to the *Divorce Act*.

In *O'Brien v. Chuluunbaatar*, a court order consented to by the parents, gave the mother sole custody of their nine-month-old child. When the child was five years old, the mother moved to vary the court order to relocate to Mongolia. She had been the primary caregiver since birth and had family in Mongolia.

The mother was born, raised, educated and employed in Mongolia before immigrating to Canada. She had a Bachelor of Arts in Financial Management in Mongolia, and a Master of Arts in Economics from Japan. The mother was not able to obtain stable employment in Canada and struggled to support herself and the child, despite her skills and best efforts.

The mother's reasons to relocate included her desire to have a better financial situation for her and the child, and increased family support. In Mongolia, the mother would be able to find professional employment opportunities which would assist her financially and improve her mental health. Her family was available to provide childcare. The mother had always encouraged access between the father and the child.

The mother's relocation to Mongolia was upheld by the Ontario Court of Appeal.

This case underlines the importance of the reasons for relocation.

In *Bourke v. Davis*, 2021 ONCA 97, a decision of the Ontario Court of Appeal, the parents, who resided in Ontario, were divorced with two boys (ages 6 and 4). The mother remarried an American man, employed with Microsoft Corporation, who worked in Ontario for a period of time who had to return to Washington State for work or lose his job. They had a baby girl. The mother had a good parenting plan and was maximizing contact with the other parent. Relocation from Ontario in Canada to Washington State was upheld by the Ontario Court of Appeal.

This case once again underlines the importance of the reasons for the relocation and a best-interest-of-the-child parenting plan under the new relocation laws in Canada.

Washington Declaration on International Family Relocation

The 2010 Washington Declaration on International Family Relocation (the Declaration) articulates important principles about the international recognition and enforcement of relocation decisions, as well as procedural proposals for national law.

The *Divorce Act* and the Declaration align in their main goal of protecting the best interests of children, and promoting agreement, not unilateral acts by parents intending to relocate. Both require reasonable notice of relocation before relocation occurs.

There are other similarities between the *Divorce Act* and the Declaration as follows:

- The "best interest" test is applied in relocation decisions.
- The factors to be considered in making relocation decisions in the Declaration resemble the *Divorce Act* factors.
- The *Divorce Act* is generally more comprehensive, particularly when it comes to family violence or abuse.

Unlike the *Divorce Act*, the Declaration contains some provisions which speak specifically to international relocation.

One factor to be considered under the Declaration is "the enforceability of contact provisions ordered as a condition of relocation in the State of destination" (s. 4(xi)).

Section 9 of the Declaration states:

> "Orders for relocation and the conditions attached to them should be able to be enforced in the State of destination. Accordingly States of destination should consider making orders that reflect those made in the State of origin. Where such authority does not exist, States should consider the desirability of introducing appropriate enabling provisions in their domestic law to allow for the making of orders that reflect those made in the State of origin."

The Declaration expressly encourages direct judicial communications: "Direct judicial communications between judges in the affected jurisdictions are encouraged to help establish, recognise and enforce, replicate and modify, where necessary, relocation orders" (s. 11).

There is one significant difference between the terms of the Declaration and the *Divorce Act*.

Unlike the *Divorce Act*, the Declaration does not require burdens of proof in relocation cases. Rather, the Declaration specifically states that as the "best interests of the child should be the paramount (primary) consideration [...] determinations should be made without any presumptions for or against relocation" (s. 3).

Burdens of proof in relocation cases were statutorily mandated in the *Divorce Act* to bring a more structured and consistent process, and clarity of the applicable principles in relocation cases. The presumptions promote the best interest of the child because there is no ambiguity. They provide a structure to focus on the best interest of the child.

A rebuttable presumption, that the parent who cares for a child on a daily basis is in a unique position to assess what is in the child's best interest, brings clarity to the law and promotes consistency in its application. The court continues to have the obligation to determine the best interest of the particular child in the particular circumstances of the case (see *Barendregt v. Grebliunas* at para. 123).

Chile

Javiera Verdugo Toro, Lawyer, Ministry of Foreign Affairs

Chile does not have a specific procedure for family relocation; the possibility of family relocation is barely even contemplated in the law. What we do have is a series of rules regulating travel authorisations, that can be used to some extent in cases of relocation.

The procedure for travel authorisations was incorporated into Chilean law in 1967 (Law N°16.618, also known as the Law of Minors), when travelling outside of the country was exceptional, especially with children. Chile's geography, flanked on one side by the Andes and on the other by the Pacific Ocean, makes travelling by land difficult; air travel is expensive, even to this day. So, it is easy to understand how leaving the country with children was not at all common in the 60s. The rules around this issue are designed to protect the child, in a world where international travel was exceptional and merited a detailed analysis of the trip and its motives.

In Chile, in order for a child to leave the country, they need authorisation from the following people:

1. Both parents.

   As a general rule, when a child is not traveling with both parents, the parent that remains in Chile must authorise the trip.

2. The person who has custody of the child, granted by a court of law.

   If custody of the child has been granted to a third party (not a parent) by a court, or if sole custody has been granted to one of the parents, then the person with custody must grant authorisation in order for the child to leave the country.

3. The parent whose visitation with the child has been established by a court of law.

   If visitation has been established by a court, that parent must grant authorisation in order for the child to leave the country. It should be noted that, under article 225 of the Chilean Civil Code, when a family judge grants sole custody of a child to one of the parents, they must establish visitation for the other parent in the same decision. This rule means that having sole custody under Chilean law does not automatically grant the custodial parent the ability to leave the country with the child, without requesting authorisation.

4. A judge.

   If the person who must grant authorisation for the child to travel is unavailable or does not want to authorise the trip, a family judge can grant authorisation instead.

Even when authorisation is granted voluntarily, it must be in writing, before a public notary. The law does not set a limit to what the parties can agree upon, therefore if both parents have decided that the child will relocate to a different country, they can simply draft whatever they choose.

Judges, however, do have limitations when it comes to authorising travel for children. One may easily note how dated the regulation of court decisions in these matters is.

First of all, cases for travel authorisation follow the ordinary procedure before Family Courts, which on average takes anywhere from six to eight months (without considering a possible appeal). This means that, unless the parents agree, last-minute trips are out of the question,

because the court would not be able to process the request in time.

Secondly, the judge "must take into consideration the benefit that [travel] may bring and will indicate the period of time for which authorisation is granted" (article 49 of Law N°16.618, para. 3). This rule poses two problems. The first is that the benefit of travel is not something that we question in 2025, because for many families travel is no longer an exceptional event but rather a normal part of life. Migration patterns have changed all around the world, and certainly in Chile, and international families are a common occurrence. Chilean children travel to other countries of which they are also nationals, where they have family, roots, and culture. The benefit of these trips does not require evidence. Even in families where there are no other nationalities, travelling abroad has become more and more common, with the sole purpose of recreation. The cultural benefits of a seven-day package in Disney World is something that has been discussed at length in Chilean courts, thanks to our old-fashioned law.

The second problem with Chile's current rules for court travel authorisations is that they seem to exclude the possibility of relocation. In 1967, when the rule was established, it would have been very rare for a parent to want to move a child permanently out of the country; that is clearly no longer the case today. Courts find their way around the rule, by indicating that the "period of time for which authorization is granted" (art. 49 of Law N°16.618, para. 3) is however much time is left until the child turns 18.

The only mention of relocation made in Chilean law is in order to exclude it. A special rule (art. 49 of Law N°16.618, para. 8) indicates that the court can grant travel authorisation without taking into consideration the opposition of a parent, when that parent is not up to date on their child support payments and has been enrolled in the National Registry for Child Support Debtors. In those cases, however, the law states that the judge may not grant authorisation for relocation. It is the only time that relocation is mentioned in our legislation.

Is it clear that Chile urgently needs to modernise its regulation of travel authorisations for children. In our current reality, it is not relevant to ask why travelling will benefit the child, because international travel has become a normal part of life for many. It is, however, very relevant to ask questions that our current law does not pose, such as what the child's life will look like outside of Chile. Parents request permission to move their children out of the country permanently, or for long periods of time, for reasons of work and study, and protecting the child's interest requires checking elements that the law does not consider. Has the travelling parent made arrangements for school and healthcare? How will the child visit the parent and extended family that remains in Chile? What migration status will the child have? Is there anything that can be done from Chile, before the child travels, to make their arrival easier?

Living in a globalised society means that our children have become globalised too: it is our duty to update our regulations, in order to adequately protect them as they move through the world.

South Africa

Ronaldah Lerato Karabo Ozah, Director of Centre for Child Law, University of Pretoria*

1. Introduction

Relocation disputes in South Africa have been described as unpredictable and expensive, which the inclination to increase conflict and discourage settlement.[1] These cases are some of the most difficult cases and, due to globalisation, a growing problem that needs legal guidance.[2] It is therefore timely that the South African Law Reform Commission has been working on this issue and have a Discussion Paper[3] which includes proposed Children's Amendment Bill to amendment the *Children's Act 38* of 2005 to provide firmer guidance to parties and courts when dealing with relocation matters.

Relocation disputes normally arise where the relocating parent with whom the child resides wishes to move to another country and the non-relocating parent with whom the child does not reside refuses consent for the removal of the child from the Republic. In terms of section 18(3)(c)(iii) of the *Children's Act 38* of 2005 parents of children who are co-holders of parental responsibilities and rights, particularly legal guardians, both have to consent to the child being removed from the country. The relocating parent may decide to approach the court to obtain an order to relocate with the child despite the refusal of consent of the non-relocating parent and the non-relocating parent may also approach the court for an order prohibiting the relocation.[4] Currently, there is no legislative guidelines on relocation and the courts, while making use of its discretion to decide such a dispute, are required to take cognisance of section 28(2) of the Constitution which provides for the principle of the best interest of the child and also apply the factors outlined in section 7 of the *Children's Act 38* of 2005.

This paper sets out the current approach to relocation matters, through a synopsis of case law, and then discusses the new approach as captured in the proposed SALRC Discussion Paper 155 of Project 100D and how these dovetail with the Washington Declaration on International Family Relocation[5].

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* This contribution is based on the South African Law Reform Commission Discussion Paper 155 on Project 100D on RELOCATION OF FAMILIES WITH REFERENCE TO MINOR CHILDREN (hereinafter "SALRC Discussion Paper 155 Project 100D") (available at https://www.justice.gov.za/salrc/dpapers/dp155-prj100D-RelocationOfFamilies.pdf (last accessed 15 September 2025)).

1 SALRC Discussion Paper 155 page 2 referring to R. Thompson "Presumptions, Burdens and Best Interests in Relocation Law" 2015 vol. 53, *Family Court Review* 40. Thompson argues that the pure "best interests" approach to relocation is a failure and proposes presumptions and burdens to guide best interests.

2 *Ibid.*

3 SALRC Discussion Paper 155 Project 100D.

4 *Ibid.*, p. 2.

5 See "Washington Declaration on International Family Relocation", Info. Doc. No 8 of October 2023 for the attention of the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (10-17 October 2023) (available on the HCCH website, www.hcch.net, under "Child Abduction Section" and "Special Commission meetings on the operation of the Convention".

2. Historic overview of the international relocation procedure available in South Africa

Prior to the enactment of the Constitution and the Children's Act the courts' approach to relocation matters was seen as one favouring the parent with whom the child resides (usually the mother) above the parent with whom the child does not reside (usually the father).[6]The courts would allow the parent with whom the child resides to relocate to another country unless the other parent could prove that the relocation was motivated by a desire to defeat his or her right of contact with the child or that the relocation would be detrimental to the child's best interests.[7] The views and wishes of the parent with whom the child resides were considered paramount over those of the other parent with whom the child does not reside.[8] A notable concern in relation to the process of determining the best interests of a child, is that much weight was attached to the wishes and feelings of the parent with whom the child resides, rather than engaging the best interests of the child as central to the enquiry.[9]

The first reported case that challenged the aforementioned traditional approach was *Shawzin v Laufer*[10] where the court took the view that the best interests of the child should be the primary consideration in matters involving the child. Amongst the arguments that were advanced in support of the relocation by the applicant in this case was the point that the standard of living that the children will be exposed to in the country of relocation (Canada) was higher than the standard of living that was currently enjoyed by the children in South Africa. In determining the best interests of the children, Rumpff, JA rejected the applicant's argument on the possibility of an improved standard of living of the children on relocation and stated as follows:

> "do not think that to be able to live in affluence is of educative value to boys of that age; their education and happiness in these formative years depend, or should depend, on other things in life."[11]

Although not clearly captured is exact words, what appears in the case is a view that matters such as relocation disputes should be resolved by focusing on what would best serve the interests of children. Soon after the *Shawzin* case the best interests of the child were described courts as a golden thread, which runs throughout the whole fabric of our law relating to children, even though it was undefined and posed a challenge in so far as interpretation.[12]

In 1994, the case of *McCall v. McCall*[13] set out the checklist of factors to guide courts when determining what would be in the best interests of the child in family law disputes. Some of these factors included that would have relevance in relocation matters are the stability or otherwise of the child's existing environment, having regard to the desirability to maintain the

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6 SALRC Discussion Paper 155 Project 100D, p. 4.

7 *Ibid*.

8 *Ibid*.

9 *Ibid*.

10 1968 (4) SA 657 (A)

11 *Shawzin v. Laufer* at para. 669 A-B.

12 SALRC Discussion Paper 155 Project 100D, p. 5.

13 1994 (3) SA 201 (C).

status quo and the child's preference- where the court was satisfied that in the particular case the child's preferences should be taken into consideration.[14] The factors in the *McCall v. McCall* case had an influence on the factors that are now in the Children's Act, as will be seen hereunder.

3. International Relocation under the *Children's Act 38* of 2005

3.1 Introduction

The enactment of the Constitution and the Children's Act brought about a more guided approach in so far as the acquisition of parental responsibilities and rights[15] by parents, both married and unmarried, as well as to how the best interests of the child must be determine where there is dispute, including relocation cases. The Constitution provides in section 28(2) that in all matters concerning a child, the best interests of the child is the paramount consideration. Section 7 of the Children's Act sets out the factors that must guide the process of determining what is in the best interests of the child.

Parental responsibilities and rights that are central to the ability to relocate with the child are provided for in section 18(3)(c)(iii) of Children's Act which provides that a co-guardian can consent or refuse to consent for removal of child from the South Africa. Section 18(5) of the Children's Act stipulates that co-holders of guardianship over a child must all provide consent for the removal or departure of a child from South Africa, unless a competent court orders otherwise. Thus, where the other parent refuses consent then the primary care-giver or the parent that the child resides with approaches High Court for consent to relocate with the child.[16]

The Children's Act also provides in section 31, which section is titled "Major decisions involving child" that before a person holding parental responsibilities and rights in respect of a child takes any decision pertaining to matters that include the removal of the child from South Africa, 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. Furthermore, in terms of section 31(2) (a) of the Children's Act before a person holding parental responsibilities and rights in respect of the child, including in relation to the removal of the child from South Africa, must give due consideration to any views and wishes expressed by any co-holders of parental responsibilities and rights in respect of the child. A major decision is, in terms of section 31(2)(c) of the Children's Act states that where a decision is likely to change significantly, or to have a significant adverse effect on the co-holder's exercise of parental responsibilities and rights in respect of the child. Relocation matters entail major decisions and thus the provisions of section 31 of the Children's Act must be considered.

3.2 Approaches to relocation in South Africa based on case law

An assessment of case law on international relocation in South Africa is said to reveal two dominant approaches to relocation matters. Those being approaches a Pro-relocation

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14 *McCall v. McCall*, para. 202.

15 These parental responsibilities and rights include care, contact, guardianship and maintenance.

16 The Children's Act clearly provides in section 45(3)(d) that only the High Court can adjudicate relocation matters.

approach and Neutral approach.[17] As will be seen from the discussion of some of the case law, there is no consistency in terms of application of these approaches by the courts however to date cases are mainly split between the pro-relocation and the neutral approach.

3.2.1 Pro-relocation approach

One of the first cases is that of *Van Rooyen v Van Rooyen*[18] where the applicant, the mother of the children, wished to move to Australia, her country of birth with the children after divorce and the father of the children refused to give his consent.[19] The court considered numerous factors, which include amongst others, the following: what will best serve the interests of the children; the fact that the mother's wish to relocate to Australia is bona fide and genuine; how the relocation will impact favourably on the children more particularly by reason of the removal of the strife between their parents which has undoubtedly affected them and there will be more effective parenting by the mother who will be at peace with herself and at home with her family; the bond between the children and their father, which was found to be is strong and meaningful. Having considered these and other factors the court found that the court found that the mother's wish to relocate is *bona fide* and genuine.[20]

In another case, *Godbeer v Godbeer*[21], the the mother was the applicant who was the parent residing with the children and she wished to relocate with her two minor children from South Africa to England. The father of the children refused to give consent for the relocation of the children.[22] In this case the court emphasised that the applicant is the parent with residence of child and must therefore decide upon the circumstances in which she and the children should live, and that while the court is the upper guardian of all minors and may insist, in appropriate cases, upon limiting the freedom of choice of the parent with residency of the children that should not be translated into the court imposing its own subjective whims upon the children of the parties concerned.[23] The court found that both parents were not motivated by malice, ill will or bad faith in the approach they have taken in this matter and granted the relocation order.

In *Jackson v Jackson*[24] where the main issue to be decided was whether it was in the best interests of the children, considering their young age, to immigrate with their father to Australia, leaving their mother behind in South Africa. The court noted that none of the parents exercised a greater care and contact role with the children than the other. Importantly, the court found that the wish to relocate by the appellant was *bona fide* and genuine but that was balanced against the interests of the non-relocating parent to reach a decision that was in in the best interests of the children.[25]

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17 SALRC Discussion Paper 155 Project 100D, p. 31.

18 1999 (4) SA 435 (C).

19 *Van Rooyen v. Van Rooyen,* para. 439.

20 *Ibid.,* para. 440.

21 2000 (3) SA 976 (W).

22 *Godbeer v. Godbeer,* para. 981.

23 *Ibid.,* para. 977(I).

24 2002 (2) SA 303 (SCA).

25 *Jackson v. Jackson,* paras 35-36.

In the case of *JP v JC*[26] the applicant sought an order of court authorising her to relocate to England with minor children in terms of section 18(5) of the Children's Act. The applicant stated that it is in the best interests of the children that she remains the primary care giver of the children and that the primary residency of the children should remain with her. The applicant alleged that she gets a lot of assistance from her parents, who were also relocating to the United Kingdom, including financial and transport assistance for the children. The father alleged that the relocation is not *bona fide*, reasonable or genuinely taken and that that his ability to spend time with the children will be severely curtailed and his right of contact with the children virtually nullified. The court considered in this case whether the applicant's decision to relocate *bona fide* and reasonably and genuinely taken; and whether it was the best interests of the children to immigrate to England with the Applicant.[27] According to the court, when determining whether the relocation is in the best interests of a child, the court has to consider the parent with residence of the child, that is the reasonableness of her or his relocation, other practical consideration on which the decision is based and the extent to which the advantages and disadvantages of the relocation on the children have been thought through.[28]

3.2.2 Neutral Approach

In the case of *Cunningham v Pretorius*[29] the mother of the child who was also the parent with residence of the child wanted to relocate to the United States of America with the child. The relocation was on the basis that the mother wanted to be with her soon to be husband. The father of the child refused consent for the relocation as he was concerned about the strength of the relationship between the applicant and her soon to be husband.

The court noted that the respondent has made no attempt to assail the *bona fides* of the applicant's reasons for wishing to relocate. Although the court found that the applicant's decision to emigrate is not only *bona fide*, but also reasonable it remarked that this alone did not justify the granting of permission to relocate with the child.[30] According to the court other considerations in relation to the child's best interests needed to be weighed as well as the competing advantages and disadvantages of the relocation; including the impact on the relationship with the non-relocating parent.[31] The court's approach was neutral approach in that it undertook a balancing exercise, weighing up the right of the mother to move on and start a new life at the tender age of 29; the right of the father to have contact with the child as well as the child's best interests.[32]

In the case of *E v. E*[33] as well as the *KM v. JW*[34] the courts refused relocation applications indicating that they would not unnecessarily interfere with the primary residence of a child, but that what is important is weighing up the best interests of the child, other relevant factors

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26 *JP v. JC* (140572014) [2015] ZAKZDHC 73; [2016] 1 ALL SA 794 (KZD).

27 *Ibid.,* para 38.

28 *Ibid.*

29 [2008] ZAGPHC 258.

30 *Cunningham v Pretorius,* para 65.

31 *Ibid.,* para 69.

32 *Ibid.,* paras 75-79.

33 (3718/2013) [2014] ZAKZDHC.

34 95071/2016 (unreported).

as well as the wishes of the child. In both cases the applicants were mothers who had initially relocated without their children, and later sought court orders for the children to join them. In both cases the applications were dismissed.

In the case of *P v P*[35] the court ordered that one child, the older son, could relocate to Alaska with the father, while the two younger girls would remain with their mother in South Africa. In considering the matter, the court pointed out that in matters concerning the best interests of children there is no onus "in the conventional sense" and that the court needs to investigate in the matter through a more inquisitorial approach.[36]

3.3 Summing up

The codification of the factors for determining what is in the best interests of the child have fortified the guidance to courts in relocation matters. While the earlier cases appear to have had an approach that is pro- relocation, recent cases show that there is now a recognition by the courts that while the relocating parent's interests and motivation to relocate is important, the impact of that on the interests of the child should be the decisive factor.

4. Responses to some key questions pertaining to international relocation and the accessibility to courts in line with the Washington Declaration on International Family Relocation

4.1 Is legal assistance available in your State for a relocation procedure? If so, is it subject to a means and / or merits test? - Can parties to a represent themselves?

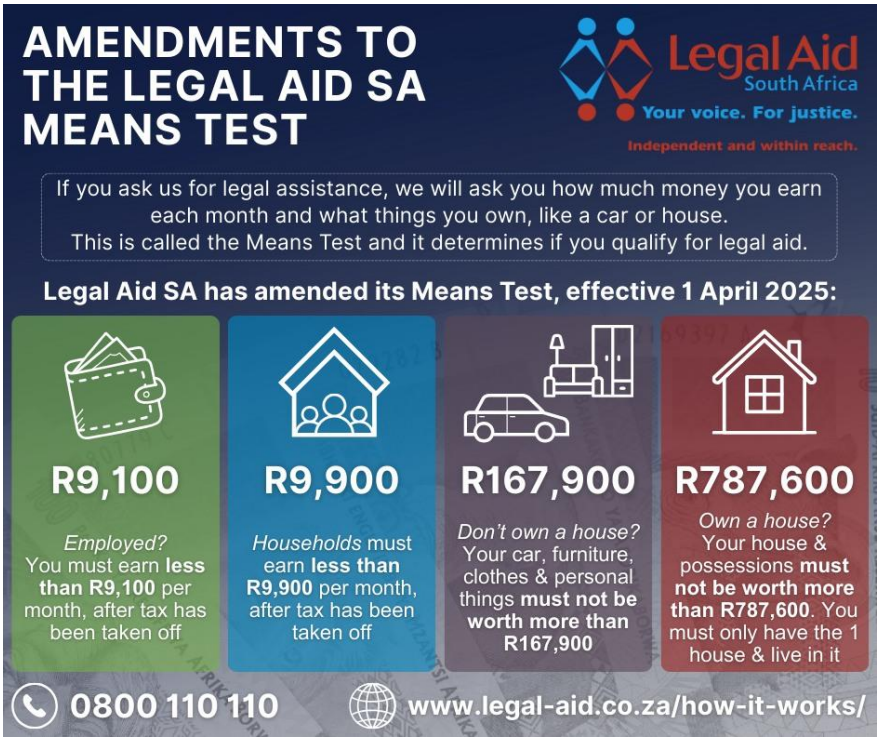
The High Court is the only court that may hear cases on relocation matters and applications to this court are not cheap. Furthermore, due to the contested nature of the matters and the implications thereof, the courts are unlikely to allow self-representation. Legal assistance is available through the Legal Aid South Africa, however such assistance is subject to the means test that determines whether the applicants a financially destitute to qualify. Legal Aid South Africa considers what applicants earn, after tax, and own:

- Applications for legal aid in civil cases where the applicant is a member of a household – applicants must earn less than R9, 900 per month.
- If an applicant owns movable assets, they must not be worth more than R167, 900.
- If an applicant owns immovable assets, they must not be worth more than R787,600.

35 [2020] 2 All SA 597 (WCC).

36 *P v. P,* para. 69.

The means test is illustrated hereunder with a picture:



4.2 Do the provisions of the Washington Declaration on International Family Relocation feature in how relocation matters are approached in South Africa?

The Washington Declaration provides a list of factors at paragraph which are relevant when decisions on relocation matters are being made. These factors link with section 7 of the Children's Act which sets out factors that the court must consider when determining what is in the best interests of the child in family law matters. Furthermore, the approach of the South African courts as set out in paragraph 3 herein, is to a great extent in line with what the Washington Declaration sets out to guide the enquiry towards the decision to grant or refuse a relocation application.

4.3 What is the impact of Domestic Abuse/Domestic Violence allegations in relocation procedures in your State?

In terms of section 7 of the Children's Act, which provides for factors that must be considered when determining the best interests of the child, the need to protect the child physical or psychological harm- including that arising from exposure to violence and any family violence involving the child or a family member of the child are factors that must be considered.[37] Therefore, where such allegations are made the court would have to consider them in line with section 7 of the Children's Act.

37 Section 7 (1)(l); 7(1)(m) and 7(1)(n) of the Children's Act.

4.4 What is the average time frame for a relocation procedure to be decided in your State? - What is the average success rate of relocation procedures in your State?

Due to the current lack of legislative guidelines both international and national relocation disputes subject of fiercely contested and protracted litigation. The time-frame would be six (6) months to a year and half. Recently, some divisions of the South African High Courts have introduced specialised Family Court Rolls as a way to expedited family law matters and avoid unnecessary delays.[38] This should reduce the time-frame for relocation applications and where there are reasons to bring matters on an Urgent basis a party can do so in line with the *Uniform Rules of Court*.[39]

4.5 Do you foresee / recommend possible improvements for relocation procedures in your State, if so on what aspects?

The lack of a uniformed approach to relocation matters prompted the South African Law Reform Commission to undertake an investigation into this matter. This process culminated in Discussion Paper 155 of Project 100D which includes proposed amendments to the Children's Act to regulate and guide the process of family relocation better. The proposed legislative amendments address issues such as the need for notice to the non-relocating parent, the time-frames for response, the possibility of mediation, the approach to court proceedings, additional elements that the court's must consider in determining the best interests of the child in relocation mattes. These are discussed in turn.

4.5.1 Notice to relocate and time-frames

The proposed Bill requires that a person who has parental responsibilities and rights in relation to a child must notify every other co-holder of parental responsibilities and rights of their proposed relocation with or without the child.[40] This provision thus entails that it is not only when the person relocating is the person whom the child resides with that this notice is given, but even where the relocating person is the parent with whom the child does not reside. Such notice must be given no later than sixty (60) days prior to the intended or proposed date for relocation. The notice must provide substantive information in relation to the proposed relocation such as date, reasons for the relocation and proposal for revised schedule for contact with the child.[41] An objection to the relocation must be filed within thirty (30) days after receipt of the notice to relocate.[42]

4.5.2 Mediation of relocation disputes

The proposed Bill requires that before an application for relocation is made, parties must attend mediation offered by a certified mediator agreed upon between them or appointed by a mediation service provider or court. Where an application is before the court and the court deems it in the best interests of any of the family members, it may at any stage refer the matter

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38 These are in in Gauteng and the Western Cape Provinces of South Africa which are the provinces with the busiest High Courts.

39 *Uniform Rules of Court (South Africa)*, Rule 6(12), available at www.saflii.org/images/superiorcourts/Uniform%20Rules%20of%20Court%20[F].pdf (last accessed 15 September 2025)).

40 SALRC Discussion Paper 155 Project 100D, p. 99.

41 *Ibid.*, p. 99.

42 *Ibid.*, p. 100.

to a certified mediator to facilitate the mediation of the relocation dispute and the court may do so without the consent of the parties to the proceedings.[43]

4.5.3 Court applications and burden of proof

In so far as the burden of proof is concerned, the proposed Bill places it on the relocating parent to prove that the proposed relocation is in the best interests of the child.[44]

4.5.4 Best interests of the child and burden of proof

The proposed Bill provides that the factors for determining what is in the best interest of the child, as provided for in section 7 of the Children's Act must be considered, and suggests further factors specific to relocation. The additional factors are as entailed in the Washington Declaration on International Family Relocation.

4.5.5 Costs

The general approach proposed by the proposed Bill is that each party to a relocation dispute should bear his/her own costs, except in exceptional circumstances. One such instance is where the relocating parent failed to give notice of relocation, then such failure may be considered sufficient cause to rode the relocating person to pay reasonable expenses and attorneys' fees incurred by the non-relocating person.[45]

5. Conclusion

The approach in South Africa to relocation disputes is one that centres the best interests of the child in line with the Children's Act. However, there has been a gap in so far as ensuring a standardised approach to these applications and also the provision of guidance to applicants in so far as the case they must present in order to convince the court that the relocation sought is in the best interests of the child or children affected. The proposed legislative amendments discussed in paragraph 4.5 above will, once enacted into legislation, assist to ensure a guided process; predictable burden of proof and hopefully reduce the acrimonious nature of family relocation disputes through mediation. The time-frame for the legislative process is not known, but we do hope that the proposed amendments will be before parliament in the near future.

43 *Ibid.*, p. 101.

44 *Ibid.*, p. 102.

45 *Ibid.*, p. 103.

United Arab Emirates

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Legal Framework in the UAE

In the UAE, personal status matters such as marriage, divorce, child custody and alimony, are governed by the UAE family Laws. The family laws are stipulated under the Muslim personal status law and the non-Muslim civil personal status laws. From the year 2005 until April 2025, the Muslim personal status matters were governed by Federal Decree Law No. 28 of 2005. However, since April 2025, a new law under Federal Decree Law No. 41 of 2024 ("**Federal Personal Status Law**") has been in force. Non-Muslim personal status matters are governed by two laws, namely, the Federal Decree Law No. 41 of 2022 ("**Federal Civil Personal Status Law**"), governing family cases in the UAE except in the emirate of Abu Dhabi and the Abu Dhabi Law No. 14 of 2021 ("**Abu Dhabi Civil Personal Status Law**"), governing non-Muslim cases within the emirate of Abu Dhabi.

Child Custody Laws in the UAE

The Federal Personal Status Law is based on Sharia principles while the Federal Civil Personal Status Law and the Abu Dhabi Civil Personal Status Law are based on international legal norms and best practices in family law. Nevertheless, all three laws underscore the importance of the involvement of both parents in the lives of their children after a divorce.

As per Article 112 of Federal Personal Status Law, children's affairs after a divorce are divided into custody and guardianship. Custody refers to the day-to-day care and wellbeing of the children, requiring physical custody, and is generally granted to the mother of the children. However, the father is granted the guardianship of the children and is in charge of the overall care and supervision of the children. On the other hand, the civil personal status laws under Article 10 of the Federal Civil Personal Status Law and Article 9 of the Abu Dhabi Civil Personal Status Law allow joint custody of children, after a divorce.

Recognition and Enforcement of Family Relocation Decisions

As the UAE is not a signatory of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the UAE courts apply its local laws in cases involving international child relocation. Consequently, when a foreign court judgement is to be enforced in the United Arab Emirates, the Civil Procedure Code of the UAE lays down certain regulations for enforcing foreign court orders or judgments. In this regard, Article 222 of the Civil Procedure Code states that judgments and orders delivered by a foreign country may be ordered to be executed in the UAE. The execution case is registered as an order on a petition before the execution judge and the judge will issue his order within five days. Although this order can be appealed, however it shall not automatically suspend the execution of the order unless the court authorizes such suspension. The court shall verify the following points before issuing the order:

(a) The court will determine whether the UAE courts have exclusive jurisdiction on the dispute;

(b) Additionally, it must be analyzed whether the foreign judgement is delivered according to the law of the country where it was issued and duly ratified;

(c) Moreover, both parties to the dispute must have been summoned and duly represented;

(d) The foreign judgement to be enforced must be a final decision.

(e) The judgement must not be against the UAE public policy.

Apart from the above conditions, the execution judge has the discretion to request relevant supporting documents before issuing his decision. Furthermore, the law clearly states that these provisions shall not prejudice the provisions of treaties and agreements that the UAE has entered into with other countries concerning the enforcement of foreign judgments.

Parental Child Abduction

There are two main scenarios in which child abduction takes place in the UAE. In the first case, a parent abducts a child from the UAE and travels with them to a different country. In this scenario, the remaining parent will be required to approach the family court to obtain legal custody of the child. Once the court appoints the parent as the legal custodian, the parent may proceed with the execution of the judgment. Subsequently, they may prosecute a criminal case of kidnapping against the other parent in accordance with Article 380 of the UAE Penal Code, as outlined in Federal decree Law No. 31 of 2022. As per Article 380, a parent or grandparent who abducts a child, even if without fraud or coercion, or refuses to return the child, will be subject to imprisonment or a fine. Upon filing the criminal case, the parent is entitled to request the Interpol to pursue an extradition request, in accordance with Federal Law No. 39/2006 on International Judicial Co-operation in Criminal Matters, also known as the judicial cooperation law. The Judicial Cooperation law governs the collaborations between the UAE and other countries in criminal matters in the absence of a bilateral or multilateral treaty with a foreign country.

In the second scenario, when a parent abducts a child from a different country and brings them to the UAE, the other parent may approach the UAE court based on any mutual treaty or convention that both countries are a part of and in line with the provisions of the UAE Civil Procedures Law. Any judgment issued by the foreign courts may be enforced in the UAE, subject to prerequisites of the aforementioned provisions of the UAE Civil Procedures Law.

However, if there are no treaties or conventions between the two countries, the other parent can file a new case for relocation. In such situations, the court may determine the child's custody, whether there is a foreign judgment to return the child, analyze whether the child was abducted, and most importantly, consider the child's best interests.

If the mother or father has a foreign court order regarding the custody of the child, they may petition the court to recognize the order. However, the enforcement of such foreign court orders will be subject to the court's assessment of whether they satisfy the requirements established by UAE law for the enforcement of such foreign court orders, as outlined in the aforementioned Article 222 of the UAE Civil Procedure Code.

If the father brought the child to the UAE after signing an undertaking to return the child, but failed to do so, the mother may file a case for the enforcement of the undertaking. She may request a provisional custody decision until the dispute is resolved and file a new custody case in the UAE to obtain child custody.

The mother may request an urgent court order to return the child to her if the child is in the custody age and the mother has suffered damages. An application may be submitted to the urgent matters court to request the return of the child if there is clear evidence of child abduction. Nevertheless, there is a possibility that the father may impose a travel ban, and the urgent matters court may refer the matter to the court in the substance case for resolution.

Parental Settlement Agreements

If a child is with a parent outside the UAE, and the other parent wishes to bring the child into the UAE for a short period of time, he/she may do so by entering into a settlement agreement with the other parent, before a UAE court. The agreement may be signed before the child travels to the UAE. This agreement is equivalent to a judgment rendered by a local court.

Parents may enter into a settlement agreement before the Family Guidance Department located within the premises of the Family Courts. This agreement may replicate the contents of any parenting order issued by a foreign court, that the parents would want to mirror in the UAE. Once executed, this settlement agreement may be regarded as a local court order having the enforcement power of a court decision issued from the procedural perspective. Consequently, the agreement can be cited by either party in the event of a breach. Once the execution case related to the signed settlement agreement is opened in the UAE, the non-resident parent may obtain the custody of the child and return to their home country as per the agreement. In order to sign the settlement agreement before the Family Guidance Department, at least one of the parties must be a resident of the UAE. Furthermore, either of the parties must submit an application in the family guidance department with a request to execute a family agreement.

Relocation Procedure in the UAE

Parents may wish to relocate children based on mutual consent. However, if either parent does not consent, the other parent may approach the court which will issue a decision based on the best interests of the children.

Under the old personal status law namely, Federal Decree Law No. 28 of 2005, only the father could request the relocation of the children. However, as per the new Federal Personal Status Law, the sole right of the father to apply for relocation has been removed. Thus, both parents can not approach the court seeking permission to relocate the children. Moreover, the Federal Civil Personal Status Law and the Abu Dhabi Civil Personal Status Law provide equal treatment between men and women and allow both parents to seek relocation orders.

The court may take into account the financial and the psychological circumstances of the parent seeking relocation, and the child's best interests, while deciding relocation matters. Other reasons include better employment opportunities in another country, the relocating parent having immigration issues due to which they are no longer legally permitted to reside in the original country, or the relocating parent's desire to live closer to family. A mother may object to relocation on the grounds that it would be detrimental to her. As previously mentioned, relocation requests were exclusively authorized by the father until recently.

Consent is also necessary in case of short-term travel with children. However, if the parents are unable to come to an agreement regarding travel with children, they may request an order from the UAE courts. The law grants both parents the right to travel alone with the child on one or more occasions per year, provided that the total travel period does not exceed 60 days

for either parent. This period may be extended if the travel is in the best interest of the children, for medical treatment, or for an urgent necessity.

As per Article 117 of Federal Personal Status Law, as guardian, the father has the right to retain the passport of the children, except in cases of travel, where he is required to handover the passport to the custodian mother. If the father refuses to deliver the passport in such cases, the mother has the right to approach the court and the judge may order the passport to be handed over to the mother. As per Article 124, the mother has the right to retain the identification documents of the children. However, if the mother attempts to misuse these documents, the court will order her to handover the documents to the father.

The Federal Personal Status law has introduced penalties in case of non-compliance by parents. According to Article 251 of the law, individuals who refuse to provide documents, without justification will be subject to imprisonment or penalties. Furthermore, if a parent transports a child out of the country without the consent of the other parent or the court, or if they misuse the children's documents that are in their possession, similar penalties may be imposed.

Family Court Procedures

In the UAE, a single court case may contain all the claims related to family matters such as custody, divorce, maintenance, and relocation. In case of urgent matters such as travel, visitation or maintenance, a parent can file an application before the Urgent Matters Judge, for a temporary decision, that will be applicable for the duration of court proceedings.

UAE Laws in comparison with the Washington Declaration

A considerable portion of the UAE laws are in line with the Washington declaration. As explained earlier in this article, consent is a key factor in relocation matters in the UAE. Moreover, similar to the principles in the Washington declaration, the UAE laws underscore the best interests of the children while deciding cases involving children. This is reflected both in the UAE legislations, and in judgements issued by the UAE courts.

The UAE law stresses the importance of the involvement of both parents in the upbringing of a child. Thus, the non-custodial parent is granted visitation rights and if the custodial parent refuses to co-operate, the other parent may approach the court which will in turn provide a visitation schedule to visit the children, after considering the best interests of the children involved.

The UAE also has an extensive mediation section under the family guidance department. This allows the resolution of familial disputes without the need to undergo the lengthy legal process. Moreover, if the disputing parties are unable to reach a settlement, they can proceed with the litigation process.

The primary difference between the UAE laws and the Washington conference is that the UAE judges do not engage in direct judicial communication with the foreign judges. Despite the fact that foreign judgments may be enforced in the UAE, the UAE courts conduct an independent analysis of the judgments in accordance with the local laws. Additionally, the United Arab Emirates is not a signatory to the Hague Conventions.

Impact of Domestic Violence allegations on the relocation process

Federal Decree-Law No. 13/2024 on the Protection from Domestic Violence lays down strict provisions against domestic violence. The definition of Domestic violence under this law not only includes physical violence but also psychological, sexual, and financial violence. Thus, Article 4 of the law defines domestic violence as any act, omission, verbal abuse, threat, or neglect - including sexual or economic exploitation – carried out by one or more family members against another. This includes actions exceeding their custodianship, guardianship, authority, or responsibility intended to cause or resulting in physical, psychological, sexual, or economic harm to the victim.

For the purpose of this law, family includes the husband, wife, children, step parents, children of either spouse from a prior marriage and individuals related by guardianship, custodianship, or legal tutorship

The law lays down provisions to protect victims of domestic violence against the perpetrators. The public prosecution may issue protection orders that prohibit any form of contact with the victim, approaching the victim at their residence or workplace, within a defined distance and timeframe, and may direct the perpetrator to provide financial support for the victim.

Conclusion

The UAE laws regarding relocation of children have witnessed considerable improvements in the last few years. With the issuance of the civil personal status laws based on international legal practices and the recently enacted personal status laws, both the father and the mother have a more equal right over their children, and can file relocation cases. Nevertheless, the UAE continues to prioritize the best interests of children involved in family disputes.

Session 4 - States that follow case law or guidelines in relocation cases

Australia

Diana Bryant, former Chief Justice of the Family Court of Australia and Member of the IHNJ, Chair of the Board of the 9th World Congress on Family Law & Children's Rights and Chair of the Drafting Committee for the March 2010 Washington Declaration on International Family Relocation

From the outset, I have to say that, in truth, Australia currently has neither case law nor guidelines on relocation. The 2024 amendments to Australia's Family Law Act pertaining to shared parenting arrangements which came into effect on 6 May 2024 significantly changed the law and I want to look at whether that will be likely to result in more relocation cases being successful.

In making a parenting order, Australian courts both before and after the amendments must regard the best interests of the child as the paramount consideration. In Australia, a relocation application would be part of an application for a parenting order. Whether it's a new application or an amendment of an existing parenting order, the court is required to determine who has parental responsibility, what arrangements can be made for both parents to be involved in the lives of their children and what would be in their best interests, particularly if one parent wants to move to a different jurisdiction.

I'll be confining my comments in this session to international relocation cases although there is little difference in the application of the law in domestic and in international cases. There is no specific procedure for relocation cases and no priority is given to them, unless a party could make a case for expedition. Neither the provisions in the Family Law Act which were in force between 2006 and 2024 nor the latest amendments had any provisions specifically dealing with relocation cases.

As I will be speaking about whether the new amendments, in my view, will make a difference in relocation cases, I will first provide an idea about what was previously in place.

Australia's Family Law Act came into operation in 1975, 50 years ago. The Act initially only had a provision that the court would consider the best interests of the child as the paramount consideration. Over the years, a number of other factors were added and, finally, in 2006, provisions were included on shared parenting arrangements. There were many presumptions which made the provisions very complex and confusing. The provisions remained as such for 20 years. In an article I wrote, I noted that there were 42 steps that a judge had to go through in making a parenting order. This has all changed, however, with the new amendments to the Act on 6 May 2024, following several law reform commission reports and various other reports.

These were significant changes. The provisions regarding shared parenting arrangements are now relatively short. The provisions outlining the general considerations a court must take into account when determining a child's best interests provide the following:

> "(a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of:
>
> (i) the child; and
>
> (ii) each person who has care of the child (whether or not a person has parental responsibility for the child);
>
> (b) any views expressed by the child;
>
> (c) the developmental, psychological, emotional and cultural needs of the child;
>
> (d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
>
> (e) the benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so;
>
> (f) anything else that is relevant to the particular circumstances of the child."[1]

This is in contrast with the complicated provisions contained in the Act before the amendments. There will no longer be a presumption of equal shared parental responsibility. Sole long-term decision-making orders will likely be made more frequently than the sole parental responsibility orders were that were made in the past. The link between equal shared parental responsibility and equal time, which was in the previous provisions, has been removed. This means that even if equal long-term decision-making responsibility is ordered, there is no compulsion to consider equal time orders as a first step. I would epect there will be less of those orders.

The concept of spending significant and substantial time with the child, measuring the time children spent with the non-primary carer parent, has been removed. There will be greater emphasis on family violence because it's now well and truly in the provisions the court has to consider when looking at the best interests of the children. Importantly, the focus on preserving a meaningful relationship has been removed as a primary consideration when assessing best interests.

So, what is the effect or likely effect of these changes on applications to relocate with children? Will they be more successful? It was argued that the previous law when enacted in 2006 made relocation more difficult. The research on the topic is sparse. Some research soon after the amendments took effect suggested a reduced success rate, but a paper in 2017 by Patrick Parkinson and Judy Cashmore didn't draw that conclusion. They actually looked at 70 cases and the statistics were rather similar to what we've heard, about 53 % of applicants were successful and the overwhelming majority of the applicants were women.

I think the simpler wording of the 2024 amendments and the emphasis on family violence will enable the court to focus more easily on the issue regarding relocation. The expectation is that family violence will impact shared parenting arrangements to a greater extent than previously.

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[1] Section 60CC of the *Australian Family Law Act*.

The sole long-term decision-making orders will be made more frequently than they were in the past, and although the decisions about relocation are not within the bundle of responsibilities covered by parental responsibility or long-term decision-making, it may be easier for a parent to succeed in a relocation application if that parent has a sole long-term decision-making order. While the provisions of the Washington Declaration aren't set out in the Act, the principles contained in the Declaration are encompassed in general terms in the amendments, and the court takes them into account. Equal time orders will be made less frequently, and relocation orders will likely be made more frequently, particularly where there's been family violence.

As the amendments took effect only 10 months ago, there are not many reported cases, and it is difficult to judge at this stage if the amendments have made a difference in the way cases are decided. In February this year (2025), a trial judge allowed a mother to relocate to Argentina where there was family violence by the father and strong parental conflict was likely if the mother stayed. The appeal by the father against the relocation was dismissed. The case was largely determined by the father's family violence and coercive control.

There have not been relocation factors or guidelines added to the Family Law Act to date. Prior to the 2024 amendments to the Family Law Act, in my view, the legislation was so complex that to add guidelines to an already complex legislation was thought to be importing an impermissible gloss on the legislation. Our High Court has, over the years, been less than enthusiastic about guidelines, particularly where the legislation was quite complex and set out what the court should take into account. That would arguably be no longer the case with the new 2024 amendments. So, it may be that the appeal court will at some point decide to create guidelines along the lines of those contained in the Washington Declaration. I personally hope this happens.

As to procedural matters, parties can represent themselves in the absence of legal representation. Legal aid is available, but subject to means and merits tests and as was said previously, there are many people who do not receive legal aid. Consideration is usually given to whether the State to which the parent wants to relocate is a Party to Conventions such as the 1980 Child Abduction or the 1996 Child Protection Convention. The court tries to finalise all cases as promptly as possible, and parties can apply for an expedited hearing. The timeframes at this point in time is about 12 to 18 months for a final hearing unless the case is expired. There is currently no data on success rates. Recognition of foreign judgments is available, while agreements made in another country are not binding but will be taken into account by the court.

In conclusion, from the perspective of Australia – watch this space!

India

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Introduction

As of March 2025, global Indian diaspora comprising of approximately over 35.42 million individuals, including about 15.85 million Non-Resident Indians (NRIs) and nearly 19.57 million Persons of Indian Origin (PIOs), necessitates evolution of robust legal frameworks to address transnational conflicts within private international law. India's domestic laws, however, struggle to cope with the complexities of cross-border family disputes, including issues such as interparental child relocation, child removal, adoption, matrimonial property division, and "limping marriages." Lack of comprehensive statutory remedies and alignment with international legal instruments often results in fragmented adjudication, forcing Courts to rely on outdated family law legislation and *ad hoc* judicial interpretations. Specifically, no statutory codified law governs or prescribes relocation of children from India to foreign jurisdictions. This paper examines the contemporary role of international Conventions as sources of private international law from an Indian perspective.

This analysis explores key areas where India's domestic legal regime could benefit from accession to international instruments such as the Hague Convention on Civil Aspects of International Child Abduction, 1980 (1980 Convention) and Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement, Co-operation in Respect of Parental Responsibility and Measures for Protection of Children (1996 Convention) Convention on International Recovery of Child Support and Other Forms Of Family Maintenance (2007 Convention). For instance, international parental child removal and voluntary relocation remains a critical challenge in India, since no Indian statutory mechanism governs relocation by consent. Likewise, relocation of children by consent to India is not permitted by foreign courts due to the lack of an iron clad guarantee of return from India. As a result, Courts often rely on judicial innovations such as mirror orders, *parens patriae* jurisdiction, and writs of habeas corpus, which attempt to uphold the welfare of the child while navigating jurisdictional constraints. Hence, as of now, the United Nations Convention on the Rights of the Child (UNCRC) ratified by India on 11 December 1992 and whose beneficial provisions are incorporated in the Juvenile Justice (Care and Protection of Children) Act, 2015 hold fort. Section 2(9) of Juvenile Justice Act, 2015 defining the "*best interest of child*" to mean the "*basis for any decision taken regarding child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development*" guides *parens patriae* jurisdiction of superior Indian Constitutional Courts in enforcing the UNCRC for domestic application within India.

Magnitude of the Problem

India is home to about 1.46 billion Indians over a territory of 3.28 million square kilometres and of these, as of March 2024, global Indian diaspora comprises approximately 35.42 million individuals, including about 15.85 million Non-Resident Indians (NRIs) and nearly 19.57 million Persons of Indian Origin (PIOs). These global Indians have inhabited, settled and thrived in over 103 countries across the globe. Undoubtedly, these international Indians are a unique nationality by themselves. They propel a dire need for a global law to govern their conflicts.

Link and retention of their ties with their extended families in India and abroad has found expression in issues relating to nationality, citizenship, marriage, divorce, spousal maintenance, alimony, inter-parental child removal, custody and guardianship of children. Besides this, it is in the division of matrimonial property, inter-country adoptions, succession and inheritance of Indian property and last but not least in surrogacy arrangements, that links prevail. Domestic violence in abusive marriages of international couples has created a new jurisprudence. Foreign Courts and overseas law practitioners are at sea attempting to resolve these problems for lack of any updated or amended Indian laws or reasoned interpretation of law on these subjects. Conflict of laws is galore. In the face of such a situation, effective remedial solutions can only be found through India's accession to International Conventions as the prime source to resolve disputes in private international law matters. There is no specific statutory or codified legislation in India to govern voluntary relocation of children from India to foreign jurisdictions when parents are separated or divorced and live in different countries. Hence, there is no judicial mechanism to adjudicate any such petitions due to a lack of statutory remedies for such relief of voluntary child relocation.

International Child Removal, Relocation and Child Support Issues in India

International parental child removal and relocation in India is an important contemporary legal issue, which risks relocated or removed children not being returned to their country of habitual residence because of the operation of various legal systems of countries involved and India not being in alignment with foreign Court Orders. Support is available for those countries which are signatories to 1980, 1996 & 2007 Conventions. However, when a child is removed or relocated between countries which are not part of this global collaboration, it is the domestic law of countries to which the child has been taken, or in which the child has been retained, that will govern the issue. This creates uncertainty over whether a child will be returned to the State of habitual residence, and it is innocent children who suffer in such situations.

Parens Patriae Writ Jurisdiction

Against the backdrop of this statutory position, the Supreme Court and High Courts in India, in exercise of their extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India respectively, can issue a prerogative writ of Habeas Corpus exercising jurisdiction as *parens patriae* in their best discretion to adjudicate upon conflicting claims of parents for relocation, support and welfare of children. Hence, invoking writ of Habeas Corpus by a non-resident parent for child custody or for violation of consensual relocation, on the strength of a consequential foreign court custody order is only an efficacious, speedy and effective remedy because the minor 'ordinarily resides' abroad and there is a bar of jurisdiction under GWA for a guardianship petition before a Guardian Judge, and the fact that violations of consensual relocation find no statutory definition under the GWA.

Indian Case Law: Historical Position

In matters relating to inter-country parental child removal, the position of the law has varied. In *Surinder Kaur v Harbax Sandhu*[1] and in *Elizabeth Dinshaw v Arvand Dinshaw*[2] the Supreme Court of India, exercising summary jurisdiction, returned removed minor children to their foreign country of origin on the basis of foreign court custody and violation of relocation orders. However, in *Dhanwanti Joshi v Madhav Unde*[3] and in *Sarita Sharma v Sushil Sharma*[4] the Supreme Court of India favoured keeping welfare and the best interests of the child in mind over all other aspects. Accordingly, foreign Court Orders were held to be only one consideration in adjudicating child custody disputes, which were to be decided by domestic courts on the merits of each case. Subsequently, in *Dr V Ravi Chandran v Union of India,*[5] the Supreme Court of India held that Courts in foreign jurisdictions which had already passed prior custody/relocation orders or consent orders between parties earlier, ought to take cognisance in subsequent issues also. In *Arathi Bandi v Bandi J Rao,*[6] the Supreme Court of India held that the mother was singularly responsible for the removal of the child from the jurisdiction of the United States (US) Courts and summary jurisdiction was exercised for the return of the child to the US. In *Shilpa Aggarwal v Aviral Mittal*,[7] the Supreme Court of India held that the country in which the child has been living during the initial years of his life, will be the determining factor with respect to which jurisdiction has the most intimate contact with the child for the purposes of adjudicating issues relating to custody. Accordingly, Courts of that country will have jurisdiction to decide custody issues of children. This also accords with the principle of comity of Courts. The Supreme Court of India, in *Surya Vadanan v State of Tamil Nadu*,[8] settled a five-decade chain of varying precedents laid down by courts in India to create a consistent approach in multijurisdictional child custody disputes.

Decision on Custody/Relocation AL vs. KL, 2021 SCC OnLine 224

In a matter of non-consensual relocation of a child outside of India, and upon return to India, the Supreme Court of India ruled as follows:

- Family Courts are to follow the procedure under the Civil Code & Evidence Act to determine custody/relocation rights in Guardianship petitions.
- Adjudication of possible, agreed joint parenting arrangements are to be determined by evidence in the Family Court with a child centric approach.
- Relocation of a child without the consent of the Family Court is not possible.

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1 *Surinder Kaur v. Harbax Sandhu* AIR 1984 SC 1224

2 *Elizabeth Dinshaw v. Arvand Dinshaw* AIR 1987 SC 3

3 *Dhanwanti Joshi v. Madhav Unde* 1998(1) SCC 112

4 *Sarita Sharma v. Sushil Sharma* 2000(3) SCC 14.

5 *Dr V Ravi Chandran v. Union of India* 2010 (1) SCC 174

6 *Arathi Bandi v. Bandi J Rao* Judgments Today 2013 (II) SC 48.

7 *Shilpa Aggarwal v. Aviral Mittal* 2010 (1) SCC 591.

8 *Surya Vadanan v. State of Tamil Nadu* 2015 (5) SCC 450.

- Interparental child removal is not an Indian statutory offence and is not recognised by any Indian law. India has not acceded to the 1980 Convention.

Recent Developments

However, in *Nithya Anand Raghavan v. State of NCT of Delhi and Another*,[9] the Supreme Court abolished the principle of comity of Courts and the principle of 'first strike' in matters relating to inter-country, inter-parental child custody disputes. Further, in *Prateek Gupta v Shilpi Gupta and Others*,[10]the Supreme Court held that there is *forum non conveniens* in wardship jurisdiction and the welfare of the child is the paramount consideration. Hence, foreign Court Orders taking notice of violated consensual relocation to India are only one consideration in adjudicating the return of children to foreign homes. This, in turn, is also a big deterrent for foreign Courts to relocate children to India.

Evolving Use and Utility of Mirror Orders as an Alternative Relocation Mechanism

Typically, mirror orders arise when two Courts in different jurisdictions adopt equivalent custody or protective provisions to ensure consistency and enforceability. However, a Family Court's ruling does not explicitly constitute a mirror order in and of itself. The mirror-like nature of orders only becomes evident in subsequent proceedings, particularly through interaction between an Indian and a foreign Court.

Mirror Order Jurisprudence in Jasmeet Kaur v Navtej Singh: A Possible Solution

Noteworthy evolving jurisprudence in *Dr Navtej Singh v. State of NCT*[11] is noted with respect to compliance by a US court in passing "mirror orders" for the implementation of directions of a Delhi High Court judgment dated 6 March 2018 in *Dr Navtej Singh*[12] as a condition for directing the return of a mother along with her two children to the US. Under fresh US Court orders dated 14 May 2018, the children were to remain in the custody of the mother. The US Court directed that the mother was to return immediately to the US with the minor children, who were to remain in the custody of the mother with the father having reasonable interim visitation. The US Court also approved the father's affidavit of undertaking confirming his conduct of compliance with the directions of the Delhi High Court contained in a judgment dated 6 March 2018 in *Dr Navtej Singh*. These directions were affirmed by the Supreme Court of India, in *Jasmeet Kaur v State (NCT of Delhi) & Anr.*[13] Happily, in June 2021, after deliberation between the parties, the mother along with the two children returned to the US for final determination by the US Courts and are now following the US legal process.

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9 *Nithya Anand Raghavan v. State of NCT of Delhi and Another* AIR 2017 SC 3137.

10 *Prateek Gupta v. Shilpi Gupta and Others 2017 SCC Online SC 1421.*

11 *Ibid.*, 30.

12 *Ibid.*, 30.

13 *Ibid.*, 29.

Maintainability of Habeas Corpus as *Parens Patriae* to Return Children to the Jurisdiction which has the Closest and Most Intimate Contact

From our reading of the consistent position of settled law, it can be concluded that the 'doctrine of jurisdiction of most intimate contact' has been consistently followed by the Supreme Court in upholding the exercise of *parens patriae* jurisdiction in Habeas Corpus petitions filed before the High Court for the return of children to foreign jurisdictions. This principle has not been deviated from, differed, dissented or distinguished.

Exercising of *Parens Patriae* Jurisdiction for Directing Return of Children

Because of the above situation, in child relocation and removal cases, jurisdiction of closest contact to determine the welfare of children lies mostly with foreign Courts. The High Court in Habeas Corpus petitions rightly exercises its *parens patriae* jurisdiction to undertake an inquiry to reach a conclusion that it would be in the best interests of minor children to return to the jurisdiction with which they have the closest connection and most intimate contact.[14] Accordingly, the writ petition of Habeas Corpus for the return of minor children to the country of their original home was maintainable as the High Court exercised its *parens patriae* jurisdiction to examine the best interests of minor children and passed directions for their return upon coming to the conclusion that it was in welfare of children to return to the country of their original home to decide their welfare and best interests.

Balancing Acts: Navigating International Custody Disputes in Indian Courts - Insights from Bombay Judgment and Comparative Legal Perspectives

A Bombay High Court judgment of 7 February 2024, in the case of *Ne v. A*[15], is a landmark ruling that delves into intricate issues of international child custody, application of the Hague Convention on Civil Aspects of International Child Abduction, and legal principles governing child welfare across borders. Kudos to Court, in a record span of 7 weeks, N was returned to the Netherlands by a summary adjudication of a Habeas Corpus petition. This case exemplifies the legal challenges and ethical considerations that arise when family law disputes transcend international boundaries, highlighting the conflict between national jurisdictions and the need for international legal harmonisation to protect the best interests of children involved in cross-border custody disputes.

The erudite decision of Justices Gadkari & Chandak is significant for several reasons. Firstly, it addresses the complexities of applying the Hague Convention in countries like India, which is not a signatory, and how its principles are interpreted within the Indian legal framework. The Court's meticulous analysis of the Convention's objectives, alongside Indian laws pertaining to child custody and welfare, underscores the global challenge of ensuring children's rights are safeguarded when parental disputes cross international lines.

Secondly, the judgment showcases the Court's approach to evaluating the best interests of a child, 'N', in a situation fraught with legal and emotional complexities. The Court's

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14 *Surinder Kaur Sandhu Vs. Harbax Singh Sandu, 1984 (3) SCC 698.*

15 *Ne v. A*, 2024 NCBHC-AS 5998 : 2024 ALL MR(Cri) 1044.

consideration extends beyond immediate legal frameworks to encompass the child's psychological wellbeing, social and cultural integration, and long-term impact of its decisions on the child's development. This approach reflects a growing international consensus on prioritising child welfare over procedural legalities in custody disputes. Furthermore, the case illustrates the legal quandaries faced by mixed-nationality couples and the cultural implications for their children.

The intricate legal battle between Ne and A, involving courts in both the Netherlands and India, highlights the challenges of navigating multiple legal systems with differing approaches to custody and child welfare. The Court's effort to strike a balance between respecting international legal commitments, such as those proposed by the Hague Convention, and domestic legal principles governing child welfare, is a delicate endeavour that requires careful consideration of all the factors affecting a child's best interests. Moreover, the judgment brings to light the limitations and potential areas for improvement in international legal frameworks dealing with child abduction and custody disputes.

This position underscores a broader tendency within Indian legal practice to navigate international family law issues through its domestic legal framework, rather than through international treaties. The rights of N as a child find expression in the Court's admirable interpretation of Indian law. However, the Court's reference to principles of Hague Conventions in their judgments to uphold the best interests of the child, indicate an informal acknowledgment of international norms within the confines of Indian law.

The judgment in the case of *Ne v. A* reflects this nuanced stance. While India's obligations under the Hague Convention are not directly applicable, Indian Courts have demonstrated a willingness to engage with the underlying principles of the Conventions, especially those pertaining to the child's welfare. This approach is indicative of a broader trend in Indian private international law, where Courts balance respect for international legal principles with imperatives of domestic legal contexts. Domestic law in motion navigates international roads to the destination of justice for children - a salute to the vibrant Indian judiciary.

Moreover, the judgment referenced above sheds light on the importance of legal reform and international co-operation to address the limitations of the current framework. Authors advocate for greater harmonisation of laws and enhanced judicial co-operation between countries to better serve the interests of children involved in international family disputes. This call for reform resonates with the challenges highlighted by the Bombay High Court in navigating the complex interplay between the Indian and Dutch legal systems in the case at hand. The Court's nuanced approach in this case sets a precedent for future international custody disputes, emphasising the importance of a holistic and child-centric approach in such disputes. It calls for attention to the dire necessity for legislators, legal professionals, policy-makers, and international bodies to work collaboratively towards creating a more cohesive and child-friendly international legal system.

The case is a reminder of the ongoing challenges in balancing national legal sovereignty with the global imperative to protect children's rights and welfare in an increasingly interconnected world. In summary, the *Ne* judgment of February 2024 is a testament to the evolving nature of family law in the context of globalisation and international mobility. It highlights the complexities of international custody disputes and the paramount importance of focusing on child welfare in inter se parental legal proceedings.

Cyclical Custody of an Incapable Adult in the UAE: Y vs. X, 2023:KER:80740, affirmed by the Supreme Court on 15 October, 2024

In a very unique case of an incapable adult, access and visitation to the mother in India was provided by a Court intervention in the UAE, where non-consensual relocation had taken place by the father. Extending its jurisdiction to the UAE, the Courts held as follows:

- The incapable adult has the right to have the company of both parents.
- The India-based mother who was appointed guardian has access in the UAE.
- Both parents appointed as joint guardians in the UAE by the Court.
- The Indian Courts have jurisdiction in determining the best interests and welfare, if the parent has no legal remedy in Courts beyond Indian territory.
- Cyclical custody of the incapable adult in the UAE was granted to the mother.

This unique alternative exercise of *parens patriae* jurisdiction was an excellent mode of support, contact, shared parenting by Courts, outside of Hague Conventions.

India and 1980 Hague Convention Report of Justice Rajesh Bindal Committee

The Ministry of Women and Child Development established a 13-member high level Committee, on 18 May 2017, to examine issues relating to international parental child abduction. Model legislation was suggested to safeguard the interests of parents and children both within India and beyond its territorial borders. Proposed legislation drafted by the Committee, Protection of Children (Inter-Country Removal and Retention) Bill 2018, defined, for the first time, wrongful removal or retention of children as an act that breached the rights of custody actually exercised before such violation occurred by a natural parent, by reason of a judicial order, operation of law or an agreement.

Notwithstanding the outstanding efforts of those involved, the Bill did not become law, and India currently remains a non-Convention country. Evolving mirror order jurisprudence in child custody matters in India, under which the US Court passed mirror order directions to comply with a judgment of the Delhi High Court, may be a possible way forward to establish a precedent for the return of children to their homes of foreign jurisdictions. This mirror order formula, evolved by judicial mechanisms through far-sighted wisdom of Indian Courts, aims to ensure the best interests and welfare of children, as well as to provide them with a family life encompassing the love, care and affection of both parents. It can be cited as a possible method for the return of children to foreign jurisdictions, until a law on the subject is enacted and some adjudicatory dispute resolution process is implemented. This being the only acceptable method to contesting parties, it can cut down litigation time of alternative protracted contested proceedings. A mirror order helps ultimately if granted by the High Court and approved by the Supreme Court on appeal. Since there is presently no other solution to deal with abduction cases in India, this is the only workable formula, regardless of the fact that the High Court mirror order may find challenge in a time-consuming appeal to the Supreme Court. It is hoped that if such an evolving mirror order jurisprudence finds judicial approval in India, children removed to India will benefit by being reunited with both parents in their foreign abode. If such a practice is endorsed, it may also encourage foreign Courts to permit children residing abroad to visit their extended families in India, if an assurance is found for their return by a mirror order jurisprudence. This may, perhaps, be the best stop-gap arrangement that can evolve through mechanisms of Courts until a legislative solution is found to address inter-

parental child removal. Until then, in India, matters will continue to be decided within *ad hoc* parameters, in the best interests and welfare of children on a case-by-case basis.

Conclusion

In conclusion, the concept of "**lawful**" cross border relocation to and from India to foreign jurisdictions, does not find statutory recognition under Indian statutory laws as both parents are natural guardians with equal parental rights. Parental child removal is not a wrong under current codified Indian laws. Hence, even violation of any consensual relocation does not find recognition under any visualised definition of child removal in India. It may find favour in a Habeas Corpus petition under the Constitution of India as a discretionary relief in *parens patriae* extraordinary jurisdiction, in the best interests and welfare of the child in the wisdom of the High Court/ Supreme Court, on the facts and circumstances of a case. However, there is no Indian statutory or codified law to relocate children to foreign jurisdictions. Mechanisms of the 1980, 1996 and 2007 Conventions are not available in India. Likewise, India has no legislative procedure to guide or govern relocation of children to India, if there is no return of a child to India from a foreign jurisdiction. Further, not being a party to the 1980, 1996 & 2007 Conventions, there is no legal procedure prescribed in Indian law to approach authorities in foreign jurisdictions to return children to India. This, in turn, is a very big deterrent for relocation of children to India shifted either by parental consent or by foreign Court Orders, since there is no assured return of the children from India to foreign jurisdictions. In such a situation, India is a standalone jurisdiction in which the concept of "**lawful**" cross border relocation is not a codified concept. Even "wrongful" relocation defies definition. Hence, lawful cross border relocation is only a consensual arrangement between private parties, dehors any statute. But due to its pitfalls on violation, even "**lawful**" relocation is a rarity in practice. Therefore, unless and until India accedes to the 1980, 1996 and 2007 Conventions, the process of lawful cross border consensual relocation with a defined mechanism of return will remain unresolved. Accession to the Hague Conventions, preceded by India enacting domestic legislation to incorporate the beneficial provisions of Hague Conventions, is the only possible permanent lawful solution.

United Kingdom (England & Wales)

Lord Justice Stephen Cobb, Court of Appeal Judge, Royal Courts of Justice, London

Introduction & context

In March 2010, the Rt Hon Lord Justice (Mathew) Thorpe (hereinafter 'Thorpe LJ'), then Head of International Family Justice, represented the views of England and Wales at the meeting organised by the Hague Conference on Private International Law (together with the International Centre for Missing and Exploited Children) which launched the Washington Declaration. I feel honoured to stand in his shoes and privileged to be able to participate in this important event, fifteen years on.

In his short article for the *Judges' Newsletter* which followed this conference (Special Edition: 2010[1]), Thorpe LJ described the common law jurisdiction in England and Wales in relocation cases as having evolved from the "relatively modest case" of *Poel v. Poel*.[2] It is indeed widely acknowledged in England and Wales that *Poel* laid the foundation stone of our modern jurisprudence, and the principles in *Poel* continued to influence legal philosophy in this area throughout the decades which followed. In that 'founding' case, Sachs LJ had made clear that a court exercising the family jurisdiction on an international relocation application would not "lightly interfere"[3] with the "reasonable way of life as is selected by that parent to whom custody" had been awarded, even if that meant moving abroad; it was "one of those things" that the non-custodial parent "may well have to bear"[4] – the court showing disarming indifference to the role of the respondent/left-behind parent. Thorpe LJ later described how the approach in *Poel* established something of a "presumption" (in the non-legal sense) in favour of the reasonable application of the custodial parent[5]; the award of 'custody', it seems, came with a one-way ticket.

Forty years on from *Poel*, the court looked again at these cases in *Payne v. Payne*[6]. The judgment of Thorpe LJ was expressly predicated upon an 'assumption' (for the purposes of the judgment) that "[…] relocation applications are only brought by maternal primary carers". He described, as one of the rationales for the long-standing approach to such cases, the:

> "[…] clear interaction between the approach of courts in abduction cases and in relocation cases. If individual jurisdictions adopt a chauvinistic approach to applications to relocate then there is a risk that the parent affected will resort to flight."[7]

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1 "International Judicial Conference On Cross-Border Family Relocation (23-25 March 2010, Washington, D.C., USA)", The *Judges' Newsletter* on International Child Protection, Special Edition No 1, The Hague, 2010.

2 [1970] 1 WLR 1469 (Court of Appeal).

3 *Ibid.*, p. 1473.

4 *Ibid.*, p. 1473.

5 See his comments in *Payne v Payne* [2001] EWCA Civ 166 at [25] (last accessed 15 September 2025).

6 *Ibid.*

7 *Ibid.*, para. 28.

In *Payne*, Thorpe LJ proposed that "the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability"[8], and he posed a set of questions which he recommended should be asked in any such case, focusing enquiry on the attitudes and motivations of the parents, albeit that the answers to these questions were to be "subject to the overriding review of the child's welfare as the paramount consideration".[9] In this way, he sought to pull the pendulum more towards the midline of welfare. That said, he went on to add:[10]

> "In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor."

Payne was followed three years later by *Re B, Re S* [2003][11], in which Thorpe LJ developed his thinking further; in this case, he said that if:

> "[…] the court frustrates the natural emigration [mother with new partner] it jeopardises the prospects of the new family's survival or blights its potential for fulfilment and happiness. That is manifestly contrary to the welfare of any child of that family. Often there will be a price to be paid in welfare terms by the diminution of the children's contact with their father and his extended family."

It may reasonably be thought that the ghosts of Mr and Mrs Poel had not entirely been laid to rest.

By the time he visited Washington in 2010, Thorpe LJ was having second thoughts about this approach. In his speech to the Washington conference in 2010 he said this:

> "[…] as recently as [nine] years ago, I was delivering the lead judgment in the case of Payne, which again upheld the principles in Poel. Would I do so again now in 2010? Exposing my heart, I have to say that I do not think that I would, and that is because the movement in the international market has demonstrated how isolated we have become in our stated and applied principles."

In expressing himself thus, he reflected particularly on the evolving recognition of the importance of parental responsibility for fathers, and the changed nature of post-separation 'custodial' arrangements. He referred in his piece to the conference in 2010 to the "almost archaic decision" of *Poel*.

Progress

Unsurprisingly 'progress' in judicial thinking in England and Wales about international relocation cases developed quickly and authoritatively following the 2010 Washington

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8 *Ibid.*, para. 32.

9 *Ibid.*, para. 40.

10 *Ibid.*, para. 41.

11 [2003] EWCA Civ 1149 (last accessed 15 September 2025).

Conference. In the following year, a strongly constituted Court of Appeal in *K v. K*[12] shifted the dial away from the philosophy of *Payne*. The three judges did not speak with one voice, and Thorpe LJ found himself in the minority in observing that while *Payne* continued to apply to 'primary residence' cases, it did not apply to a shared care arrangement. Moore-Bick LJ[13] and Black LJ drew the focus *away* from the concepts of primary care or shared care arrangements, and *away* from the passages in *Payne* which had drawn attention to the parental attitudes, by asserting the view that:

> "[…] the only principle of law enunciated in Payne v Payne is that the welfare of the child is paramount; all the rest is guidance. Such difficulty as has arisen is the result of treating that guidance as if it contained principles of law from which no departure is permitted. … the circumstances in which these difficult decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interests of the child."[14]

Black LJ agreed, adding that:

> "[…] the only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child."[15]

Black LJ added that *Payne* should not be treated as offering "rigid principle" […] "in a sphere of law where the facts of individual cases are so infinitely variable".[16]

In the following year, Munby LJ in *Re F*[17] followed suit. He confirmed that there could be:

> "[…] no presumptions in a case governed by section 1 of the Children Act 1989. From beginning to end the child's welfare is paramount, and the evaluation of where the child's best interests truly lie is to be determined having regard to the 'welfare checklist' in section 1(3)."

There then followed two important Court of Appeal decisions in the context of 'public law' family cases (cases where the state is involved in family life). In *Re G (Care Proceedings: Welfare Evaluation)*[18] McFarlane LJ referred to the need for the court to undertake "[…] a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare." This was endorsed by Sir James Munby P in *Re B-S (Children)*[19]: "The judicial task is to evaluate all the options, undertaking a global, holistic and […] multi-faceted evaluation of the child's welfare which takes into account all the negatives

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12 [2011] EWCA Civ 793 (last accessed 15 September 2025).

13 *Ibid.,* para. 86.

14 *Ibid.* Moore-Bick LJ, para. 86.

15 *Ibid*., para. 141.

16 *Ibid*., para. 142.

17 [2012] EWCA Civ 1364, para. 37 (last accessed 15 September 2025).

18 [2013] EWCA Civ 965, para. 50 (last accessed 15 September 2025).

19 [2013] EWCA Civ 1146 (last accessed 15 September 2025).

and the positives, all the pros and cons, of each option".

These passages found their way into the lead judgment in the next international relocation case to come before the Court of Appeal in (and confusingly also called) *Re F* in 2015[20] in which Ryder LJ said that:

> "Where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary[…] it is […] necessary to consider the options side by side in a comparative evaluation."[21]

Ryder LJ reinforced the point that international relocation cases engage Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (hereinafter "ECHR"), and suggested that both parents' plans must be "scrutinised and evaluated by reference to the proportionality of the same".[22] McFarlane LJ, giving a supporting judgment in *Re F*, returned to his theme from *Re G*, in adding that "the overall balancing exercise is 'holistic' in that it requires the court to look at the factors relating to a child's welfare *as a whole*" (emphasis in the original). There has been little significant movement of the common law since 2015. The principles which every court will follow are now reasonably settled.

Relevant to a review of 'progress' in the field of private family law in England & Wales over the last decade properly calls for reference to the cultural shift which has taken place in relation to the understanding and acknowledgement of domestic abuse and its impact on children and families. The growing recognition of this issue within the Family Court is illustrated, among other ways, by a combination of:

a. Amendments (2017) to the 2010 Practice Direction (PD12J) which provides the template for the case management of private law cases involving domestic abuse (including a much wider definition of what constitutes "domestic abuse")[23],

b. A detailed Government-backed review (2019-2020)[24] which reported on how effectively the family courts identify and respond to allegations of domestic abuse and other serious offences,

c. Two significant judgments of the Court of Appeal in *Re H-N* [2021][25] (in which the court looked carefully at controlling and coercive behaviour and patterns of abuse) and *K v K* [2022][26] both of which gave guidance to all family judges about the correct approach to domestic abuse issues;

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20 [2015] EWCA Civ 882 (last accessed 15 September 2025).

21 *Ibid.,* para. 30.

22 *Ibid.,* para. 31.

23 PRACTICE DIRECTION 12J – CHILD ARRANGEMENTS & CONTACT ORDERS: DOMESTIC ABUSE AND HARM – Justice UK (last accessed 15 September 2025).

24 Assessing Risk of Harm to Children and Parents in Private Law Children Cases (last accessed 15 September 2025).

25 [2021] EWCA Civ 448 (last accessed 15 September 2025).

26 [2022] EWCA Civ 468 (last accessed 15 September 2025).

d. The Domestic Abuse Act 2021, which *inter alia* made provision for the granting of measures to assist individuals in certain circumstances to give evidence or otherwise participate in civil proceedings.

For an illustration of an international relocation case which involves discussion of domestic abuse issues (albeit pre-dating some of these more recent initiatives), see *Re CB (International Relocation: Domestic Abuse: Child Arrangements)*.[27]

Perspectives

In considering the current "perspectives" on international relocation, I address the specific topics set out in the "guidance for panellists" which was helpfully provided by the HCCH secretariat.

Is there a relocation procedure? While there is no statutory code in England & Wales which governs international relocation cases, or specific procedure, there are two complementary and well-understood statutory routes to making such an application; if the relocating parent already has a child arrangements order to the effect that the child lives with them, they make an application under section 13 of the Children Act 1989[28]; where there is no existing child arrangements order, then the court is asked to make a specific issue order under section 8 of the Children Act 1989[29]. There is no material difference in the welfare test which the court will apply. It is effectively a single procedure for the determination of parental responsibility and contact; maintenance would be dealt with separately.

While looking at the Children Act 1989, it is appropriate to mention here a small and not unimportant statutory amendment which was introduced to the Children Act 1989 in 2014[30]; this laid particular emphasis on the need for the court to ensure that, in making any of the wide range of child arrangements orders (of which an international relocation order would or could be included), it promotes the relationship of the child with *both* parents. Thus, the court is "to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare" (section 1(2A) of the Children Act 1989). It was said in *Re F* in 2015 (see above) that this provision "[…] will in future heighten the court's scrutiny of the arrangements that are proposed by each parent" (emphasis in the original).[31]

Legal aid? Legal aid is not generally available for applicants or respondents to international relocation applications unless domestic abuse is raised as an issue. To qualify for legal aid, individuals must provide specific evidence, known as 'gateway' evidence, to demonstrate domestic abuse or child abuse. 'Gateway' evidence may include evidence of a police caution for a domestic violence offence, a conviction for a domestic violence offence, a letter or

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27 [2017] EWFC 39 (last accessed 15 September 2025).

28 "Where a child arrangements order [which sets the arrangements which relate to with whom the child concerned is to live] is in force with respect to a child, no person may— (a)cause the child to be known by a new surname; or (b) remove him from the United Kingdom; without either the written consent of every person who has parental responsibility for the child or the leave of the court."

29 "A specific issue order" means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

30 October 22, 2014: section 11 of the *Children and Families Act* 2014.

31 Ryder LJ, para. 35.

report from an appropriate health professional or referral to a domestic violence support service, a letter from an organisation providing domestic abuse support services, leave to remain in the UK as a victim of domestic abuse, a protective injunction or undertaking or findings made in a family court.[32] Realistically, respondents will rarely qualify for legal aid.

Legal aid will then be subject to both means and merits testing. Therefore even if the applicant passes through the 'gateway', they must also be financially eligible to receive legal aid, from both an income and capital (i.e. assets) basis, and the overall likelihood of success in the case should be sufficient enough to justify the use of public funds.

Not uncommonly, applicants and respondents in relocation cases represent themselves.

Relocation to a 1980, 1996 2007 Convention Country? It would indeed be relevant to the determination by the Family Court of England & Wales of an international relocation application that the destination country is a signatory to one or more of these Conventions.[33] Where the destination country is *not* a party to the 1996 Convention, the position is considerably more complex. The most common approach adopted in England where the relocation is to a non-1996 Hague country is for the court to require the relocating parent to obtain a 'mirror order' in the destination country (where a full order is made in this jurisdiction, and the court in the destination country is asked to produce an exact replica of it which therefore becomes recognised and enforceable there, and vice versa). This can be time-consuming, costly, and cumbersome. Many non-Hague Convention countries will not be familiar with the idea of a mirror order; in such circumstances, it is possible that undertakings, financial bonds and other security can be used as possible leverage to ensure contact is maintained and foreign relocation decisions and agreements are recognised. Whether these are in fact effective is, I regret, a moot point.

Is the Washington Declaration followed in England & Wales? The Washington Declaration 2010 promotes sound, child-focused principles for the determination of these cases. While I have to acknowledge that it is rarely referenced expressly by judges in the Family Courts of England and Wales[34] (it is mentioned more in proceedings in Scotland and Northern Ireland), the principles which it promotes are well-recognised and adopted in our jurisprudence on international relocation, within the 'holistic' analysis of welfare which the court undertakes. That said, paragraph 4 of the Washington Declaration 2010 does not include the impact of grant/refusal on the parent who is seeking permission to relocate; the Family Court of England & Wales may consider this to be relevant insofar as it impacts on the welfare of the child.

Time frames and success rates? Data on time frames and success rates is hard to come by. In the second quarter of 2024, the average length of a 'private law' case (of which international

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32 The *Civil Legal Aid (Procedure) Regulations* 2012 (regulation 33) (last accessed 15 September 2025).

33 See especially Art. 23 of the 1996 Convention: "The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States".

34 It is discussed in *Re H* [2010] EWCA Civ 915, para. 26 (last accessed 15 September 2025): Wilson LJ (as he then was): "The Washington Declaration is, in my view, extremely interesting and… it may prove not only to be a valuable means of harmonising the approaches of different jurisdictions to the determination of applications for permission to relocate but ultimately also to become the foundation of some reform of our domestic law." It was also mentioned in *C v B* [2015] EWHC 456 (Fam), para. 81 (last accessed 15 September 2025).

relocation would be one) was 41 weeks.[35] A 2012 study suggested a 66.7% success rate[36], but there have been developments in the case law since then, and I could not confirm this to be currently reliable.

Improvements/Reform? Since 2015, the case law has settled the relevant tests which are now universally applied in international relocation cases; there is no call for specific codification of the law relevant to relocation. Efforts are currently underway to improve the timeliness of private family law applications by the introduction of a 'pathfinder' process[37]; this is likely to benefit (directly or indirectly) the swifter passage of relocation cases through the courts.

Recognition and enforcement of foreign relocation orders? As a signatory to the 1980 and 1996 Hague Conventions, the courts of England & Wales will recognise orders made in other signatory countries, and have measures available for enforcement. For example, Article 21 Hague Convention 1980 is routinely deployed for applicants seeking access to the Family Court by a parent who seeks contact (access) with his/her child. One of the benefits of this mechanism in England and Wales is that non-means, non-merit tested public funds (legal aid) are available for the applicant.

For many of the reasons set out above, in determining an international relocation application, the judges of the Family Courts of England & Wales focus on proposed contact arrangements for the respondent parent; but what actually happens to the contact arrangements after a relocation is something of an unknown quantity. Detailed contact schemes are often devised, agreed or ordered, to facilitate the continuation of a relationship with the left-behind parent. But does the contact actually happen? I suspect not, or certainly not as well or as fully as the court intended when making these orders.

Conclusion

International relocation cases remain fundamentally difficult cases to resolve. They invariably involve high stakes for the parties and their children. The decisions are often binary – either the child moves abroad permanently with the applicant parent, thus losing ready contact with the other parent, or the child does not move, leaving the aspirant 'relocating' applicant devastated and frustrated at not being able to return to family in their home country, or start a new life with a new family which is already based abroad.

We continue to have much to learn through our discussions with our international family law colleagues in how to resolve these cases, and are grateful for the chance to do so at this conference.

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35 Family Court Statistics Quarterly: July to September 2024 - GOV.UK (last accessed 15 September 2025).

36 Relocation Disputes in England and Wales: First Findings from the 2012 Study *Oxford Legal Studies Research Paper No. 91/2013*.

37 Thousands of children to be supported thanks to multi-million expansion of innovation in family courts - GOV.UK (last accessed 15 September 2025).

United States of America

Hiram Puig-Lugo, Associate Judge, Superior Court of the District of Columbia, Washington D.C., Member of the IHNJ

The incidence of international parental child abduction and restrictions on parental rights to contact and access their children remain urgent concerns for the United States.

In 2023, the United States Central Authority worked on 721 active abduction cases involving 982 children and 69 access cases involving 92 children. Of the 721 abduction cases, 316 were opened in 2023.[1] These figures do not reflect an additional 227 enquiries where parents did not provide sufficient documentation about abductions, and over 4,600 prevention-related enquiries.[2]

The Hague Convention on the Civil Aspects of International Child Abduction remains the primary avenue to remedy wrongful removals or retentions, and to secure protection for rights of access at an international level.[3] However, legal procedures to resolve international relocation disputes are seen as complementary strategies to reduce the possibility of illegal unilateral conduct.[4]

This article examines the judicial response in the United States to the issue of international relocations. It gives an overview of the broader American legal context where these controversies unfold and compares the different approaches undertaken at local levels. It concludes with a comparison between the proposals made in the Washington Declaration and the approaches implemented in American courts.

The Legal Framework:

In the United States, relocation cases intersect with two federal constitutional rights: the assignment of responsibility for family disputes within the federal structure, and the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA).

The right to travel for parents and children and parental rights with respect to children may clash in relocation cases. For instance, the Supreme Court has noted there is a constitutional right to travel. See *Jones v. Helms*, 452 U.S. 412 (1981). Similarly, it has found that parents have a constitutional right to control, care for, and educate their children. See *Troxel v. Granville*, 530 U.S. 57 (2000). Although the Court has not recognised a constitutional right for children to maintain contact with their parents, the parental rights suggest that children arguably possess an analogous right subject to their best interests.

Relocation cases unfold within a federal system which gives state and local courts responsibility for resolving disputes related to families and children. *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). The only exception to this division of labour is petitions for return or

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1 U.S. Department of State, *Annual Report on International Child Abduction* 2024, p. 1.

2 *Ibid.*, pp. 2-3.

3 Preamble, the HCCH 1980 Child Abduction Convention, at p. 1.

4 See generally, Washington Declaration on International Family Relocation, March 25, 2010.

access filed under the Hague Convention. Petitioners may make such requests to the federal district court or the state trial court for the jurisdiction where a child is located.[5]

The federal structure in the United States encompasses 50 states, 5 territories, and the Nation's capital. This landscape presents a potential 56 ways to address relocation. This diversity has motivated two significant attempts to establish a national system.

The elder proposal came from American Academy of Matrimonial Lawyers Relocation Act in 1998.[6] It preceded the American Law Institute Principles of the Law of Family Dissolution proffered in 2002.[7] Although neither proposal garnered national acceptance, they have contributed to the discussion and informed local responses to the issue of relocation.

Finally, relocation cases may implicate the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). This legislation has been adopted in 49 states, four territories and the federal district. It defines which courts have authority to issue and to modify child custody orders. There are four important points to remember about the UCCJEA.[8]

First, the Act establishes procedures for registration and enforcement of foreign custody orders, provided these orders comply with due process of law and do not violate fundamental principles of human rights.

Secondly, the Act assigns priority for child custody determinations to a child's home state. While not identical, this term resembles the state of habitual residence concept applicable in Hague Convention cases. Once a home state determines custody, it retains authority to resolve modification requests provided at least one party resides in the jurisdiction and information needed to decide the best interests of a child can be found there, unless the court determines that another forum is more convenient, or any court determines that neither parent nor the child reside in the state which issued the custody determination.

Thirdly, it is arguably the domestic analogue to the 1996 Convention when it comes to enforcement or modification of child custody orders.[9] Centred on the concept of "exclusive, continuing jurisdiction," it mandates that courts which issue child custody orders resolve modification requests consistent with applicable UCCJEA guidelines. United States judges consult these guidelines when resolving requests to modify custody orders issued in other countries.

Finally, the UCCJEA requires that remedies available for domestic child custody disputes be available to support Hague petitions for return. These remedies include the issuance of warrants to take physical custody of a child, measures to protect the wellbeing of a child or to prevent removal or concealment pending resolution of a petition, and the assistance of law enforcement.[10]

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5 International Child Abduction Remedies Act, 42 U.S.C. § 11603 (a) (1988).

6 https://www.aaml.org/model-relocation-act/ (last accessed 15 September 2025).

7 https://www.ali.org/publications/principles-law/family-dissolution-analysis-and-recommendations (last accessed 15 September 2025).

8 This discussion is based on a comprehensive explanatory report from Patricia M. Hoff available at https://www.ojp.gov/pdffiles1/ojjdp/189181.pdf (last accessed 15 September 2025).

9 https://www.hcch.net/en/instruments/conventions/full-text/?cid=70 (last accessed 15 September 2025).

10 The United States made a reservation under Article 42 to providing legal aid under Art. 26 of the Convention.

There are two common scenarios in relocation cases. One scenario is whether to permit relocation of children who reside with a custodial parent. The other scenario is whether relocation requires modification of custody rights, particularly where parents share joint legal and/or physical custody of their children.[11]

States have responded to these scenarios in two ways. Some states have enacted legislation to guide the resolution of relocation requests.[12] Other states have provided guidance to their courts through case law.[13] Both approaches start with factors courts use to determine a child's best interests in custody disputes, and supplement them with factors specific to relocation.

When considering these approaches, it is useful to examine four topics as points of comparison. Those topics are notice, burdens of proof, presumptions, and factors for consideration.

Notice:

27 states require non-relocating parents to receive notice of intent to relocate prior to a relocation.[14] Time frames for advance notice range from 30 to 90 days. Some states define the type of notice required. For example, parents must receive notice in person, through certified mail, or through regular mail. Other states define what information must be included within the notice; others do not specify the content.[15]

There are deadlines for a response after notice is served. Time frames for lodging an opposition range from 15 to 60 days.[16] Where no response or opposition is lodged within the requisite time frame, a court may proceed to treat the request as conceded. Exceptions to notice requirements may arise when notice is not possible or in emergency situations.

Burden of Proof:

28 states require that relocating parents prove the relocation supports the child's best interests.[17] Some states require parents to show there is a good faith basis for the relocation – not a desire to interfere with the other parent's rights - and that both the requesting parent and the child will benefit from relocation.[18]

This position is consistent with domestic law which does not recognize a constitutional right to counsel for civil matters. As a result, the Central Authority has compiled a list of attorneys available to represent Hague petitioners pro bono or on a sliding fee scale basis.

11 T. Glennon, "Divided parents, shared children: conflicting approaches to relocation disputes in the USA", 4 *Utrecht Law Review* 55, 57-58 (June 2008), http://www.utrechtlawreview.org/ (last accessed 15 September 2025).

12 See, *e.g.,* COLO. REV. STAT. § 14-10-129 (2022) and GA. CODE ANN. § 19-9-3 (2024).

13 See, *e.g., Yannas v. Frondistou-Yannas*, 395 Mass. 704, 481 N.E.2d 1153 (1985) and *Estopina v. O'Brian*, 68 A.3d 790 (D.C. 2013).

14 S. Tang, *Adjudicating International Relocation Cases in the United States*, 2024 (available at SSRN: https://ssrn.com/abstract=5056873 or http://dx.doi.org/10.2139/ssrn.5056873 at 2 (last accessed 15 September 2025)).

15 L. Daniels Simon, "Child Relocation Law in Spain and in the United States", *InDret. Revista para el Análisis del Derecho*, Barcelona, October 2014, p. 13-14.

16 *Ibid.*, p. 15.

17 S. Tang, p. 3.

18 T. Glennon, p. 60.

Five states place the burden on the parent opposing the relocation.[19] Other states apply a shifting burden of proof – once a parent seeking relocation presents evidence the relocation is in the child's best interests, the opposing parent must present evidence that the relocation is not.[20]

Presumptions:

41 states do not apply any presumptions. Five states follow a presumption in favor of relocation. Four states use a presumption against relocation.[21] The presumptions are not conclusive. Where a presumption exists, the party against whom it applies must present evidence to rebut the presumption.[22]

Factors to consider:

When deciding relocation issues, it is common for courts to examine a wide range of factors. These enquiries rely on factors used to determine the best interests of a child in custody disputes, and supplement them with factors specific to the consequences of relocation. With that overview, let's consider an example of a jurisdiction which addresses relocation cases through a statute, and another which provides guidance through case law.

The State of Florida has enacted a statute to resolve relocation disputes. Florida requires that parents who seek relocation file a petition and provide notice to the other parent. The statute specifies which information the notice must provide. There are no presumptions, but the party seeking to relocate must prove by a preponderance of the evidence that relocation is in the best interests of the child. If that burden of proof is met, the burden shifts to the non-relocating party to show by a preponderance of the evidence that the proposed relocation is not in the best interests of the child.[23]

When resolving these applications, the relocation statute lists several factors to consider:

1. The nature, quality, extent of involvement, and duration of the child's relationship with the parent or other person proposing to relocate with the child and with the non-relocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.
2. The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
3. The feasibility of preserving the relationship between the non-relocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other

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19 S. Tang, p. 4.

20 *Ibid*.

21 *Ibid*.

22 A rebuttable presumption "gives particular effect to certain group of facts in absence of further evidence, and [...] provides prima facie case which shifts [to the opposing party] the burden to go forward with evidence to contradict or rebut fact presumed." *Rebuttable presumption*, Black's Law Dictionary (6th ed. 1992).

23 FLA. STAT. ANNOT. § 61.13001(7) (2024).

person; and the likelihood of compliance with the substitute arrangements by the relocating parent or other person once he or she is out of the jurisdiction of the court.

4. The child's preference, taking into consideration the age and maturity of the child.
5. Whether the relocation will enhance the general quality of life for both the parent or other person seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.
6. The reasons each parent or other person is seeking or opposing the relocation.
7. The current employment and economic circumstances of each parent or other person and whether the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.
8. That the relocation is sought in good faith and the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.
9. The career and other opportunities available to the objecting parent or other person if the relocation occurs.
10. A history of substance abuse or domestic violence, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
11. Any other factor affecting the best interests of the child or as set forth in the child custody statute.[24]

In comparison, the District of Columbia Courts rely on statutory factors used to determine the best interests of a child in custody disputes and supplement them with ten factors specific to relocation.[25] These additional ten factors are:

1. The strength of the relationship of the child with each parent.
2. The individual resources, temperament, and special development needs of the child.
3. The psychological stability of the relocating parent and the parenting effectiveness of both parents.
4. The success of the current custody arrangement and the effect the proposed relocation will have on its stability and continuity.
5. The advantages and disadvantages of the proposed relocation, including the potential disruption to the child's social and school life and a comparison of the educational, health, and extracurricular opportunities the child would have in each location.
6. Any benefits to the child likely to be derived from the parents' improved circumstances.
7. The feasibility of an alternative visitation and access schedule, including the geographic proximity of and travel time between the parental homes as this relates to the practical considerations of the child's residential schedule.

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24 FLA. STAT. ANNOT. § 61.13(3) (2024). This statute lists 20 factors applicable to best interest determinations.

25 D.C. CODE § 16-914(a)(3) (2025).

8. The motivations of the parents in proposing and opposing relocation.

9. The effect the move will have on the child's relationship with the non-custodial parent, considering the extent to which visitation rights have been allowed and exercised, the level of support the custodial parent has shown for the continuation and growth of the child's relationship with the non-custodial parent, and whether there is any established pattern of promoting or thwarting that relationship.

10. The extent of any conflict between the parents and the recentness of the marital separation.

Estopina v. O'Brian, 68 A.3d 790 (D.C. 2013).

The factors listed in the Florida statutes and those used in District of Columbia case law are not exhaustive. Judges in both jurisdictions retain discretion to consider any factor relevant to a proposed relocation. Thus, for international relocations judges may consider whether a country operates with the United States under the Hague Convention, and whether any custody or access directives we issue will be recognised, respected, and enforced in that other country. Our concerns are for both parents to maintain access to their children and for children to enjoy meaningful relationships with both parents. The answers to these questions may or may not make the difference in the outcome of a case.

Conclusions:

The Washington Declaration recognises the best interests of the child as the paramount consideration for international relocations.[26]

It calls for multiple factors to guide judicial discretion when resolving relocation disputes. These factors include the right of the child to maintain contact with both parents, the views of the child, proposed arrangement for relocation, the reasons for seeking or opposing relocation, any history of family violence, past and current contact arrangements, pre-existing custody and access decisions, the impact of the outcome on the child, the parental relationship, whether contact proposals are realistic, the enforceability of contact provisions, mobility issues for family members, and any other circumstance the judge finds relevant.[27]

The Declaration urges respect for the legal rights of everyone involved in a relocation process. For example, it endorses providing reasonable notice.[28] Moreover, it underscores the need to recognise and to enforce provisions made in orders granting relocation requests.[29]

Jurisdictions within the United States have not attained exact uniformity on processes to resolve relocation disputes, but the similarities greatly outweigh the differences.

Every jurisdiction identifies the best interests of the child as the primary consideration. Practically every jurisdiction within the federal structure provides guidance through statute or case law for judges to exercise their discretion in relocation cases. Overall, this guidance is

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26 See Washington Declaration, *supra* note iv, p. 2.

27 *Ibid.*, p. 2-3.

28 *Ibid.*, p. 2.

29 *Ibid.*, p. 4.

consistent with the factors identified in the Washington Declaration.

There remains room for improvement with notice requirements, but the UCCJEA facilitates the registration and enforcement of foreign orders. It also permits or requires judicial communications when dealing with custody or modification issues. These tools, in addition to guidance available for judicial discretion, have led courts towards a greater implementation of the principles espoused in the Washington Declaration.

Session 5 - States that follow case law or guidelines in relocation cases

Argentina

Judge Marcela Sandra Trillini, Judge in charge of the Family Court No 9, San Carlos de Bariloche, Río Negro, Member of the IHNJ

PROCEDURAL FRAMEWORK

In Argentina, there is no specific procedure for relocation cases at a national level. Laws are applied according to their hierarchy, which is why the National Constitution and the Civil and Commercial Code govern the entire country; however, each province may determine which procedure to follow. Judicial precedents are also applied at a national and provincial level.

The Civil and Commercial Code specifically determines that the consent of both parents is necessary for a child or adolescent to leave the country or to change permanent residence abroad, which is what we call the main norm.

Therefore, as each province establishes its own return procedure, the duration of the procedures in Argentina are not uniform.

Some jurisdictions assign relocation as a summary procedure, which is the shortest one provided in the Argentinian procedural system. Other provinces may use a common but abbreviated process, or may also grant interim measures, and in a few cases, they may be treated within the main processes related to the care of the child.

Parties cannot represent themselves in any judicial process; they must have legal representation. If they do not have the means to afford a lawyer, there is the possibility - throughout the country - of having free sponsorship, in accordance with the local regulations.

To do this, whoever requires free legal services must justify that they cannot pay for them and an official public defender is assigned. Therefore, legal assistance is available.

From the judgments handed down in the last 4 years in Argentina, I can affirm that none of them appears to take into account that the country in which the party wishes to relocate is a Party to the 1980, 1996 and/or 2007 Conventions.

Nevertheless, some of these resolutions order monitoring of the situation once the relocation has taken place, which would entail, at the very least, direct judicial communications.

Relocation processes generally follow all the principles of the Washington Declaration, however, it is necessary to point out that it is not a well-known instrument at national level.

In the Argentinian legal system, the best interests of the child are a primary consideration in all procedures that involve them.

For this reason, in relocation requests, what is especially analysed is that the modification of the child's habitual residence does not affect their best interests, such as identity, nationality, social relations, child support and, last but not least, the way in which contact will be maintained with the other parent. We could say that the family interest as a whole is analysed in relocation requests.

There is an obligation for each judge to resolve the case with a gender perspective. To this end, in cases of international family relocation, they must also identify whether there are asymmetrical power relations and inequality patterns that determine the design and implementation of the individual life plans.

Furthermore, if domestic violence or abuse is alleged, it is analysed along with the rest of the evidence.

To show the number of relocation cases and their outcomes, I requested a report from each province for the last 4 years.

However, I should point out that the data I am about to provide is partial because some provinces did not reply, and a few are incomplete. In any case, I hope the information obtained is useful.

The rulings of the last four years, issued by some of the provinces, show that the majority of relocation cases have been related to job opportunities or sentimental reasons. In only one of them, domestic violence had been alleged and it was taken into account when authorizing the relocation.

Due to the different procedural framework that depends on each jurisdiction, I can affirm that the duration of the processes is not uniform. In some provinces that assign summary processing, they may last between 3 and 6 months and in others up to two years.

In many cases, the procedures are concluded with an agreement from the parties.

SURVEY RESULTS

- CORDOBA: 7 CASES – 4 settled – 1 relocation resolved successfully – 2 in progress (duration 1 to 2 years)
- SAN LUIS: 14 CASES – 3 relocations resolved successfully – 1 denied – 10 in progress (6 initiated in the last 6 months of 2024)
- RIO NEGRO: 4 CASES – 2 relocations resolved successfully – 1 settled – 1 in progress (duration 3 to 12 months)
- SANTIAGO DEL ESTERO: 8 CASES – 3 relocations resolved successfully – 2 settled – 1 denied (mother retains in Spain) – 2 in progress (duration 1 to 12 months)
- LA PAMPA: 2 CASES – Both relocations resolved successfully (one of them appealed)
- SANTA FE: 23 CASES – 7 denied – 4 relocations resolved successfully – 7 settled – 5 in progress
- MISIONES: 11 CASES – 5 settled – 3 relocations resolved successfully – 1 denied – 2 in progress (1 without procedural activity)
- THE PROVINCE OF BUENOS AIRES: Only a few courts replied - 33 CASES - 15 relocations resolved successfully - 12 settled – 6 in progress (approximate duration 1 year)
- THE CITY OF BUENOS AIRES: Only a few courts replied: 28 CASES – 9 settled – 18 by sentence – 1 with agreement after illegal child abduction
- Other provinces such as Formosa and Santa Cruz had no cases.

As it derives from the information, most of the relocation cases have been settled and more cases were successfully resolved than denied.

TWO CASES WITH DIFFERENT SOLUTIONS

I would like to tell you about a case that took place in the province of Corrientes. A mother, who had detained her daughter in the United States, was recommended by her lawyers to return with the girl so as not to expose herself to an international return request, which would have been very harmful if she had wanted to live in that country.

The mother trusted the advice and returned to Argentina requesting international relocation, which was finally granted. Today, they both live in the United States. The mother was able to obtain the job she had wanted and their quality of life has greatly improved. The girl maintains regular contact with her father and travels to Argentina regularly. By having no criminal record, they have been granted green cards. She was law-abiding, a return process was avoided and justice was done. Still the duration was very long. It took almost 2 years. [1]

Another case I would like to share, took place in the province of Misiones, which borders two other countries. In this case, the mother requested authorization to relocate her two children in Brazil, where she had been living since February 2023, 400 miles away from the children's habitual residence, where they had been left in the care of their father. The father had rejected the relocation. An abbreviated process was followed, in which the judge considered the background of the children, including tests, school reports, and listening to the children. After analysing all the evidence, the judge rejected the relocation request based on the children's position, who had indicated that they did not want to move from the city where they lived. It had not been proven that the change of residence would be better for the family project, nor had adequate contact been guaranteed with their father, who had been exercising parental care since February 2023. However, the judge did grant a system of daily communications and vacations between the children and their mother. The entire process took just under a year.[2]

LOOKING FORWARD

Regarding possible improvements to these procedures, I understand that training the legal operators throughout the country is essential to raise awareness about the impact that delays in these types of procedures generate, in not only the family group, but also how they are connected to international return processes.

It would also be very valuable to unify the type of procedure throughout the country, assigning the fastest procedure in force in each province.

In addition, I think it is important for each judge to determine whether a request for authorization to travel abroad conceals an intention to settle abroad without the consent of the other parent.

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1 "M., M. F. c/ Z. V., P. S. s/ AUTORIZACIÓN JUDICIAL", Expte. Nº226204/22.; 27/12/2023

2 "D. S., G. M. c/ D. S., R. S. s/Autorizaciones", Expte. Nº 19687/2023, 21/12/2023

It is also important to continue promoting mediation as a method of conflict resolution; to improve direct judicial communications; and, to reinforce the work of both the International Network of Judges and the National Network of Argentina not only for international return cases, but to strengthen international cooperation too.

In my State, the procedure to recognize and enforce a foreign relocation decision is through an Exequatur that must be submitted to the Ministry of Foreign Affairs. One way to improve execution would be to develop a sort of protocol with the requirements at both the international and national levels to avoid delays and the return of procedures.

To address non-compliance, I believe one way could be, by first enforcing a relocation decision or relocation agreement at the place where the child would live, to ensure that communication or visitation agreements are fulfilled. In that case, the 1996 Convention could be applied, whose scope is to provide for the recognition and enforcement of such measures of protection in all Contracting States; and for the countries that have not yet subscribed to it; the HCCH guides to good practice could be useful instruments as well, especially the one referred to as the Transfrontier contact.

As a family judge, I am convinced that each process, like each human being involved, is completely different from the others and demands different solutions tailored to each particular family.

Focusing on the best interests of children and adolescents, and streamlining the procedures that involve them in matters of private international law, represents compliance with the international obligations borne by my country by signing instruments such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, CH1980, and CH1996, among others.

France

Anthony Manwaring, *Magistrat de liaison*, Embassy of France in Washington DC

As families evolve in a broader international context than before, local courts may receive more requests than they used to regarding the relocation of a child abroad, without one of his or her parents.

In France, the relocation process is based on amicable settlement by the parents or, otherwise, on legal proceedings. Article 372 of the French civil code provides that both parents exercise joint parental authority on the minor, and it does not matter if they are married, unmarried or separated (Article 373-2).

If one parent wishes to travel outside of France with the minor, the authorisation of the other parent won't be needed. However, the latter must be informed of this travel and may oppose it. On the other hand, if the parent wishes to change their place of habitual residence, whether in France or abroad, it may have an impact on the rights of custody of the other parent and the arrangements put in place by agreement or court order. In that case, the consent of the other parent is needed prior to the relocation.

In that regard, Article 373-2 of the French civil code provides that: "*Any change in the residence of one of the parents, as long as it modifies the way parental authority is exercised, must be notified in advance and in good time to the other parent. In the event of disagreement, the more diligent parent refers the matter to the Family Affairs Judge, who makes a decision based on the best interests of the child*". Therefore, if the holders of parental authority cannot agree on the new place of residence of their child, the matter must be referred to court. The parents can also decide to enter into mediation in order to have the help of professionals in finding an agreement, before referring the case to court.

In France, there isn't a procedure tailored specifically for relocation purposes, whether domestic or international. The standard proceedings regarding parental responsibility before the Family Affairs judge will be used to that end. These are oral proceedings, where legal representation is not necessary. However, it is recommended to hire a lawyer, especially in international cases, to help the parent prepare evidence to be presented in court and to have relevant legal guidance and advice. The parties may apply for legal aid, which is means tested.

Regarding the assessment of the case by the judge, as provided for in point 3 of the Washington Declaration, the best interests of the child will be the paramount consideration for the French judge when making a decision on relocation. All principles set out in the 2010 Washington Declaration are consistent with French law. For instance, the judge will take into account the reasons for relocation (iv), the impact of this change of environment on the child and the new place the child will be staying in (ii; viii), the possibility to maintain contact with the other parent remaining in France (i; x), and, if appropriate, the wishes of the child (depending on their age and maturity; ii).

Some of the criteria listed in the Washington Declaration are set out in the French civil code. It is indeed provided that each parent "*must maintain a personal relationship with the child and respect the child's ties with the other parent*" (Article 373-2) and that the judge must take into account the "*ability of each parent to assume his or her duties and respect the rights of the other*" (Article 373-2-11). The parent that wishes to relocate must, therefore, provide evidence on the child's new living environment and the desire to maintain contact with the other parent.

The reason for the relocation will be important, as the simple wish to move closer to one's family may not be considered sufficient to modify the rights of the other parent. The geographical separation may be authorised if it is due to a job opportunity or a promotion, for example, with the judge verifying that the new job or assignment indeed necessitates such separation. However, the court may also consider that it is in the children's best interest to have their habitual residence transferred to the other parent's home, in order to preserve their environment and, therefore, not to relocate.

In case of allegations of domestic violence, which must be established in accordance with French procedural standards, the judge will analyse the evidence provided when ruling on the relocation request. Article 373-2-11 of the French civil code does provide that the judge needs to take into consideration physical or psychological pressure or violence exerted by one parent on the other when ruling on the exercise of parental authority. The judge will, therefore, make an analysis of this evidence, in light with the other criteria for relocation and the existing French mechanisms to protect victims of domestic violence.

There are several measures that can put in place under French law in order to protect victims of domestic violence (whether direct or indirect). For instance, a parent can request the presence of a third party during the visiting rights of the abuser with the child or that those visits take place in a neutral place. In grave circumstances, the judge can refuse rights of access and residence to the abusive parent, and even withdraw his or her parental authority.

In case of urgency, the judge can issue a protection order within 6 days (Article 515-11 of the civil code) and rule on the habitual residence of the child, as well as authorise the victim parent to conceal their domicile or residence. These proceedings are not conditional to the existence of a prior criminal complaint. Furthermore, by a recent law dated 13 June 2024 (law n°2024-536), the public prosecutor can request, with the agreement of the victim parent, a provisional immediate protection order (Article 515-13-1). The order will be issued within 24 hours and the judge can take the same measures as mentioned above, on a provisional basis.

On another note, even if there are no statistics on whether the ratification of the 1996 Child Protection Convention by the foreign country where relocation is sought is being considered by the judge, this is information that should be highlighted to the court, as it will help with the recognition of the later decision in the relocating State. Indeed, the 1996 Hague Convention allows for the establishment and (advance) recognition and enforcement of relocation orders, which facilitates the relocation of the child. This Convention also provides for cooperation mechanisms between the two States concerned, in order to exchange information relevant to the child's protection.

Therefore, the judge will analyse all the evidence before them in order to make a decision, making sure that the children's needs are met and analysing whether the new living environment and the separation from the other parent are in the children's best interests.

There is no specific timeframe set by law for a decision to be issued, the length of the proceedings can vary according to the complexity of the case, the length of the petition and the workload of the local court seized. However, in case of urgency, there is a specific procedure aiming to obtain a decision faster ("*procedure à bref délai*", Article 1137 of the civil procedural code). On average, the proceedings can take around 4 to 5 months before a decision is issued. It is commonly advised to refer the request early enough to the court, as the parties may also wish to appeal the first instance decision, and before the next school year.

No specific data on those proceedings applied specifically for relocation requests are available. However, it can be indicated that, in 2022, out of the requests filed by non-married

couples regarding the exercise of parental authority and the residence of the child, 68% of requests have been accepted and there were 9% of agreements reached between the parties.[1] In 2023, 61% of requests have been accepted and 9% of agreements reached.[2]

Furthermore, it must be highlighted that, if there is a risk of child abduction, a parent can request a temporary ban on leaving French territory ("*opposition à la sortie du territoire*") before the local government authorities. This opposition will be registered under the National Wanted Persons File and will last for 15 days. The other parent is not notified of this order and will not be able to leave French territory with the child. For a longer duration, a parent can also request a long-term exit ban ("*interdiction de sortie du territoire*") before the Family Court or the Public Prosecutor. This is a court order, that will last for a longer period (usually mentioned in the decision) and that will be registered on the National Wanted Persons File.

While this order is in place, the parent can only leave the country with the child with an authorisation form signed by the other parent at the police station or an order from the court temporarily allowing the child to leave the territory.

If an abduction already took place, France has ratified the 1980 Child Abduction Convention, which applies between two Contracting Parties when a parent flees abroad with the minor without the consent of the other parent. The French Central Authority can be contacted in order to take action in this situation.

Once the decision on relocation has been issued, its recognition and enforcement abroad will depend on the international agreements or private international law rules in place in the country of relocation. If the relocation order comes from a State that hasn't ratified the 1996 Hague Convention, an *exequatur* procedure will be needed for the decision to be enforced in France.

Hence, if a parent does not comply with the French relocation decision, there are several possibilities available to the requesting party. For instance, a parent may request the court to issue a civil compensation and fine. Also, the public prosecutor can be asked to enforce the decision issued by the court, with the help of the relevant authorities (i.e., police services and social services).

To conclude, the legal framework and procedure provided under French law appears quite satisfactory to resolve relocation issues between the parents. It can be highlighted that efforts have been made in order to reduce the procedural timeframes, even though decisions on relocation require an in-depth analysis of the family situation from the court.

In that regard, these decisions being life changing for the minors and the parents, it is of paramount importance to have a strong and robust framework that would allow judges to take the time to hear both parents and obtain more information on the context of the relocation request, hear the wishes of the child(ren) and obtain the relevant details on the current family situation.

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1 Références Statistiques Justice 2023, publication du 20 décembre 2023 : https://www.justice.gouv.fr/documentation/etudes-et-statistiques/references-statistiques-justice-2023 (last accessed 15 September 2025).

2 Références Statistiques Justice 2024, publication du 19 décembre 2024 : https://www.justice.gouv.fr/documentation/etudes-et-statistiques/references-statistiques-justice-2024 (last accessed 15 September 2025).

Finally, as it has been noticed that judges may not have sufficient knowledge about the 2010 Washington Declaration and tend not refer to this text in their decisions, it could be useful to promote this text further in France.

Hungary

Soma Kölcsényi, IAFL Fellow

The author has chosen to respond to the targeted questions pertaining to the 2010 Washington Declaration, prepared by the Permanent Bureau of the HCCH in advance of the conference (please see page 61 above).

1. Is there a specific relocation procedure available in your State?

Sources of law:

- Act V of 2013 (Civil Code, CC)
- Act LXII of 2021 (On the international judicial cooperation in regards to parental responsibility)
- Act CXVIII of 2017 (on the rules applicable to civil extrajudicial proceedings and to certain extrajudicial proceedings)
- Act XXXI of 1997 on child protection and guardianship administration
- Act XXVIII on the Private International Law Code
- Govt. Decree no.149/1997 (on guardianship authorities and child protection proceedings)
- Content of parental responsibility (CC 4:146.§)
- Jointly exercised parental responsibilities (CC 4:175. §) - even parents living apart exercise their parental rights jointly. These are fundamentally important topics: name issues, nationality issues, educational issues, and relocation.
- Procedural forum by default is the district child protection authority ("Government office, guardianship office dept.").
- Procedure: in case of a dispute between the parents regarding relocation, an application is filed with the district child protection authority which, by default, is decided within 60 calendar days.
    - Such applications must contain information relevant to the envisioned relocation (e.g., whether the relocation permanent or temporary; a social report issued by foreign authority/, proof of school enrolment, proof of relocating parent's income, proof of accommodation). From this information, the district child protection authority can ascertain that the child's upbringing, maintenance, care and continuation of studies needs are ensured.
    - A relevant factor considered in the relocation decision is whether parenting / visitation plans can be ensured in the state of relocation, based on international treaties or reciprocity (EU member states AND Hague 1996 states do have an advantage!).
    - If a parental responsibility/custody case is pending, the application to be automatically dismissed.

- If the issue of parental responsibility has not been settled, the district child protection authority recommends that an application for custody be filed first and advises the parent who wants to relocate not to do so without the other parent's consent or official permission, because that may constitute child abduction.
- Where the applicant's relocation request is granted, the decision is in effect for 6 months. The district child protection authority sets the purpose of relocation (temporary or permanent), upon request or *ex-officio* regulates or amends the parenting / visitation plan, informs the applicant of the obligations to register the child's change of address, and new school abroad, that they may ask for a change in the parenting / visitation plan and that they must inform the respondent and the authority about the expected date of the actual relocation. The district child protection authority also informs the respondent of the decision and of the conditions of the parenting / visitation plan, noting that they may also request an amendment to the plan within 3 months after the relocation, provided that the child has relocated within the EU.
- Where the applicant's relocation request is rejected, the district child protection authority informs the applicant of the expected legal repercussions of a wrongful removal or retention across borders (i.e., child abduction under the HCCH 1980 Convention) and informs both parents to put an alert (travel ban) onto the child in an extrajudicial speedy procedure (Art 32. 1 b)-c)-d) of the SIS Regulation). In case the child returns and (re-)establishes their habitual residence in Hungary , a new relocation application must be lodged.

Case law:

- Kuria Kfv. 37.910/2020/11.

In determining the child's place of residence abroad for a long period or for the purpose of settlement, the authority may decide on the application on an individual basis, taking into account all the circumstances of the case, in a complex interpretation of the legislation governing the rights and obligations of the child and the parents, and taking into account the best interests of the child. The designation of a place of residence abroad shall not result in the termination of contact with the separated parent or in a disproportionate impediment to such contact. In reaching its decision, the authority must give a detailed account of the facts and circumstances taken into consideration.

- Kuria Kfv. 37.857/2018/7.

In the case at hand, all these circumstances were examined by the authority, which correctly assessed them as permitting the children's residence abroad. Contrary to the applicant's position, it is not relevant for the authority to compare the conditions of residence in Hungary and abroad and to decide which country provides better housing conditions and, where appropriate, a better livelihood, because the authority must examine whether, in the case of residence abroad, the children are placed in appropriate conditions and whether their care and education are adequately provided. [...] The court of first instance rightly stated that any change, including moving abroad, may cause difficulties and disadvantages for the children, but that these are temporary and that if the change is to their benefit, the temporary difficulty should not be an obstacle to the authorisation of the expatriation. [...] The court of first instance was also justified in taking into account the positive changes in the income of the intervener, firstly by taking up a part-time job and then by taking up a full-time job.

- Kuria Kfv. 37.516/2017/6.

In the event of a dispute between parents, the guardianship authority must decide whether to consent to the minor children's residence abroad, taking into account all the circumstances of the case. It is not in breach of the law if, in reaching this decision, the guardianship authority takes explicit account of a final court judgment during and in relation to the proceedings which has been handed down in support of the applicant's unlawful act.

In the present case, the applicant did not wait for that necessary decision, based on duly considered objective facts, circumstances and evidence. After the father had answered in the negative, he left with the children to go abroad without permission and of his own accord. He has no basis for alleging that he was in a situation of duress, nor that the guardianship authority took into account factors in its decision which went beyond the scope of its powers and beyond the scope of the law. In particular, it would have acted unlawfully if it had disregarded the fact that, in the course of the proceedings pending before it - which have not yet been concluded - the mother was found by a final court judgment to have committed an unlawful act by taking the children abroad without permission.

In the present proceedings, the guardianship authority could not have done otherwise than to take into account the judgment of the German court and to conclude that it could not subsequently grant authorisation to take the children abroad in those proceedings. It is apparent from the documents that the decision of the guardianship authority was not based on the fact that the father had in the meantime also brought proceedings for a change of parental custody before the Hungarian court, nor did the court base its decision on the assumption of the outcome of a future court case, but on the findings of a court proceeding which had been concluded. The only relevant factor for the Public Guardianship Office was the fact that the applicant had moved to Germany with her children during the administrative proceedings, within a short period of time after the filing of her application, before the final decision on the merits was expected, and that the foreign court had made a final finding that the children had been unlawfully removed abroad.[...] The position of the defendant and the court of first instance that the defendant could not grant permission for the expatriation ex post facto in the current proceedings is correct, and that it is not for the guardianship authority but for the competent court to decide which parent is better suited to the upbringing and care of the child.

One window service case law

The case concerns Hungary/Argentina/Ivory Coast. The court established that the parties started living together in Hungary without having the long-term objective of settling there permanently.

The respondent filed six job applications in Argentina. The Court found that their agreement was to stay in Hungary until they find jobs suitable for both their qualifications. The Applicant had not found such a job (accreditation issues). The Parties quarreled a lot at home. After the birth of the child, the burden of running the household was shifted onto the applicant, who could not rely on the respondent, relatives, friends or acquaintances to help her. The child was not eligible for public healthcare in Hungary (costly). The Applicant owned a property in downtown Buenos Aires and a good job opportunity in Argentina. In Argentina , the applicant could also benefit from the support of relatives. Good schooling opportunities in Argentina were also proven to the Court. In addition, the child did not speak Hungarian, but spoke Spanish and English (at the psychological assessment, a Spanish translator was needed). There were no Spanish schools in Budapest.

The respondent, as an Ivorian national, and the applicant as an Argentine national, both had to reckon with the fact that their domicile was not necessarily in Hungary in the medium and long term. At least they made no serious undertaking to that effect, (e.g. buying property, taking out a loan, developing a long-term plan).

In Hungary, neither of the parties nor the child had any family ties of any kind. The child had an Argentinian identity document and not a Hungarian one. The Court agreed with the applicant that the acquisition of a given nationality is less a matter of looking for material and legal advantages, but rather family, cultural, emotional, linguistic and other related motives. The applicant had to pursue a career below her qualifications for many years in a foreign country (HU), with no roots, no family and no one to rely on.

2. Is the relocation procedure in your State a single procedure or several procedures (*e.g.*, (1) parental responsibility, (2) contact, (3) maintenance)?

In the jurisdiction of Hungary, there are 3 separate options given by law to parents who wish to relocate their children to another country:

- Parents agree themselves, with no formal legal requirements apart from clear and unambiguous consent to relocate (not just travel). (CC § 4:152. (6)) The parents' agreement shall not be approved by anyone else.
- Parents cannot agree on the relocation, but parental responsibilities have already been decided by the court (public administration procedure conducted by the district child protection authority).
- Parents cannot agree on the relocation, and parental responsibilities have not yet been decided by the court, so both parents are equal in rights and obligations (special procedure conducted by the court) § 32. of Act LXII of 2021 on the international judicial cooperation in regards to parental responsibility: § 4:166 and § 4:175(3) of Act V of 2013 on the Civil Code shall apply with the exception that if the application for the designation of the child's place of residence abroad for a long period or for the purpose of settlement is submitted in a court action concerning parental responsibility (custody) or after the commencement of proceedings concerning parental responsibility (custody), the court shall decide on the application. In the case of the designation of the child's place of residence abroad for a long period or for the purpose of establishment, the court and the guardianship authority shall also decide on contact, either on application or *ex officio* in the child's best interests.

3. Is legal assistance available in your State for a relocation procedure? If so, is it subject to a means and / or merits test?

Yes, legal assistance is available for all EU citizens, in English and in Hungarian. No means test is required for disabled individuals, individuals living with a close relative who is disabled or who are looking after a child with a disability, individuals who are entitled to public healthcare with a public health care ID, individuals who are homeless and individuals who are refugees. A means test is applied to applicants whose monthly net income does not exceed the amount of the social projection base (USD77) and the costs shall be borne by the State. Furthermore, a means test is also applied to applicants whose does not exceed HUF 312 911 / USD 841 (this amount is calculated on the basis of the 43% of the average gross monthly

income in the national economy in 2024). The legal costs shall be covered in advance by the State.

4. Can parties to a relocation procedure represent themselves or do they need legal representation?

Parties can represent themselves, it is not obligatory to instruct an attorney / lawyer. Interestingly, when represented by an attorney / lawyer, all statements must be made personally (128 § (3) of Act XXXI of 1997).

5. Is consideration given to whether the State to which a person wants to relocate a Party to the 1980, 1996 and / or 2007 Conventions?

Definitely. In Hungary, EU member states and States who are Parties to the HCCH 1980 and 1996 Conventions do have a practical advantage.

- During the procedure the authority takes into account whether on the basis of an international treaty or (at least) a reciprocity contact with the parent living separately can be ensured (24.§ (3)).
- If during the procedure, the authority cannot facilitate an agreement between the parties with regards to the planned country of relocation, the authority reminds the parents of the possibility of regulating / amending contact / access rules and of the expected legal consequences of child abduction (24. § (4)).
- In case of a relocation within the EU, the district child protection authority retains its jurisdiction for 3 months after the relocation takes place for the purpose of adjusting contact / access rules (24. § (5) b) bb)).
- In case the relocation application is denied, the authority reminds the (unsuccessful) applicant of the expected legal consequences of child abduction (24. § (6), 1980 Convention countries) and of the possibility of putting a general travel ban on the child (EU SIS2, all countries).

6. Which principles of the Washington Declaration are followed in relocation procedures in your State and which principles are not followed (and why)?

- Best interest of the child: YES
- Direct contact on a regular basis with both parents: YES
- Child's age and maturity: YES (but to a lesser degree)
- Accommodation, schooling and employment: YES
- Reasons pro/con
- DV/DA: NO
- Past and current care and contact arrangements: YES
- Pre-existing custody and access: YES
- Impact of grant or refusal on the child: YES

- Inter-parental relationship and commitment of applicant for support and facilitate relationship between child and respondent: YES
- Costs of contact after relocation: YES
- Enforceability of contact: YES
- Issues of mobility for family members: NO

7. What is the impact of DA/DV allegations in relocation procedures in your State?

There are no particular statutory rules within the relocation procedure for DA / DV (allegations). However, DA/DV allegations are taken into account seriously in care and access arrangements.

8. What is the average time frame for a relocation procedure to be decided in your State?

By law, the procedure should take up to 60 calendar days. However, this is a "net" duration, the time spent by the authority when conducting the fact finding (e.g., psychological assessment) process do not count. Clients should expect 4-8 months until the decision is made.

9. What is the average success rate of relocation procedures in your State?

No central statistics are available to date. By minding the law and procedural rules and mapping circumstances thoroughly, while setting goals realistically, success can be ensured.

10. Do you foresee / recommend possible improvements for relocation procedures in your State, if so on what aspects?

- If it is a fundamental, top question by law, then it should always be decided upon by the top forum, the court and no other forum.
- Non-judicial decision makers need more training (in dealing with the parties, meeting legal deadlines, understanding the scope of fact finding and not treating the relocation proceeding as a "secondary" custody battle).
- Mistakes can be irreversible: what if there are 2 caretaking parents (joint custody), one caretaker parent's all other parental responsibilities can theoretically be annulled (withdrawal of court's provinces).
- The social report is always the problem, as its concept in Hungary is unknown in other jurisdictions. What is a social report?
    - A Protocol on assessing the environmental circumstances (§ 130. of Act XXXI of 1997 on child protection.
    - The authority may acquire it via international legal aid.
    - It includes:

Information regarding the child

a. contact details of relatives or other persons residing in the place of residence,

b. contact details of persons present at the time the record is taken who are relevant to the care and education of the child,

c. the contact details of his/her general practitioner, his/her nurse or, if he/she is in a nursery or school, the head of the public education establishment,

d. any findings relevant to his/her case, an assessment of the family's circumstances;

Information regarding the circumstances of the person subject to guardianship

a. the contact details of the persons present at the time of the taking of the report who are relevant to his/her life and care,

b. contact details of his/her general practitioner or psychiatrist,

c. the contact details of the head of the social welfare institution to which he or she has recourse,

d. his/her financial and social circumstances,

e. the findings relevant to his/her case.

11. What is the procedure in your State to recognise and enforce a foreign relocation decision or to give effect to a foreign relocation agreement?

For orders made in an EU Member State, no exequatur is necessary. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required. (Art. 30 of the 2019/1111/EU (Brussels IIter Regulation). For orders made in a non-EU Member State, paragraph 3 of Act XXVIII of 2017 on the Private International Law code of Hungary provides that a "court shall also be understood to mean any other authority in civil matters".

Paragraph 109 (1) Act XXVIII of 2017 on the Private International Law code of Hungary provides that a decision of a foreign court shall be recognised if:

a. the jurisdiction of the foreign court seised was established under this Act,

b. the judgment has acquired the force of res judicata or equivalent legal effect under the law of the State in which it was given, and

c. none of the grounds for refusal set out in paragraph 4 applies.

A relocation order must not be recognised if it goes against public policy, has been issued *ex-parte*, or if there is a pending legal action (*lis pendens*) in Hungary for the same rights (*i.e.,* custody and/or relocation), the Hungarian courts have previously issued a decision on the same rights or a court in another State previously issued a decision on the same rights which is compliant with the Hungarian recognition requirements.

12. How do you address non-compliance with relocation decisions or agreements?

There are no tools to address this issue in Hungary.

Spain

Lola Lopez-Muelas, President of AEAFA, IAFL Fellow

1. Introduction

This presentation focuses on the legal procedures available in Spain for international family relocation and the legal framework that governs such relocations in Spain. Also, some relevant Spanish case laws on this subject matter and how they relate to the Washington Declaration on International Family Relocation are studied in order to provide a wider context on how such cases are approached and resolved in Spain. Finally, some aspects to be improved in Spain regarding International family relocation disputes are pointed out, since this is a complex area of law that requires urgent and clearer legal procedures to achieve a more predictable framework in Spain.

2. Legal Procedures in Spain: Voluntary Jurisdiction vs. Child Arrangements Order

Spanish law does not provide a specific legal procedure to resolve child relocation disputes, whether national or international. Despite the importance of these cases, given their potential impact on the lives of children and families, Spanish procedural law remains silent on how to solve these situations by providing a more accurate legal answer within a specific procedure. Instead, attorneys use different procedural ways depending on the circumstances of each case.

Two main legal procedures are used to address child relocation cases:

Voluntary Jurisdiction Procedure and *Procedimiento de modificación de medidas* (equivalent to a Child Arrangements Order).

A. Voluntary Jurisdiction Procedure

This procedure is based on Article 156.3 of the Spanish Civil Code and is regulated in the Voluntary Jurisdiction Law 15/2015.

Law 15/2015 on Voluntary Jurisdiction has regulated, within the voluntary jurisdiction proceedings in family matters, the judicial intervention proceedings concerning: Disagreement regarding joint parental responsibility and inappropriate use of custody rights over children or people with disability, or their property's administration.

Article 156.3 Spanish Civil Code

> "In case of disagreement regarding parental responsibility, either one of the two parents may go to court. The judge will grant the right to decide to one of the parents after hearing both of them and the child, if he/she has sufficient maturity and, in any case, if he/she is older than twelve years."

Therefore, within this context, the Voluntary Jurisdiction procedure is typically used when there is disagreement between parents over joint parental responsibilities, such as where the child should live or go to school. In other words, if one of the parents does not consent and agree to decide on the children's habitual residence, the other parent may apply for a court order and get the court's permission if they cannot agree. Then, when one parent refuses

consent for relocation, the other may seek judicial permission by applying for such permission through this procedure.

It is important to note that no mandatory legal representation (*abogado and procurador*) is required.

Jurisdiction lies with the Court of First Instance (*Juzgado de Primera Instancia*) of the child's permanent address or habitual residence, or the Court of First Instance where the divorce judgment was issued (when a judicial authority decided the joint parental responsibility).

Theoretically, this is a quick procedure that may conclude in 2-3 months. However, in practice, delays are common since the judicial response can take several months, depending on whether an appeal is filed or the existence of judicial delay or gridlock in that specific place in Spain where the case was brought to court.

B. Child Arrangements Order Procedure

As regulated in Articles 770–775 of the Spanish Civil Procedure Law (LEC), this procedure is intended to modify existing custody or child arrangement orders based on changes in the circumstances that were first taken into account when the arrangements were decided.

According to Article 775.1 LEC, this may take place:

> "When there are children [...] the Public Prosecutor's Office and, in any case, the spouses (parents), may request from the Court that decided on the final children's arrangements, a Child Arrangements Order to change the arrangements agreed by the spouses (parents) or those issued by the court if they (the parents) were unable to agree on them. This applies provided that the circumstances taken into account at that time have substantially changed."

Thus, it requires evidence that previous custody arrangements no longer serve the child's best interests.

This is a long and more formal process, often lasting over 12 months, due to the courts' work overload and lack of staff; but it could take even longer in case of appeal to the higher court (Provincial High Court), which usually lasts over twelve months or more.

Jurisdiction lies here with the Court that issued the final child arrangements order.

Legal uncertainty arises due to the alternative use of both procedures for similar issues.

3. Legal uncertainty

Due to the absence of a specific legal procedure for family relocation, the judiciary decides what is best when child relocation cases are brought before the Court, taking into account different family law principles, which could be summarised in the child's best interests as paramount when children are involved in legal issues.

However, sometimes, that decision (judgment) may not be aligned with the child's best interests. For instance, in this recent case, the Barcelona Provincial High Court (Judgment 429/2024, July 30) states that the First Instance Court should have done things differently when deciding on the relocation dispute:

> "The appellant alleges omission in the judgment regarding the claim for relocation and the change of the child's school, as requested in the counterclaim [...]. However [...], in the hearing, the first instance judge dismissed the

> counterclaim by viva voce judgment.
>
> The judge considered that the procedure for such claims should be through voluntary jurisdiction and the viva voce judgment became final since no appeal was lodged in that act."

In this specific case, the Barcelona Provincial High Court criticised:

> "This is not the time to set aside the viva voce judgement regarding the counterclaim, which was not appealed; however, this Court understands that it should have been sustained in order to resolve in one single procedure the different claims the parties bring to court (regarding child arrangements) and, therefore, to avoid possible contradictory judicial decisions."

Finally, the Barcelona Provincial High Court points out the legal uncertainty that the different procedural options cause since the mother's relocation application to move with her child should have been decided in the main proceedings, instead of in a voluntary jurisdiction.

The reason is *"to resolve in one single procedure the different claims the parties bring to court and to avoid possible contradictory judicial decisions".* Then, "*Once the voluntary jurisdiction procedure was decided on this appeal and relocation order (permission to move) was granted to the appellant, it is appropriate to decide on those child arrangements related to the relocation."*

The existence of both the Voluntary Jurisdiction procedure (Art. 156 of the *Spanish Civil Code*, CC) and the Child Arrangements Order procedure (Arts 770-775 of the *Spanish Civil Procedure Law*, LEC) to address relocation disputes can indeed create legal uncertainty[1] for several reasons and mainly because they present different standards and outcomes for solving family relocation disputes. In fact, Spanish judges are aware of this different procedure situation and the law's lack of accuracy in determining the child's best interest.

For instance, as stated by the Barcelona Provincial High Court:

> "The law does not determine elements of weighting to decide on a relocation application and to provide content of the child's interest in each case. This increases the risk of arbitrary decisions and/or biased resolutions, hinders the prediction of the judicial response and the agreements, and generates legal uncertainty."[2]

4. What Legal Procedure is Best in International Relocation Cases?

It will depend on (1) whether the couple is still together and one of them wants to move to another country -or town within Spain- but the other parent does not want to, or (2) whether the couple is already separated.

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[1] Barcelona Provincial High Court in deciding on the appeal against first-instance court decisions regarding child relocation disputes: Judgement 429/2024, July 30, applies Voluntary Jurisdiction Procedure. Judgement 206/2024, April 12, applies Child Arrangements Order Procedure.

[2] Barcelona Provincial High Court Judgments 206/2024 (April 12), 296/2024 (May 21), 355/2024 (June 17)

In the first case, a petition for parental responsibilities shall be filed applying for custody and permission to relocate.

In the second case, it will depend on whether there is joint or sole custody.

If relocation is urgent, the voluntary jurisdiction procedure should be filed first and, if this application is rejected, a Child Arrangements Order shall be filed coupled with provisional arrangements so the parent can move while the main procedure is decided upon.

5. The Role of Judicial Discretion and the Best Interests of the Child

In Spain, the law does not establish criteria that facilitate the concretion of the child's interests when dealing with relocation disputes.

Given the lack of a specific legal procedure in Spain for family relocation issues, Spanish judges rely on judicial discretion to decide on each case and generally take into consideration the Washington Declaration on International Family Relocation, solving disputes in cases of child relocation with sound discretion guided by law. But, while sound discretion is a powerful tool, it also risks producing arbitrary or unpredictable decisions.

Regarding family relocation disputes, judicial discretion should be guided by:

- The right of the child to maintain personal relations and direct contact with both parents on a regular basis (except if the contact is contrary to the child's best interest);
- The child's age and maturity;
- The proposals for the practical arrangements for relocation (accommodation, schooling, employment, contact arrangements);
- The cost to the family and the burden to the child;
- The reasons for seeking or opposing the relocation;
- Any history of family violence or abuse (physical or psychological);
- The continuity and quality of past and current care;
- The pre-existing type of custody;
- The impact of grant or refusal on the child (his/her extended family, education, and social life context) and the parents;
- The relationship between the parents;
- The applicant's commitment to support and facilitate the relationship between the child and the other parent after the relocation;
- The enforceability of contact provisions in the State of destination;
- Any other circumstances deemed to be relevant by the judge.

Even though the child's best interests remain the central principle, Spanish law does not clearly define how to assess or weigh these interests. For instance, as the Barcelona Provincial High Court has noted, there are no "*elements of weighting*" for relocation decisions and this contributes to legal insecurity.

6. Spanish Case Law and the Washington Declaration on International Family Relocation

Most relevant case law studied has been judged by the Barcelona Provincial High Court and the Spanish Supreme Court of Justice.

It is important to highlight that, whether national or international family relocation disputes, the Barcelona Provincial High Court takes into consideration the 2010 Washington Declaration principles -as well as the UN General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) and the Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation- equally to all family relocation matters brought before the Court. The Principles of European Family Law concerning parental responsibility are also taken into account.

Barcelona Provincial High Court – reviewed CASE LAW:

314/2023 (31 May) - Relocation is granted (National relocation)

409/2023 (06 July) - Relocation is granted (International relocation)

206/2024 (12 April) - Relocation is not granted (International relocation)

296/2024 (21 May) - Relocation is not granted (National relocation)

355/2024 (17 June) - Relocation is not granted (National relocation)

429/2024 (30 July) -Relocation was previously granted, and the Court consequently changed the child's custody to sole legal custody (National relocation)

7. Common Criteria Followed When Relocation Is Granted

- The other parent has or has not applied for sole custody compatible with the other parent's decision to move (if he/she has asked for sole custody and if that is beneficial for the children at that moment in time);
- The family background before and after the break-up: Who has been the main caregiver, any history of violence, parental skills, if the children are currently living with the parent who seeks to move, etc.);
- The results of any evaluations (e.g.: psychological assessments) that may be important for deciding on the relocation;
- The parents' socio-economic status;
- If the children know the place and the language and will be able to adapt;
- The reason to move is not out of unrealistic or fanciful ideas, but reasonable arguments;
- The aim is to achieve an environment of greater personal and economic well-being that will have a positive impact on children (= Greater well-being for the child as a result of their caregiver's greater well-being);
- The impact of granting or dismissing the relocation application (= What is less detrimental to the family's welfare);
- The child's opinion, according to their age and maturity, and whether parental conflict or rejection towards one of the parents exists;

- A practical and realistic proposal on visitation rights, accommodation, education, and employment is suggested.

As the Barcelona Provincial High Court has stated in judgments 314/2023 and 429/2024:

> "These criteria are aimed at solving international relocation cases. However, they are equally applicable when the relocation proposal is to move from one city to another, within the same country."

It must be stated that in the Case Law studied for this Conference, consideration is given to the Washington Declaration on International Family Relocation and most of the judicial decisions studied also refer to:

- The Principles of European Family Law concerning parental responsibility;
- The Hague Convention on Child Abduction (Convention of 25 October 1980 on the Civil Aspects of International Child Abduction); and
- The Hague Convention of 19 October 1996 (on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children)

8. The Constitutional Court of Spain, On The Judgement of March 10, 2025: An Important Legal Precedent for Relocation Disputes

This recent decision says: "relocation of children whose parents are separated or divorced requires the consent of both parents or, otherwise, prior judicial authorization (if one of the parents does not consent and agree on the child's habitual residence). However, this legal obligation may be adapted by the Court on the basis of the child's best interests and the parents' right under Article 19 of the Spanish Constitution (freedom of movement). Now, this Constitutional Court can affirm that the existence of gender-based violence indicators is an important aspect to be considered by the judge as part of our civil legislation regarding children's relocation when parents are involved in separation or divorce proceedings since it is beyond legal and logical reasoning to require a mother, who claims to be a victim of gender-based violence, to ask for the other parent's consent to remove the child from a potential threat to their life and safety."

This case sets a dangerous legal and constitutional precedent for relocation disputes in Spain, given that in this decision, the Constitutional Court only refers to *"reporting being a victim of gender-based violence",* which is different from "being a victim of gender-based violence."

This difference is important because it could somehow encourage some mothers -who wish to remove their minor children from their habitual residence and stop them from seeing their other parent- to "report being a victim" in order to produce those "gender-based violence indicators" necessary to create the circumstances to relocate without the other parent's consent.

In such a scenario, once the mother has relocated with her children, the passing of time would be enough to win the legal battle (child's settled environment) and create a new life wherever she has decided to go; and this will happen regardless of whether the mother ultimately turns out to be or not a victim of gender-based violence, since -it seems- it would be enough to

"report being a victim" to relocate without the other parent's consent or prior judicial authorisation.

9. Recommendations for Family Relocation Procedures in Spain

In Spain, better legal regulation is needed to avoid legal uncertainty. It is urgent to ensure a single and specific procedure to resolve family relocation disputes, national or international. This is achievable where the political will (legislative power) exists.

On the other hand, many judges in Spain are still not aware of the 2010 Washington Declaration Principles and the Principles of European Family Law, even though these are very important principles judges must know and apply within our justice system.

In this respect, each Member State, through the competent national authority, should inform the judiciary about The Hague Conference's work since it is important to make sure judges know the principles and how to apply them.

Therefore, it must be insisted that it is urgent to ensure a single and specific legal procedure in Spain by drafting and implementing a law to resolve family relocation disputes.

Session 6 - States that utilise best interests assessments as guidelines in relocation cases

Brazil

Judge Guilherme Calmon Nogueira Da Gama, Vice-President, Regional Federal Court of the Second Region, Rio de Janeiro, Member of the IHNJ

Introductory note

Brazilian law does not include the concept of relocating children, unlike some other legal systems. However, the issue of changing a child's residence to a country other than Brazil is provided for in the rules of Family Law in Brazilian legislation, which provides for specific judicial procedures that must be followed if no agreement can be reached between the parents.

According to Brazilian law, custody of children is treated as an ordinary duty of the parents - whether they are married or in a stable union - due to the fact that they live together, and mainly by virtue of parental authority, with the aim of serving the interests of the child. Guardianship is undoubtedly based on the prevalence of the interests of minors. 'Guardianship represents the effective and day-to-day coexistence of parents with the child under the same roof, assisting them materially, morally and psychologically'.[1]

Article 229 of the 1988 Federal Constitution states that parents have a duty to assist, raise and educate their children. The Brazilian Constitution does not distinguish the type of relationship between parents that generates the legal effects it mentions, based on family solidarity and equality between children. Nowadays, having overturned the conception of *"patrio poder"* from Ancient Rome, the meaning of the idea of parental authority is closely associated with the sense of protection, guardianship, safeguarding, promotion and respect for the interests and rights of children and adolescents, especially in matters relating to family coexistence.[2]

Among the child custody models, the shared custody modality aims to perpetuate the child's or adolescent's relationship with both their parents in the period following the dissolution of the marriage, allowing the best interests of the child to be safeguarded, and ensuring the equality of the genders - men and women - in the exercise of parental authority. This modality advocates the joint exercise of parental authority, the continuity of the child's (or adolescent's) contact with both parents, as was the case when the parental couple was, at the same time, a married couple. Another important aspect concerns the child's residence.

It is essential that the child has a fixed place of residence (in the father's house, in the mother's house or with a third party), which is unique and does not alternate, (...) close to their school, neighbours, club, playground, where they carry out their usual activities and where they have their friends and playmates. Determining the child's place of residence creates 'the stability that the law wants for the child' and 'does not exclude their daily life from being linked to a

1 GRISARD FILHO, Waldyr. *Guarda compartilhada.* São Paulo: Revista dos Tribunais, 2000, p. 58.

2 GAMA, Guilherme Calmon Nogueira da. Direito civil: família. São Paulo: Editora Atlas, 2008, p. 274.

fixed point'.[3] But a relevant aspect of shared custody is that it allows the parents, despite no longer being together, to jointly decide 'on the general programme of upbringing of the children, including not only instruction, but also the development of all the physical and mental faculties of the child'.[4] The shared custody model is not incompatible with the hypothesis that the child's parents live in different countries, because it is not required that custody of the child be exercised by both parents, nor is it obligatory that the time spent together be equal between the parents, 'but only that the child has contact with both parents, and the responsibilities and expenses must also be shared by both by mutual agreement'.[5]

We must not lose sight of the fact that shared custody will not work for everyone. Cultural differences, resentment and confusion over the causes of divorce and the dissolution of the marital relationship itself can all make it difficult to implement.

In a correct and coherent approach, the Civil Code provides that the children will have a place (even though the precept refers to 'the city') that will serve as their home base, taking into account their interests ('best interests of the child and adolescent'). The rule in the current §2 of art. 1.583 reinforces the notion that there is no access regime in shared custody and, therefore, the children's time together and communication with both parents should be divided in a balanced way, taking into account the factual conditions and the interests of the children. This rule did not establish the alternating custody model, but only made it clear that there is no access regime for one of the parents when there is shared custody.

Law no. 12.318/2010, better known as the Parental Alienation Law, aligns with social movements aimed at protecting children and adolescents. It regulates the behaviour of a relative or person close to the minor who interferes with their psychological development in such a way as to cause damage to the establishment or maintenance of bonds of affection with a parent (art. 2). Normally, acts of parental alienation aim to exclude one of the parents from living with their child by conducting a campaign to discredit them. Such behaviors may include creating obstacles to living with this parent, omitting relevant information about the child, filing false reports of physical or psychological mistreatment or sexual abuse, moving to distant places – even countries – among other behaviors.

As the doctrine rightly points out, 'there are indications of possible parental alienation or abuse by one of the parents in unjustified changes of residence at the time of a custody dispute, as well as that such an attitude is serious and should be promptly opposed'.[6] This is the so-called abusive change of residence with the aim of making it impossible or obstructing the father's family life with his child.

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3 GRISARD FILHO, Waldyr. *Guarda compartilhada.* São Paulo: Revista dos Tribunais, 2000, p. 146.

4 *Ibid*., p. 148.

5 REIS, Juliana Pamela Costa dos; FERREIRA, Márcia Danielly Batista; VILAR, Erika Cristhina Nobre. A supremacia da guarda compartilhada: o melhor interesse da criança na alternância de 134esidencia para o exterior. *Revista FT*, v. 27, jun. 2023, p. 5.

6 MATOS, Ana Carla Harmatiuk. Mudança de domicílio e foro de discussão da guarda: sequestro interparental. In: *Anais do X Congresso Brasileiro de Direito de Família:* Famílias nossas de cada dia" . Coordenado por Rodrigo da Cunha Pereira.- Belo Horizonte : IBDFAM, 2015, p. 535.

2. Content of parental authority and the decision to move residence

Parental authority is the exercise of authority by parents over their minor children, always in their best interests. Parents are the 'natural' carers of their children, allowing them to govern their persons and their property, as a rule.

Article 1.631 of the Brazilian Civil Code states that parental authority belongs to both parents on equal terms, and that the Courts must be sought when there is a disagreement between them. Thus, parents will always have parental authority, regardless of the continuity (or not) of the legal bond between them, i.e. if they remain married or cohabiting or if they eventually divorce.[7] There are, of course, situations in which parental authority will be held by only one of the parents, in the case of single parenthood - lack of recognition of the child by one of the parents - or in the event of suspension, impediment or dismissal of parental authority.

As there is no longer a hierarchy between the parents, the codified rule only clarifies that, in the event of a disagreement between the parents over the exercise of parental authority, either of them is entitled to bring the matter before the judge.

Under Article 1.634 of the Civil Code, there are various duties that parents have in relation to their children when exercising parental authority. The meaning of parental authority is linked to the notion of care, protection, guardianship, safeguarding and respect for the interests and rights of children and adolescents.

The two attributions formally added by Law n° 13,058/2014 to Article 1,634 are contained in items IV and V: 'consent to travel abroad' and 'consent to move permanent residence to another municipality'. Even if the unilateral custody model, which is now the exception, is adopted, the non-guardian parent will have to be consulted about the child's possible trip abroad, as well as any intention to move their permanent residence to another municipality. In this respect, Brazilian law is following the line adopted in other judicial systems, which gives both parents – regardless of whether they are guardians or not – the prerogative to take part in very important decisions in their children's lives, such as changing their permanent residence or travelling abroad.

The concern with the change of residence is not about where the child can be taken, 'but rather how the distance can hinder paternal-filial coexistence, including due to the financial difficulties of travelling'.[8] Currently in Brazil, even if there is unilateral custody, the non-guardian must be consulted about the child's change of permanent residence as well as any intention to travel abroad.

It is the duty of all legal actors and of the doctrine and jurisprudence itself to undertake the vital work of correctly interpreting and applying legal rules, always with the best interests of children and adolescents in mind. It is on this basis that the changes and innovations introduced by Law 13.058/2014 in the model of legal custody of minor children should be interpreted.

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7 LEITE, Eduardo de Oliveira. Famílias monoparentais. São Paulo: Revista dos Tribunais, 1997, p. 192.

8 GEARA, Diana. O genitor detentor da guarda unilateral dos filhos menores tem o direito de alterar o domicílio dos filhos para o exterior sem a anuência do genitor não guardião? *Anais da EVINCI*. Unibrasil, v. 1, n. 3. Cadernos de Artigos Científicos e Resumos Expandidos, 2015, p. 6.

3. Various procedures for obtaining judicial authorisation

There is no institute for relocating children in Brazilian law, nor is there a specific procedure for obtaining a child relocation order under the Brazilian legislation. However, Law 8.069/90 makes it compulsory to obtain judicial authorisation for a child to travel abroad, except in two cases: a) when the child is accompanied by both parents or a guardian; b) when the child is travelling in the company of one of the parents, as long as the other parent expressly authorises it through a notarised document (art. 84 of the Statute of the Child and Adolescent). The legal provision, however, does not refer to cases of permanent change of residence, but rather to any journey outside the national territory. There is also a legal provision regarding the prior need for express judicial authorisation for children or adolescents born in Brazil to leave the country in the company of a foreigner resident or domiciled abroad.

Resolution 131 of the National Council of Justice stipulates that the authorisation for the child to travel abroad must be given directly to the Notary Public or judicially granted by the Child and Youth Court. Recently, the National Council of Justice reaffirmed the need for the other parent's permission to travel abroad to be given in a document with a notarised signature by a Notary Public in Brazil, and no other type of document is possible, even if it uses a technological tool offered by the federal government.

In cases where there is a need for judicial authorisation, or even when there is disagreement between the parents about their child travelling together, the action will be aimed at judicial authorisation. However, in cases where there is disagreement between the parents, an action will have to be brought to obtain paternal or maternal consent.

Brazilian law does not prohibit a parent from moving in with their child, but it does require certain measures to be taken and therefore prohibits abusive and unjustified removals, as provided for in Law 12.318/10 (Parental Alienation Law), which also provides sanctions for acts considered to be parental alienation. 'The child has a father and a mother and in order to move to another municipality, and not just abroad, there must be agreement between the father and the mother, or in the event of refusal and if the request benefits the child or adolescent, judicial authorisation'.[9]

4. The Brazilian Code of Civil Procedure and family lawsuits, with an emphasis on mediation and conciliation

The Brazilian Code of Civil Procedure (Law 13.105/15) sets out the procedure for family lawsuits, expressly dealing with divorce proceedings, termination of a civil partnership, custody, rights of access and filiation Maintenance proceedings, however, remain governed by a separate special law. The Code of Procedure encourages the consensual solution of legal disputes, including the assistance of a multi-professional team for mediation and conciliation activities (art. 694), and also provides for the possibility of suspending legal proceedings if the parties are seeking to reach a consensual solution via out-of-court mediation or multidisciplinary assistance.

9 SILVA, Regina Beatriz Tavares da. A guarda compartilhada na Lei n. 13.058, de 22/12/2014. *Revista de Direito de Família e das Sucessões.* v. 2, p. 243-247. São Paulo: Ed. RT, out.-dez. 2014, p. 245.

Mediation can be divided into as many sessions as necessary to achieve a consensual solution, without prejudice to any judicial measures that may be necessary to prevent the right from perishing (CPC, art. 696).

A recent legislative innovation now contemplates that in custody actions, before mediation or conciliation begins, the judge will ask the parties and the Public Prosecutor's Office acting in the case if there is a risk of domestic or family violence and, in this way, will set a deadline of five days for the presentation of evidence relating to the allegation (art. 699-A, introduced by Law 14.713/2023).

5. Precedent of the Superior Court of Justice and the parameters for resolving concrete cases

In the structure of the Brazilian Judiciary, the Superior Court of Justice has the central role of promoting the standardisation of the interpretation of federal law in the light of the concrete cases that are submitted to the justice system. And because of this, there was a very recent precedent ruled in a case where there was a dispute between the parents about whether or not it was feasible for the child to permanently move in with his mother, even if the father disagreed. This was the decision in Special Appeal No. 2.038.760/RJ, which was handed down in December 2022.[10]

In this specific case, the possibility of changing the residence of the child under shared custody between the parents to a foreign country was considered. The judges, basing their judgement on the fact that shared custody does not require physical custody of the child in favour of both parents, nor does it require equal time between the parents and the child, decided that the child will continue to live one parent in the other State during school periods, and have access to the parent in Brazil with the support of technology, and, during the holidays, the child will go to Brazil to stay with the parent who has not changed residence. The best interests of the child were weighed up in the light of the specific case. Thus, shared custody was established, with the parameters of cohabitation being set in favour of the father who continued living in Brazil: a) the child returning to Brazil during all school holidays until reaching the age of eighteen (with the costs fully covered by the mother); b) wide and unrestricted use of video calls and other technological means of conversation; c) daily cohabitation when the father is in the Netherlands.

In a doctrinal comment on the case, 'this decision shows that shared custody is not restricted by the geographical proximity of the parents, but is based on the ability and desire of both to exercise parental authority and the need to prioritise the best interests of the child'.[11]

There are advantages to using the shared custody model when the child's parents live in different countries, namely 'access to different cultures, learning new languages, broad social

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10 BRASIL, Superior Tribunal de Justiça. Informativo STJ n. 762, de 07.02.2023. https://www.cnj.jus.br/viagem-de-criancas-e-adolescentes-desacompanhados-exige-autorizacao-em-cartorio-ou-por-aev/ (last accessed 15 September 2025).

11 THURY, Patricia. Guarda compartilhada de filhos com pais que moram no exterior: entendendo a legislação brasileira. Jusbrasil.com.br. https://www.jusbrasil.com.br/artigos/guarda-compartilhada-de-filhos-com-pais-que-moram-no-exterior-entendendo-a-legislacao-brasileira/2004608967 (last accessed 15 September 2025).

development, which allows the child to develop in a socially appropriate environment (which is expected) with a view to becoming a citizen who contributes positively to the environment in which they live'.[12]

6. Analysis of the recommendations contained in the 2010 Washington Declaration and their repercussions in Brazil

In order to be more objective and systematic in analysing the content of the 2010 Washington Declaration regarding the relocation of children and how the subject of change of residence is dealt with in Brazilian law, more specific information is provided below. In fact, there is no specific procedure for the relocation of a child abroad, but there is a procedure for judicial authorisation of consent denied by one of the parents, assuming that both parents have parental authority.

Under Brazilian law, it is possible to obtain free legal aid and a public defender to defend the interests of economically vulnerable people in court. In these cases, no procedural costs (fees) or lawyer's fees are charged, taking into account the economically vulnerable situation of the person who does not have an income of more than three minimum wages in Brazil.

According to Brazilian law, it is not possible for parties to act in court without legal representation by a lawyer or public defender. Therefore, it is imperative that a lawyer be present, who may be a public defender.

In Brazil, in order to move a child abroad, it is not important that the State to which the child is moving is a State Party to the 1980, 1996 or 2007 Hague Conventions. There is no way to restrict rights based on the state of destination for the purposes of establishing a new residence.

As for the principles contained in the Washington Declaration, which are or are not observed in Brazilian law, it can be said that most of them are followed. If there is no agreement between the parents to move the child's residence to another country, it is mandatory to file a lawsuit. Therefore, the unilateral decision of one of the parents to change residence is not enough to allow the change to take place.

The factors outlined in the Washington Declaration are usually observed in cases, especially the aim to maintain the child's relationship with both parents (even with the use of technological resources and periods of travelling by the child to Brazil), hearing the child's views, acknowledging the child's ties with their extended family and assessing the relocating parent's commitment to maintaining regular contact between the child and the parent who has remained in Brazil.

Judgments, especially from the Superior Court of Justice, always ground the solution for authorising or not a change of residence based on the principle and parameter of the best interests of the child, in accordance with the doctrine of full protection, as established of art. 227 of the Federal Constitution and the UN Convention on the Rights of the Child. In shared

[12] SILVA, Bruna Bernardes da; CÂNDIDA, Marcela. Guarda compartilhada: pais residindo em países diferentes. Centro de Ensino Superior Uma de Catalão https://repositorio-api.animaeducacao.com.br/server/api/core/bitstreams/a1a04efe-82d5-48b1-859e-479a817850cb/content (last accessed 15 September 2025), p. 18.

custody, 'joint physical custody of the child is not required, which is why it is possible for this regime to be established even when the parents live in different countries'[13]; hence the possibility of the child living with both parents and the division of responsibilities between them, using the support of technology.

The factors listed in the Washington Declaration are followed, valuing the child's right to maintain relations and direct contact with both parents, with the exception of cases where the best interests of the child do not recommend it, the fact that the child has already reached sufficient age and maturity for their wishes to be considered, the parents' commitments regarding practical contact arrangements (such as accommodation, school education and employment of the parent in the other country). Also relevant are the reasons for obtaining judicial authorisation to move or the reasons for denying it, as well as any history of family violence or physical or psychological abuse against the child. It is also important to consider the family's history in terms of authorising or refusing to move, and in particular the continuity and quality of the previous and current arrangements for caring for and living with the child. Likewise, the context of the child's extended family, their upbringing and social life is an important factor to consider. Another fundamental factor is the commitment of the parent who intends to move to Brazil to support and facilitate the continuity of the child's relationship with their other parent after the move. Also to be considered is whether the proposals for cohabitation and contact with the parent who remains in Brazil are realistic, including the costs involved, such as covering travel expenses for in-person contact with the child during school holidays, for example. The mobility of family members, such as someone with a physical disability, is also taken into account.

The most sensitive issue, which therefore deserves more attention in Brazilian law, concerns the recognition and enforcement of cohabitation decisions in the state of the child's new residence, precisely because of the issues relating to the applicable jurisdiction. As the Brazilian State is not yet a party of the 1996 Hague Convention, there are indeed issues that still deserve attention and, for this reason, the Brazilian Network of Liaison Judges recently approved a request for the Brazilian government for Brazil to become a state party to the 1996 Convention. One of the cases in which custody is not authorised for a particular parent is precisely in cases of domestic violence, and parental authority may be suspended or assisted (or supervised) visitation measures may be established to prevent further episodes of family violence.

There is no way of indicating the average time it will take to complete the procedures for changing residence to another country, but a constitutional rule requires that the principle of reasonable duration of proceedings must be observed, especially in cases involving the interests of children.

Unfortunately, it is not possible to provide information on the success rate in cases of proceedings to change the child's residence in Brazil, as all cases are subject to judicial secrecy, but I believe it is possible to start a specific project to obtain this information using a form that can be distributed among the judges who have jurisdiction over such cases.

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13 REIS, Juliana Pâmela Costa dos; FERREIRA, Márcia Danielly Batista; VILAR, Erika Cristhina Nobre. A supremacía da guarda compartilhada: o melhor interesse da criança na alternancia de residencia para o exterior. *Revista FT*, v. 27, jun. 2023, p. 5.

As far as Brazilian law is concerned, I believe that the main aspect that needs to be improved in cases where a child moves abroad is the recognition and enforceability of Brazilian decisions in the other country and, to this end, as well as Brazil needing to adhere to the 1996 Convention. It is also essential to develop capacity-building and training activities for judges and other professionals in the justice system.

The procedure in Brazil to recognise and enforce a foreign decision to change residence or to give effect to a change of residence agreement reached abroad is followed by the Superior Court of Justice in terms of the homologation of a foreign decision with the granting of an exequatur so that the Federal Court can comply as a result of international legal cooperation.

Undoubtedly, there is room for improvement, particularly with regard to the recognition and enforceability of Brazilian decisions in the child's new place of residence, given the judicial authorisation granted by the Brazilian authorities. Therefore, the Brazilian State's accession to the 1996 Convention is one of the measures that is convenient and appropriate, as well as the training of professionals in the justice system in this regard.

Germany

Judge Martina Erb-Klünemann, Judge of the Family Court, District Court of Hamm, Member of the IHNJ

The Basics

Compared to the situation in Germany 15 years ago, which I described during the First Relocation Conference in Washington from March 23 to 25, 2010 (see *The German Judicial Approach to Relocation, Judges` Newsletter on International Child Protection* - Special Edition No 12010, pp. 49 – 51), not much has changed. Germany does not have a specific legal framework for relocation proceedings, whether for procedural or for substantive issues. Relocation is treated as a pure question of custodial rights. Only a relocation with a low impact on the child, i.e., without a bigger distance from the previous home and without a change of kindergarten or school, could be a matter of everyday life that can be decided by the primary caregiver alone. If the relocation is a matter of major significance with serious repercussions on the child's best interest, the person not having sole custodial rights needs the consent of the person who has sole or joint custodial rights, pursuant to section 1687 (1) of the German Civil Code (BGB). In case of a dispute over the relocation, one of them can start custody proceedings before a court. There is no structural distinction between international and national relocations.

Procedural Law

The proceedings on custody do not include questions of access and maintenance, these are dealt with in separate proceedings, and only if a party applies for them. There is no need for a legal representative in proceedings on parental responsibility, but there is a need for one in proceedings on maintenance. Legal assistance is available on application for all sorts of proceedings and subject to a means and merits test. The requirements for the latter are not high for proceedings on parental responsibility, as the dispute itself is often considered sufficient.

In proceedings on parental responsibility, the courts act ex officio. There is no burden of proof on one party, and no presumptions are applicable. The average time frame till the proceedings are finished is not predictable. The principle of priority and expediting proceedings for parent and child matters shortens the proceedings pursuant to Section 155 Act on Proceedings in Family Matters and Matters of Non-contentious Jurisdiction (FamFG). The court must discuss the matter with the parents, whose personal appearance is ordered. This must take place at the latest one month after the start of the proceedings. Postponements shall only be permissible based on compelling reasons. This hearing often ends with an amicable solution or a court decision. But if there is a need for an expert's opinion, which is at the court's discretion and ordered by the court, the proceedings will last longer, from nine months to a year. There is always the possibility for appeal. A further appeal on points of law is available when the appellate court has granted leave. The parties can apply for an interim decision in separate proceedings, which is granted if the regulation is justified under the applicable regulations and there is an urgent need for immediate action (section 49 FamFG).

Questions of recognition and enforcement of a foreign relocation decision or agreement are, as far as it concerns questions of parental responsibility, ruled by the Brussels IIb-Regulation,

the 1996 Hague Convention or sections 108 ff. FamFG. Insofar as a foreign relocation decision or agreement contains maintenance rulings, the EU-Maintenance Regulation 4/2009, the 2007 Hague Convention or sections 108 ff. FamFG are applicable.

Substantive Law

Under German substantive law, custody is like a cake that can be cut into different pieces. The relevant piece, i.e., the right to decide on a relocation, is the right to determine the place of residence of the child ("Aufenthaltsbestimmungsrecht") as part of the right to decide on personal care issues for the child, as outlined in section 1631 Civil Code. If a person is the sole holder of this right, he or she can decide on the relocation without the duty to give notice to the other parent in advance of a relocation. The "Aufenthaltsbestimmungsrecht" is often granted by the family courts in this general form even in cases where there is a dispute about moving within Germany. This general form grants a one-way ticket to wherever the holder of rights wants the child to go in the world. The possibility to restrict the right to determine the child's residence, for example, only a determination within Germany, is given, but is often not chosen by the German courts. From my point of view, the German courts should be more sensitive. I see a need to raise better awareness on this topic.

If both parents have joint custody, the parent who makes the application can get sole rights if the other parent agrees, or if the court decides that it is in the child's best interests to change this (section 1671 (1) Civil Code). In cases where a relocation is contested, the court must balance several constitutional rights. These include the child's right to develop his/her own personality (Art. 2 Basic Law) and the relocating parent's freedom of movement (Article 2). In addition, visiting rights of the child and parents have to be taken into account (Art. 6 Basic Law). The child's best interest is the decisive criterion for the court.

The legal situation is based in particular on case law from the German Constitutional Court and the German Federal Court of Justice. The decision of the Federal Court of Justice dated 6 December 1989, no. IVb ZB 66/88, which was already the subject of my lecture on the first Washington relocation conference, formed the basis for the legal situation described. One important sentence of this judgement was that „in case of better qualification of the moving parent, the visitation rights are weaker and have to step back." The Constitutional Court then stated in a ruling on 20 August 2003, no. 1 BvR 1532/03, that when weighing the best interest of a child, the court has to consider, together with other aspects, the effects of a relocation on access. The Federal Court of Justice raised, during the cases from 18 April 2010, no. XII ZB 81/09, and 16 March 2011, no. XII ZB 407/10, that the relevant questions in relocation cases are: What impact does a relocation have on the child's best interest? Which scenario is better for the child: the relocation with one parent or staying in the country of habitual residence with the other parent? It is important to highlight that it is not allowed to consider, in addition, the scenario that the child will stay together with the parent who wants to relocate in the country of origin. This would breach the constitutional right of this parent to move freely.

The German Family courts consistently follow this case law. Courts must balance various aspects in each individual case when evaluating the child's best interest. These are the general aspects for custody decisions, including:

- the principle of best support of the child,
- the possibility of (personal) care of the child,

- the wishes of the child and each parent (even very young children are heard by the judge in person, Art. 21 Brussels IIb-Regulation, section 156 FamFG. Both parents are heard in person by the judge, section 160 FamFG),
- the principle of continuity,
- the child's ties to each parent,
- the impact on the extended family,
- future visitation rights and
- the willingness and ability of each parent to tolerate the other parent's relationship with the child.

In addition, special aspects for relocation cases have to be evaluated, such as:

- the reasons for the relocation (the only unacceptable reason is the aim to cut contact between the child and the other parent),
- the child's knowledge of language and culture,
- the preservation of the cultural and religious identity of the child,
- the child's ties to both places,
- the ease of the child to adjust to a new environment,
- the question whether a residence permit is given.

This is in line with the criteria mentioned in the Washington Declaration. The lack of appropriate consideration of cultural differences, which led to my criticism 15 years ago, is no longer valid. The courts are now much more open to cultural diversity than they were back then.

The following examples of German court decisions may help illustrate the legal situation:

On 14 March 14 2012, the Higher Regional Court Nürnberg - 10 UF 1899/11- granted the mother the right to relocate to her home country, Ireland, as she was the primary caregiver to the one-year-old child. The court had asked for an expert's opinion. The court was convinced that the return did not have the purpose of restricting the father's access.

On 18 June 2013, the Higher Regional Court Frankfurt – 7 UF 67/12 - granted the mother the right to relocate with the child to her home country, Türkiye. The court based its decision particularly on the will of the child, the fact that the return was to the wider family, and that the mother would do her upmost to guarantee ongoing contact of the child with the father.

On 2 February 2017, the same court – 7 UF 2/17 - denied the application of a mother who wanted to relocate the 6-year-old child to South Africa. The court had asked for an expert's opinion and based the decision on the fact that the mother had no ability and willingness to tolerate the father's relationship with the child. A complete breakdown of their relationship had already taken place. In addition, the living conditions for the child in South Africa were unclear.

On 6 November 2018, the Higher Regional Court Brandenburg – 13 UF 174/17 – dismissed the father's application to relocate to Andorra with the 12-year-old child. The court had asked for an expert's opinion. The child wished to relocate with the father, but the court found that the father did not guarantee minimum economic standards in Andorra, making the relocation incompatible with the child's best interests.

A primary caregiver who is tolerant concerning the other parent's ongoing relationship with the child and whose reason to relocate is not on cutting the relationship of the child with the other parent, has a good chance of being granted sole authority to decide on the child's relocation. This is even the case if this parent had formally abducted the child. The former abduction might be a hint at limited educational abilities. If the former abduction is the only restriction in the parent's capacity to educate the child, especially if the abductor always took care and will take care of contact of the child with the other parent, this parent has a good chance to gain the right to relocate (see Higher Regional Court Düsseldorf, 2 March 2021, no. 3 UF 173/20). None of the published decisions include the allegation of domestic violence as a reason to relocate internationally. Although that might be a valuable information, there is not a single decision known in which consideration was given whether the State to which the party wants to relocate is a party to the relevant EU-Regulations, the 1980, 1996, or 2007 Convention. The courts promote voluntary settlements and the use of mediation, Art. 25 Brussels IIb-Regulation, Art. 31 (b) 1996 Hague Convention, section 156 FamFG.

Evaluation

In parallel with the absence of any significant discussion in Germany about changing the current approach, I see no need to rethink the general German approach. Easy access to effective justice is given. German jurisprudence largely complies with the 2010 Washington Declaration. Only the requirement for a reasonable notice does not align with the German approach.

There are a few aspects where I see potential for improving the situation:

- One is the improvement of parents' knowledge of their rights and limits. Although there is information on relocation available for free by contacting the local Youth Authority and on the internet (see, for example, the information by the NGO ZAnK https://zank.de), it seems that not all parents inform themselves before moving with the child. Efforts to better inform parents about the consequences of a wrongful relocation, as well as the encouragement to use available legal proceedings for lawful relocation, should be expanded. This would increase the chance of avoiding abductions of children.
- As already said, the courts should exercise greater sensitivity when granting the right to decide on the relocation to this general extent.
- Particular attention must be given to ensuring ongoing contact with the other parent after relocation, including the use of modern technological means.
- The courts should take into account whether international instruments are in place with the other state to which the relocation is requested. Instruments such as the Brussels IIb Regulation and the 1996 Hague Convention guarantee the recognition and enforcement of a decision on parental responsibility across borders,
- Although German courts make extensive use of direct judicial communication through the International Hague Network of Judges and the European Judicial Network in civil and commercial matters, they do not use these tools in relocation cases. I see a need to promote the usefulness of the networks in the context of relocation as well.
- Finally, German research on relocation would be highly valuable.

Mexico

Judge Oscar Gregorio Cervera Rivero, Family Magistrate, Superior Court of Justice of Mexico City, Member of the IHNJ

The Washington Declaration is an important document that establishes principles and guidelines for relocation procedures for children and adolescents in the international context. States must ensure that legal procedures are available to request the right to relocation with the child from the competent authority.

In all applications related to international relocation, the primary consideration is the best interests of the child. Therefore, determinations must be made without any presumptions for or against relocation.

It is important to note that the Washington Declaration is a non-binding document, meaning that states are not required to follow its principles.

Under this logic, the principles of the Washington Declaration that are followed in relocation procedures in many States are:

1. **Best interests of the child:** The well-being and safety of the child are prioritized at all times.
2. **International cooperation:** States must cooperate with each other to ensure the protection of minors and the implementation of the principles of the Washington Declaration.
3. **Non-discrimination:** Minors or their parents should not be discriminated against based on their nationality, race, religion, gender, sexual orientation or any other condition.
4. **Respect for human rights:** The fundamental rights of the parties involved are protected, including the rights of minors.
5. **Transparency and accountability:** Transparency is guaranteed throughout the process and accountability is provided to the relevant authorities.

However, notably some principles of the Washington Declaration may not be observed, in some countries.

This may be due to various reasons, including a lack of resources and infrastructures, legal or regulatory constraints, cultural or social differences, or a lack of training or awareness of the principles outlined above.

To overcome the challenges and obstacles in implementing the principles of the Declaration in question, it is recommended to:

1. Strengthen international cooperation between States.
2. Simplify and standardize relocation procedures.
3. Increase financial and human resources for the protection of minors.
4. Promote awareness and training for professionals working with minors in international relocation situations.

It is important to highlight that the Washington Declaration establishes principles and guidelines for procedures for the relocation of children and adolescents in the international context, which is recognized in the Mexican Regulatory Framework.

Given that, in Mexico, a constitutional reform on Human Rights was published on June 10, 2011, which has had the mandate of creating a new culture of human rights, placing the dignity of persons at the centre. Although various articles of the Constitution were modified, the most significant change achieved with the reform is the one made to Article 1, in its first and fifth paragraphs, and the addition of two paragraphs - second and third. This transcendental reform mainly sought to strengthen the system for the recognition and protection of human rights in Mexico, and involved the incorporation of all human rights contained in international treaties as constitutional rights.

Since the 2011 constitutional reform, Mexican children and adolescents, and those within the country, are entitled to rights and are protected by international treaties, such as the United Nations' Convention on the Rights of the Child, which recognizes that children, for the full and harmonious development of their personality, must grow up within the family in an environment of happiness, love, and understanding.

Our Supreme Court of Justice in Mexico has established that all measures and provisions that directly or indirectly affect children and adolescents, both in the public and private spheres, must take into account their best interests.

For this reason, in terms of children's rights, the Mexican State has incorporated the following into its regulations:

- Constitutional reform (2011);
- General Law on the Rights of Girls, Boys and Adolescents (2014).
- Protocol for judging from the perspective of childhood and adolescence. (2020).
- Methodological Guide for the residential care of children and adolescents in a situation of mobility. (2022).
- Jurisprudence (210-2023).
- The Mexican Network of Judicial Cooperation for the Protection of Children, operating since 2010.

The aforementioned instruments contain the guiding principles of private international law promoted by the Hague Conference and perhaps, the greatest challenge that a judge may face is to rule on the basis of principles when there is no domestic rule applicable to the case.

Along these lines, the timeframe for issuing a resolution in an international family relocation procedure may vary, depending on the country and the type of procedure involved.

In Mexico, for example, the Mexican Commission for Refugee Assistance (COMAR) has a maximum period of 45 business days to issue a decision; in complex cases, this time may be extended, but should not exceed 90 business days, depending on the complexity of the case or if additional documents are required. It is worth noting that the United Nations High Commissioner for Refugees (UNHCR) also supports refugees in family reunification, allowing family members separated during the flight process to reunite in the host country; however, this process is subject to the immigration policies of the host country and the particular circumstances of each case.

However, notably the challenges faced in the family relocation process are:

- Bureaucratic barriers**:** The complexity of immigration procedures and documentation requirements can be a significant challenge.

- Financial barriers**:** Costs associated with the family relocation process, including travel costs, visas, and processing fees, can be a burden for many families.
- Legal challenges**:** Some countries have restrictive immigration policies that can hinder or delay the family reunification process.

Therefore, in order to achieve successful outcomes in these types of procedure, up to a statistical rate of sixty percent (60%) the assistance of international organizations such as UNHCR and the International Commission on Migration is essential, since they are essential to speed up and facilitate these processes.

However, the procedure in States for recognizing and enforcing a foreign relocation decision or for enforcing a relocation agreement abroad may vary, depending on the applicable legislation.

The general steps typically followed are: the recognition of a foreign relocation decision, which involves filing an application with the court or competent authority of the State to recognize and enforce the relocation decision.

This application must be verified for authenticity and compliance with the principles of private international law and public policy of the State, so that the relocation agreement abroad can be enacted through homologation.

For this reason, the 2010 Washington Declaration can be considered a success, as it has allowed for progress and strengthening of international cooperation in matters of international family relocation, with greater coordination and collaboration among countries to resolve these cases. It has also allowed for the establishment of common principles, that have helped ensure that the rights of children and families are effectively protected and the protection of their rights has improved, that is, greater protection of the best interests of children, based on their particular needs.

Similarly, the aforementioned declaration has reduced the risk of kidnapping and abuse of girls, boys, and adolescents by establishing procedures and mechanisms to prevent and respond to these risks, resulting in advances in the legislation of many countries to regulate this conflict more effectively, raising awareness and sensitivity in judicial and administrative practice, and improving the response to cases of international family relocation.

However, even though the implementation of the 2010 Washington Declaration has been successful, there may be some areas for improvement that require further effort to ensure the effective protection of the rights of children and families in cases of international family relocation, such as:

- Strengthening international cooperation, which includes communications and coordination between judicial and administrative authorities;
- The development of common protocols and procedures;
- Improving the assessment of the best interests of children, taking into account their specific needs;
- Strengthening preventive measures to address the abduction and abuse of children in cases of relocation;
- That families can access justice through free legal assistance, especially when they are vulnerable, and that society at large must be made aware of the importance of international family relocation and the rights of children and families; and,

- Training professionals who work in these matters, such as judges, lawyers, social workers, and psychologists.

In conclusion, monitoring of relocation cases could be improved to guarantee that the rights of children and families are respected, assessing whether the measures adopted are truly effective.

Having established the above, I will now refer to certain issues that may be of interest regarding the cases that are resolved in Mexico.

In an international family relocation proceeding, the parties may choose to represent themselves, but in most cases, legal representation specialising in international family law is recommended.

Legal representation can be especially important in these cases, as it involves the application of international treaties, and coordination with authorities in different countries; thus, in these procedures, specialised legal representation is crucial to guarantee that the rights of all parties involved are protected.

In that sense, some of the benefits of having specialised legal representation are the following:

1. Knowledge of international legislation
2. Experience in relocation procedures
3. Coordination with foreign authorities
4. Protection of the rights of children and adolescents.
5. Negotiation and conflict resolution

In this regard, it is necessary to set forth some of the requirements for legal representation: license to practice, expertise in international family law and language proficiency.

In this logic, having legal representation specialised in international family law is essential to guarantee that the rights of all parties involved are protected in an international family relocation proceeding.

It is essential to consider whether the State to which a person wishes to relocate is a party to the 1980, 1996 and/or 2007 Conventions, these international instruments are as follows:

1. The 1980 Hague Convention on the Civil Aspects of International Child Abduction**:** establishes procedures for the return of internationally abducted children.
2. The 1996 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption**:** establishes standards for intercountry adoption and the protection of children and adolescents.
3. The 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance**:** establishes procedures for the return of children who have been wrongfully removed to or retained in a State other than that of their habitual residence.

If the State of destination is a Party to any of these Conventions, the provisions and procedures set forth in them will apply, which may facilitate relocation and ensure the protection of the rights of the parties involved; on the other hand, if the State of destination is not a Party to these Conventions, other rules and procedures may apply, which may complicate the relocation process.

That is why international cooperation is essential to ensure the protection of the rights of children and adolescents in the context of international family relocation.

Cooperation between States and international organizations can help to:

1. Prevent international child abduction.
2. Facilitate the return of internationally abducted children.
3. Guarantee the protection of the rights of minors in the relocation process.
4. Promote cooperation and collaboration among States for the protection of minors.

Allegations of DA/DV (Disappearance of a Child/Displacement of a Child) can have a significant impact on relocation proceedings in any State. Some of the potential impacts include: prioritization of the case, thorough investigation, international collaboration, protective measures, risk assessment, relocation review, involvement of experts.

In general, allegations of DA/DV can add complexity and urgency to relocation proceedings, and require a prompt and effective response to ensure the child's safety and well-being.

In summary, allegations of DA/DV can have a significant impact on relocation proceedings. It is critical to consider these allegations carefully and thoroughly to ensure the safety and well-being of the child.

The time frame for issuing an **international family relocation order** may vary depending on the country and the type of procedure involved. However, generally the timelines are as follows:

1. Mexico**:** For requests for family relocation or family reunification of foreign nationals under the migration law, the **Mexican Commission for Refugee Assistance (COMAR)** has a maximum of **45 business days** to issue a resolution. This time may vary depending on the complexity of the case or if additional documents are required; in complex cases, this time may be extended, but should not exceed **90 business days.**
2. Other countries**:** Deadlines may also vary depending on the specific regulations of each country. Some countries have similar deadlines of between 30 and 90 working days, but this depends on the specific circumstances of each application and the workload of the immigration authority.

Notwithstanding the above, notably the **United Nations High Commissioner for Refugees "UNHCR"** also supports refugees in **family reunification**, allowing family members who have been separated during the flight process to be reunited in the host country; however, this process is subject to the migration policies of the receiving country and the particular circumstances of each case, without losing sight of the number of cases being heard in each country.

Family relocation or family reunification in the international context refers to the process by which family members who for various reasons are separated (e.g., due to migration or asylum) are reunited in one country.

This procedure may involve refugees, migrants or asylum seekers seeking to bring their loved ones to live with them in the host country.

Therefore, in order for a family reunification procedure to be successful, common issues related to family relocation procedures must be addressed, specifically:

1. Human Rights and Family Reunification**:** Family reunification is a right recognized by various international conventions, such as the 1951 Geneva Convention and the Universal Declaration of Human Rights. These documents protect the right of individuals to live with close family members, especially in situations of asylum or migration.
2. Family Relocation Requirements**:** In many countries, there are specific requirements for an applicant to relocate family members. For example, the applicant must be a legal resident or have refugee or asylee status; generally, applicants must prove the family relationship through documents such as birth certificates, marriage certificates and other legal documents.
3. Process and Resolution Times**:** Family relocation procedures can be lengthy, with waiting times varying according to the workload of the immigration authorities and the complexity of each case. For example, in some cases, processing times can range from a few months to a year or more, depending on the circumstances.
4. Special Cases (Refugees and Asylees)**:** Refugees who obtain asylum in a country may request the relocation of their family members under humanitarian programs. The competent authorities, such as the Mexican Commission for Refugee Assistance (COMAR) or the UNHCR, are usually responsible for these procedures; in these cases, family relocation has priority in situations of persecution or danger for family members in countries in conflict or in crisis situations.
5. Obstacles and Challenges**:** The complexity of immigration procedures and documentation requirements can be a significant challenge; as well as, the costs associated with the family relocation process, including travel costs, visas and processing fees, can be a burden for many families; some countries have restrictive immigration policies that can hinder or delay the family reunification process.
6. Family Reunification in the EU**:** In the European Union, the Family Reunification Directive allows non-EU citizens to bring their close relatives under certain conditions. National authorities must comply with European directives, but specific rules may vary from country to country.
7. Relocation of Family Members for Humanitarian Reasons**:** There are also special humanitarian processes in cases of emergencies, such as natural disasters, armed conflict, or persecution based on race, religion or nationality. These cases may have priority over other family relocation processes.
8. Difficulties in Relocation Procedures**:** Often, people affected by humanitarian crisis situations may face mobility restrictions, making it more difficult to reunite their families in a safe country. In addition, the required documentation may be difficult to obtain for those coming from areas of conflict or forced displacement.

In summary, family relocation is a key process in the protection of the rights of migrants and refugees. However, it faces several challenges, such as bureaucratic procedures, legal difficulties and financial barriers and, therefore, in order to be successful in the resolutions issued in this type of procedures, up to a statistic of sixty percent (60%) assistance should be obtained from international organizations such as the UNHCR and the International Commission on Migration, as they are fundamental in expediting and facilitating these processes.

The procedure for recognizing and enforcing a foreign relocation decision or giving effect to a foreign relocation agreement may vary depending on the State and applicable law.

However, the general steps usually followed are:

1. Recognition of a Foreign Relocation Decision

   ✓ Filing of the application: The interested party files an application with the court or competent authority of the State to recognize and enforce the foreign relocation decision.

   ✓ Verification of authenticity: The competent court or authority verifies the authenticity of the foreign relocation decision and the competence of the court that issued it.

   ✓ Review of the decision: The court or competent authority reviews the foreign relocation decision to determine whether it complies with the principles of private international law and does not contravene the public policy of the State.

   ✓ Recognition and enforcement: If the foreign relocation decision meets the requirements, the court or competent authority recognizes it and orders its enforcement in the State.

2. Enforcing an Overseas Relocation Agreement

   ✓ Filing of the agreement: The interested party files the relocation agreement with the court or competent authority of the State.

   ✓ Verification of validity: The court or competent authority verifies the validity of the relocation agreement and the competence of the parties to enter into it.

   ✓ Examination of the agreement: The court or competent authority examines the relocation agreement to determine whether it conforms to the principles of private international law and whether it does not contravene the public policy of the State.

   ✓ Approval and execution: If the relocation agreement meets the requirements, the court or competent authority approves it and orders its execution in the State.

The 2010 Washington Declaration can be considered successful for several reasons:

- **Progress in international cooperation**

  1. Strengthening international cooperation**:** The 2010 Washington Declaration has strengthened international cooperation on international family relocation, allowing for greater coordination and collaboration among countries to resolve relocation cases.

  2. Establishment of common principles**:** The Declaration has established common principles for international family relocation, which has helped to guarantee that the rights of children and families are effectively protected.

- **Improved protection of children's rights.**

Protection of the best interests of children and adolescents**:** The Declaration has emphasized the importance of protecting the best interests of the child in relocation cases, which has led to greater consideration of the needs and rights of children.

Reducing the risk of abduction and maltreatment: The Declaration has helped reduce the risk of abduction and maltreatment of children in relocation cases by establishing procedures and mechanisms to prevent and respond to these risks.

- **Advances in legislation and practice**

Influence on national legislation**:** The Declaration has influenced national legislation in many countries, leading to the adoption of more effective laws and regulations for international family relocation.

Improved judicial and administrative practice**:** The Declaration has led to greater awareness and sensitivity in judicial and administrative practice, which has improved the response to international family relocation cases.

- **Challenges and areas for improvement**

1. Effective implementation**:** Effective implementation of the Declaration in all countries remains a challenge.
2. Coordination and cooperation**:** Coordination and cooperation between countries and judicial and administrative authorities remains an area for improvement.
3. Protection of children's rights**:** The protection of children's rights in relocation cases remains an area of concern and requires greater attention and effort.

In summary, the 2010 Washington Declaration has been successful in many respects, but there are still challenges and areas for improvement that require further attention and effort to ensure effective protection of the rights of children and families in international family relocation cases.

Below are some areas for improvement that require further efforts to ensure the effective protection of the rights of children and families in international family relocation cases:

Strengthening international cooperation, improving communication and coordination, developing common protocols and procedures, ensuring the protection of children's rights, enhancing the assessment of the best interests of the child, providing protection against abduction and mistreatment, improving access to justice, including free legal assistance, raising awareness about international family relocation, providing training to professionals involved in such cases, monitoring relocation cases more effectively and evaluating the effectiveness of existing measures.

In Mexico the assessment of the best interest of the child in an international abduction case under the Hague Convention takes into account several factors and principles established in the Convention and in the case law of the Courts. Some of the factors to consider are: the age and maturity of the minor, family and emotional relationships, the environment and living conditions, the needs and rights of the child, and the opinion and participation of the minor.

The courts have established that the best interest of the child is not limited to the protection of their rights and needs, but also include consideration of their long-term well-being and stability.

The resolution becomes an opportunity to reorganize the future of the children.

Netherlands

Judge Annette C. Olland, Family Law and International Child Protection Division, District Court of The Hague, Member of the IHNJ

Introduction

International family relocation cases are often viewed as the preventive counterpart to international child abduction cases. In these situations, the interests of the relocating parent must be balanced against the interests of the child and the non-relocating parent. This article explores the legal framework governing relocation cases in the Netherlands, highlighting the processes involved, the criteria used by courts, and the underlying principles from national and international law.

Before discussing the interests that the court weighs in international relocation disputes, some understanding is needed of what the legal framework is within which the court gets to weigh interests. In cases where the parents have shared parental custody, the relocating parent needs the consent of the other parent for the relocation. If the non-relocating parent does not consent, then the relocating parent can seek permission from the court for substitute permission for the international relocation.

Under Dutch law, legal proceedings related to child relocation are governed by Article 1:253a of the Dutch Civil Code. This provision outlines a general procedure for disputes between parents regarding custody issues. This provision only applies when both parents share parental custody.

A parent with sole custody can, under Dutch law, relocate without the other parent's consent, but the non-relocating parent may file for interdiction or prohibition to contest the relocation. In this article I will focus only on relocation in cases of joint parental custody.

The Process of Relocation Proceedings

In cases where parents have joint custody, the general provision of Article 1:253a of the Civil Code provides that parents may submit disputes regarding the exercise of joint custody to the court. The court must, as follows from Article 1.253a paragraph 1, make such a decision as it deems desirable in the interest of the child.

When a parent files a request for substitute permission to relocate with a child, the court initiates a structured process. The general policy of the Dutch courts in first instance (included in the Dutch first instance courts' policy on proceedings in custody and visitation cases) is that a court hearing will be scheduled within 6 weeks after the filing of the request, followed by a court decision within four weeks after the hearing. This timeline establishes a maximum of ten weeks from the filing of the request to the court's decision, ensuring a relatively swift resolution to the matter.

The non-relocating parent – the defendant in the court case – can file a written statement of defence up to three working days before the hearing. The non-relocating parent may also – with or without an attorney – present an oral defence at the hearing. The petition and statement of defence can only be submitted through an attorney. This means that the relocating parent – the petitioner in the court case – must always be represented by an attorney. Legal representation is not required for the non-relocating or defending parent, if the defending parent only wishes to present an oral defence.

The vast majority of international relocation cases will be heard in full court, i.e. with three sitting judges. The reason for this is the weight and impact of the decision on the life of the child.

Both parents may access government-funded legal aid, depending on their financial circumstances.

Assessing the best interests of the child in international relocation cases

General principles; principles in European Law

The Commission on European Family law (CEFL), established in 2001, formulated non-binding general principles in family law matters. In 2007, CEFL finalized its second set in the field of parental responsibilities. Principle 3:21 is related to relocations. This principle applies to both domestic and international relocations and reads as follows:

> "1. If parental responsibilities are exercised jointly and one of the holders of parental responsibilities wishes to change the child's residence within or without the jurisdiction, he or she should inform the other holder of parental responsibilities.
>
> 2. If the holder of parental responsibilities objects to the change of the child's residence, each of them may apply to the competent authority for a decision.
>
> 3. The competent authority should take into consideration factors such as:
>
> (a) the age and opinion of the child;
>
> (b) the right of the child to maintain personal relationships with the other holders of parental responsibilities;
>
> (c) the ability and willingness of the holders of parental responsibilities to cooperate with each other;
>
> (d) the personal situation of the holders of parental(21) responsibilities;
>
> (e) the geographical distance and accessibility;
>
> (f) the free movement of persons."

These principles were endorsed in 2015 in the Council of Europe's ''*Recommendation on preventing and resolving disputes on child relocation*''[1], in order to encourage the prevention and resolution of disputes on child relocation as a means of reducing the risk of child abduction. Principle 8 recommends that the decision-making exercise of the competent authority should be guided by all relevant factors, giving such weight to each factor as is appropriate in the circumstances of the individual case. The factors mentioned in these recommendations were partly based on the factors listed in the Washington Declaration and on Principle 3:21 of the Principles of European family law on parental responsibilities of the CEFL, and they read as follows:

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1 Council of Europe Committee of Ministers Recommendation CM/Rec (2015)4 (February 11, 2015): 'Preventing and resolving disputes on child relocation'.

(i) The right of the child to maintain personal relations and direct contact with the other parent or other holder of parental responsibilities on a regular basis, in a manner consistent with his or her development.

(ii) The views of the child having regard to his or her age, maturity, and level of understanding.

(iii) The proposals of the parents or other holders of parental responsibilities for the practical arrangements for changing the child's habitual residence (including accommodation, education, employment, contacts with other family members).

(iv) Reasons of the parents or other holders of parental responsibilities for seeking or opposing the child's habitual residence.

(v) Any history of family violence or abuse, whether physical or psychological.

(vi) The history of the family and particularly the continuity and quality of past and current care and contact arrangements.

(vii) Pre-existing arrangements concerning the child's habitual residence and contact and previous decisions of the competent authorities.

(viii) The impact of the grant or refusal of the application of the relocation on the child, in the context of his or her siblings and extended family, education and social life, and on the remaining parent or other holder of parental responsibilities.

(ix) Nature of the relationship between the parent and other holders of parental responsibilities and the commitment of the person proposing to change the child's habitual residence (to support and facilitate the relationship between the child and the parent or other holders of parental responsibilities after the relocation).

(x) Whether the proposals of the parents or other holders of parental responsibilities for contact after the child's change of habitual residence are realistic, having particular regard to the cost to the family and burden on the child.

(xi) The enforceability of contact provisions ordered as a condition of the permission to change the child's habitual residence, particularly in the context of a change of jurisdiction.

(xii) Issues of mobility for family members or those who have a reasonable interest in having contact with the child.

(xiii) The existence of parenting agreements or other similar agreement, including provisions on child relocation.

(xiv) The failure to inform the other parent or other holder of parental responsibilities of the proposal to relocate with the child.

Dutch Supreme Court Decision of 2008

In 2008, the Dutch Supreme Court gave guidelines in the form of a 'list' of several factors that judges should consider when assessing relocation requests[2]. These guidelines were inspired by various legal standards, including principle 3:21 of the 2007 CEFL principles in cases of parental responsibilities. Since then, these guidelines have been respected and applied consequently by the Dutch courts in cases of international relocation.

The Dutch Supreme Court ruled that, although the child's best interests should be a consideration of the first order in the balancing of interests to be carried out, other interests may weigh more heavily. In deciding a dispute on an international relocation of a child, the court must consider all the circumstances of the case and weigh all the interests involved, including:

1. The necessity of the relocation.
2. The extent to which the relocation has been planned and prepared.
3. The alternatives provided by the relocating parent to mitigate the impact of the move on the child and the non-relocating parent.
4. The ability of the parents to communicate effectively.
5. The rights of the non-relocating parent and the child to maintain contact.
6. The continuity of care and contact with both parents.
7. The frequency of contact before and after the relocation.
8. The child's age, opinions, and adaptability to changes in residence.
9. The financial implications of maintaining contact post-relocation.

The Supreme Court emphasizes that these criteria are not exhaustive; rather, they provide a framework for the court to evaluate each case's unique circumstances.

The spirit and wording of the 2008 Supreme Court decision are to a large extent similar to the list of 'Factors relevant to Decisions on International Relocation' in the Washington Declaration. Factors that are mentioned in the Washington Declaration, but not in the 2008 Supreme Court Decision are:

- v) history of psychological or physical family violence or abuse,
- xi) enforceability of contact provisions, and
- xii) issues of mobility for family members.

This does not mean that Dutch courts do not take these factors into account. Factor v) may play a role in the assessment of the necessity of the relocation or in the assessment of the interests of the relocating parent. Factors xi) and xii) may be taken into account when assessing the continuity of care and contact of the child with both parents after the relocation and/or the frequency of contact before and after the relocation. One factor that is mentioned in the 2008 Supreme Court Decision, but not mentioned in the Washington Declaration is "the necessity of the relocation".

[2] ECLI:NL:HR:2008:BC5901

Dutch case law since 2008

Since the 2008 Supreme Court decision, Dutch courts have consistently implemented these principles. A short, and certainly not in depth, analysis of first and second instant cases since 2020[3] indicates that Dutch courts primarily focus on four key factors: the necessity of relocation, the contact between the child and the non-relocating parent before and after the relocation, the child's voice, and the child's living situation before and after the relocation. This approach reflects a nuanced understanding of the complexities involved in relocation cases, particularly when assessing the potential impact on the child's welfare. One might conclude that the necessity of the relocation on one hand, and the other key factors on the other hand (namely: contact with the non-relocating parent, the child's voice, and the child's current living situation) interact like 'communicating vessels': the more or higher the necessity of the relocation, the lesser weight will be given to the other factors and vice versa. For example, if the child spends an equal amount of time with both parents (co-parenting arrangement), there must be a very high, almost unavoidable necessity for the other parent to relocate since the relocation will have high impact on the frequency of the contact between the child and the other parent, and vice versa.

Addressing Specific Concerns

The voice of the child in international relocation cases

In international relocation cases, as in other family cases, the court will invite children from the age of twelve for an interview with the judge. Judges are aware that, even if a child is twelve years or older and is quite mature, and even if the child is very clear about its wishes in relation to the relocation, the child should be protected from the burden of feeling responsible for the outcome of the case. Therefore, the judges will make a balanced assessment of all the interests involved. If too much weight is being given to the voice of choice of the child, the child might later in hindsight feel guilty towards the parent that he or she left behind – or towards the parent that feels stuck in the Netherlands as a consequence of the decision of the court.

Domestic Violence

As in other countries, the specific concern of domestic violence may arise in Dutch international relocation proceedings. While domestic violence is not explicitly mentioned as a factor in the above mentioned 'list' of the Supreme Court given in 2008, it may be viewed as contributing to the necessity of relocation in some cases.

Relocation to a non-member state

There is also the question of the implications of a relocation to a state that is not a party to the international child protection conventions. Although this question is also not explicitly

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3 Numerous cases that can be found on the website of the Dutch Judiciary (www.rechtspraak.nl). I hereby provide a very small selection of cases of some of the Dutch Courts of Appeal: ECLI:NL:GHAMS:2022:3679 (South Africa); ECLI:NL:GHDHA:2024:1160 (UK), ECLI:NL:GHSE:2023:2797 (Spain), ECLI:NL:GHARL: 2023:4363 (Canada); and of some decisions of First Instance Courts: ECLI:NL: RBMNE: 2024:4770 (UK), ECLI:NL: RBROT:2023:12794 (US), ECLI:NL:RBDHA:2024:21002 (France), ECLI:NL:RBZWB:2023:1817 (Belgium).

mentioned as a factor in the above mentioned 'list' of the Supreme Court, this may be a factor taken into account when assessing the continuity of care and contact of the child with the non-relocating parent after the relocation.

Possible improvements

When asked about possible improvement of relocation proceedings in the Netherlands, I would say that it would be desirable if the courts could make the outcome of the relocation cases more predictable. However, predictability is very difficult to provide for, since the Dutch Supreme Court expressly stated that *' In deciding a dispute on an international relocation of a child, the court must consider all the circumstances of the case and weigh all the interests involved'.* And the 2010 Washington Declaration points out that *'The weight to be given to any one factor will vary from case to case'*. As every family law practitioner knows, the facts and circumstances will be different in each specific case.

To conclude: the importance of a structured approach

Relocation proceedings serve a crucial role in preventing international child abduction, offering a legal framework that prioritizes the child's best interests. By promoting speedy resolutions, providing legal aid, and encouraging specialized cross-border mediation, the Dutch legal system aims to protect children from the potentially harmful effects of abduction.

The task of the judge in relocation cases in the Netherlands is to balance parental rights with the best interests of the child. As the legal landscape continues to evolve, ongoing assessment and improvement of relocation procedures remain essential to ensure fairness and protect international families in transition.

Session 7 - Research & Policy work on international family relocation

International Social Service (ISS)

Marc Bauer, Deputy Director, ISS Germany

Introduction

Every week, parents, mostly mothers, call us in desperation to tell us that they are stuck in some country in the world and want to go "home" with their children – or they are stuck in Germany and want to return to their family in the States, for example. They tell us about endless court proceedings and immense costs.

And they say: This child cannot be a stone that ties me to this country forever.

We try to explain to them that this child is also not a piece of luggage that you can just take away with you. Sometimes we talk to both parents on the phone and hear the story from both sides. And, as you might expect, in most cases you can understand both sides – and the only thing that is really clear is … that it is complicated!

It is my pleasure and honour to represent International Social Service here today.

For more than a century, ISS has been committed to helping children and families in migration contexts with members and working partners in over 130 countries, all around the world.

One of the key issues has always been family conflict and the particular problems that arise in relocation contexts. With its observer status at the HCCH, ISS has been involved in the development of all major instruments, such as the 1980 Child Abduction and the 1996 Child Protection Conventions.

My name is Marc Bauer and I am a social worker and deputy director of the German Member of ISS located in Berlin. We are a department in the German Association for public and private welfare, the common forum for all actors in the field of social work in Germany. We have been around for over 90 years and for over 14 years, ISS Germany has been mandated by the German government as a central contact point for cross-border family conflicts and mediation according to the Malta Principles. I'm neither a researcher nor a lawyer – and a bit on the edge between panel 7 and 8. As this is one of the fundamental principles of ISS, we combine counselling and case-specific support with advocacy work.

The central contact point on cross-border family conflicts and mediation

The basic idea of the mandate for the central contact point was to create a piloting agency that offers guidance to both private individuals and professionals advising affected parents in a field characterised by difficult psychosocial situations and highly complex legal regulations. The decision was deliberately made in favour of a non-governmental organisation that is easily accessible and well networked within Germany, with youth welfare offices, independent advice centres, mediation organisations, liaison judges, our central authority as well as the ministries involved in the topic– and internationally through our worldwide network.

As a Central Contact point for Cross border family conflicts, we conduct over 1500 consultations annually in the wider field of family conflict, including contact rights. 450 of these counselling sessions take place after the abduction, at least about 250 can be clearly assigned to the area of prevention discussed here today - questions of custody and rights of residence in different countries, on relocation requirements - and on the importance of finding amicable solutions within the framework of a broad understanding of alternative dispute resolution.

This is also reflected on our websites. It was with purpose that one of the central chapters of this website focusses on the explanation for parents of how to do the relocation properly, legally, in the best interests of the child. https://zank.de/en/help-with/move-alone-with-our-child-to-another-country/ (last accessed 15 September 2025).

And the explanation for children of how this works in practice: in court, in the child hearing, in mediation, etc. this again not only has the purpose to help children understand but also help parents to refocus on their children. https://zank.de/en/children-young-people/ (last accessed 15 September 2025).

Abduction Prevention is child protection

ISS follows a child-centred approach:

- Because children have the right not to be uprooted from their familiar environment.
- The right to maintain contact with both parents.
- The right to be involved in all decisions that affect them, including and especially such an important one as a move.

Child abduction violates all these rights –

And that is why ISS is convinced preventing abduction is child protection!

For preventive counselling to work, parents who are willing to move from one country to another must engage in the relocation process in the country of origin. And for this to happen, the HC 1980 must function well.

The threat of repatriation under the abduction convention deters parents who might feel inclined to simply take their children with them – we notice this very clearly in our daily counselling work.

And in this way, the procedural mechanism of the HC 1980, implemented quickly and consistently, fulfils precisely this expectation placed on the agreement: a general preventive effect in the interest of the child's well-being.

We need both: the threat and in the same time strong support to find legal or amicable solutions.

Problems

This does not mean that there is no justified criticism in individual cases regarding the abduction convention; we also have these discussions within our network.

About the appropriate consideration of allegations of violence and the relationship to the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence:

- In some jurisdictions violence is considered as an argument for relocation, as an legitimate and effective escape-strategy,
- In others, mothers are explicitly advised not to talk about it because it might give the impression that they want to cut off contact with the other parent.

Therefore the ISS invests a lot of time in sorting out which factors have to be taken into account if a case has elements of violence – at the time being we're working on a new advocacy paper on this topic.

We have also discussions about how to assure protection in concrete situations across borders. And about the appropriate consideration of the child's will and voice. From our experience we can say: children want to be seen and want to be heard. And with appropriate support they do understand that their will is not the only element in the decision making.

Changes and Challenges

In our counselling work as Central contact point, we also notice a change that is reflected in our statistics over the decades.

In the early days, it was mostly about returning the child to the primary caregiver; today, in over 2/3 of the cases, the abductor is the primary caregiver, usually the mother. Mothers who, as described at the beginning, often have the impression that they bear the entire responsibility and do not get a fair relocation permit.

Many applicants, mostly men, do not want the child to return to them, but want the other parent to return with the child, even if they only make occasional use of their right of access or do not fulfil their maintenance obligation.

There are also more and more cases in which families are so mobile that it is difficult to determine the habitual residence. Or there are cases at the interface between flight and migration, where a family is separated in a transit state, where none had a habitual residence, where it is difficult to determine which court is competent to conduct relocation proceedings – or, in case of the abduction, to which country the child should be returned.

And we observe major differences in how the child's will and wishes are handled: how old children have to be to be heard, how strongly they have to resist to meet the 13/2 requirement, and with how much power an opposing will, which may be manipulated but is the subjective experience of the child, may be broken in enforcement proceedings.

All these difficult questions undoubtedly lead to borderline cases for which there is no general guidance and where ambiguities have to be tolerated.

Trust

Why does he talk so much about abduction when the topic today is relocation?

Because the two are directly linked. Because in counselling parents, we often only get them to engage in relocation proceedings by arguing that the 1980 HC works well. And because it

is not uncommon for abduction to occur when the relocation procedure does not work well or when there is a lack of trust in it.

As a consequence, we should discuss less about the extension of the exceptional grounds of 13/1 b, but rather about improving the relocation procedure - even if it is difficult because it concerns national law.

And if I, as a state, have no confidence in the fairness, balance and child-friendliness of the other country's relocation decisions, then I should not ratify the 1980 HC in relation to that country.

The basis for any international agreement, as for international cooperation in general, is the mutual trust of the legal systems in each other - reciprocity. The trust that the other court will also make fair decisions in the best interest of the child.

And these fair decisions in the best interest of the child must be made in the country of origin, at the place of the habitual residence, sometimes in custody proceedings after return decisions, but that is second choice. First choice is to do that in relocation proceedings before moving: the child must be heard there, his or her wishes and will must be adequately taken into account there, and a possible allegation of violence must play an important role there.

In our counselling, as in the discussions within our network, we observe that there are cultural differences and major differences in national legal systems. Different weightings of how decisions are made. We have heard many of them in the past few days. Just one more example: German family courts cannot permanently order the child's residence in Germany, but can only give either parent the right to determine the residence in the event of a dispute. This leads to a strong position for the parent who is the primary carer, which, statistically, often favours women and is criticised often by male-rights organisations. Other legal systems place a greater emphasis on access rights, including those of the extended family, or cultural considerations.

All of us who work in the field of international cooperation know – and ISS lives this experience since more than hundred years - that trust in the other side – the system as well as the persons involved - is a precondition for cooperation. But trust is also the result of cooperation, because in the process of working together we develop a common understanding of cases and common standards.

Principles

Relocation decisions are characterised by the difficult **balancing act between different fundamental rights**: between the right to continuity for the child in the previous environment and the right to freedom of movement, to the chance of a new beginning after a failed relationship.

ISS has agreed on principles in this regard:

A **child-centred approach** putting the best interest of the child in the centre.

But - in recognition of the importance of the primary carer, there is also a strong focus on their needs. After all, children not only have a right to both parents, they also need happy parents, having a perspective in their life.

Parents who plan relocation need **free, low threshold, child-focused, psycho-social counselling** as well as **legal advice** on international regulations and conventions and information about relocation laws in different States.

They need a secure access to **fast procedures:** In our counselling work, we are repeatedly confronted with relocation procedures in some countries that take years, during which the primary carer incurs immense costs and lives in an absolutely precarious situation. This can never be in the best interest of the child, no matter how necessary thoroughness is. And thoroughness is usually not the reason for this, but rather overburdened judicial systems and sometimes judges with little experience in international cases. A concentration of jurisdiction, as standard in return procedures in many countries, could be helpful also for relocation cases.

Parents need appropriate and **affordable legal representation and access to legal aid**.

And each child needs a legal representative (**guardian ad litem**) looking out for their interest assuring, seeing and **hearing of the child** in the procedure but also that the child has a chance to understand what is going on.

Standards on relocation and practices regarding the determination of the best interests of the child have to be established.

Rights of access must be organised in such a way that they can realistically function in the new cross-border situation and be enforceable in the event of a dispute.

And **Protection measures** have to be adopted in case of domestic or family violence.

There are instruments in international family law that would be very promising but are used far too rarely, for example Save Harbor and mirror orders.

And last but not least **support for parents in finding amicable solutions**: To do this, all those involved locally need good, free, interdisciplinary counselling options and guidance on how to find preventive solutions that work across borders, using the full range of options: counselling, mediation, alternative dispute resolution.

Conclusions

ISS has developed a range of advocacy papers proposing standards as a result of our worldwide effort to develop international standards for social work and legal cooperation.

The world is on the move, and so are people: as a result, cases are piling up – but so are the possible solutions.

The idea of a central contact point like we are, financed and mandated, that works closely with the central authorities, the 1980 HC courts, the social services and youth welfare offices, the non-governmental actors in the field of counselling and mediation, with private individuals and professionals - this model has been included in the Conclusions and Recommendations of the last Special Commission Meeting.

We are convinced that this should be a path pursued in more countries – and that ISS and its members are particularly well suited to do so.

Thank you!

ISS Factsheets for more information (last accessed 15 September 2025):

- https://iss-ssi.org/storage/2023/04/Parental_Responsibility_factsheet_ANG.pdf
- https://iss-ssi.org/storage/2023/04/ChildAdbuction_facthseet_ANG.pdf
- https://iss-ssi.org/storage/2023/04/InternationalRelocation_factsheet_ANG.pdf
- https://iss-ssi.org/storage/2023/04/IFM_factsheet_ANG.pdf
- https://iss-ssi.org/storage/2023/10/ISS-interventions-as-an-observer-at-8th-Meeting-of-the-HccH-Special-Comission-for-THC-1980-1996-2023.pdf
- https://iss-ssi.org/storage/2023/10/ISS-Position-Paper-for-the-8th-Meeting-of-the-Special-Commission-1980-1996_HCCH-1980-Child-Abduction-Convention.pdf
- https://iss-ssi.org/international-family-mediation/

Asociación Internacional de Juristas de Derecho de Familia (AIJUDEFA)

Patricia Kuyumdjian de Williams, President of AIJUDEFA, IAFL Fellow

I made this presentation on behalf of AIJUDEFA, the International Association of Spanish speaking Family Law Jurists, as its president, at this significant Conference on the 15th Anniversary of the HCCH Washington Declaration.

AIJUDEFA is an International Association composed of more than 170 recognized jurists of 25 nationalities, experts in Family Law. Our objectives include cooperation with international organizations and national family law associations. We are observers before The Hague Conference and we have cooperation agreements with different universities.

We were gathered at the Canadian Embassy at Washington DC, from 2 to 4Th April 2025, to address children international relocation, that is one of the most pressing and complex aspects of family law today.

We are convinced that the lack of answers concerning children relocation in the Courts of most of the countries, are the cause of a great part of the abduction of children all over the world.

I had the responsibility of sharing the findings of AIJUDEFA extensive research on international relocation cases. In 2020 we produced a report on this subject that was submitted by AIJUDEFA to the Permanent Bureau of the HCCH and presented in 3 languages: Spanish, English and French.

This report was updated in the year 2023, on the occasion of AIJUDEFA's participation, represented by Carolina Marin Pedreño, in the 8th Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Conventions. (10-17 October 2023).

Finally, in February 2025, 9 judges from different countries: Argentina, Chile, Costa Rica, England, Spain and Rumania, and a lawyer from Poland; all of them part of AIJUDEFA, were asked to answer the same survey presented on 2020.

The key question AIJUDEFA raises was the following: ***Could specific, efficient procedures with clear guidelines on international relocation serve as a preventive measure against the increasing number of international child abduction cases?***

To explore this issue further, AIJUDEFA conducted this detailed comparative study, prepared by 25 AIJUDEFA members, from 13 countries (Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Poland, Romain, Spain, UK, United States and Uruguay), to examine how relocation cases are handled through the following questions:

1. Is there a specific procedure in your country to deal with these cases?
2. Which is the Average duration in your country?
3. Which are the Jurisprudential tendencies of appeal Courts?
4. Would you say that relocations are generally granted or denied?
5. Is the 2010 Washington Declaration known in your country? If so, do you believe it is applied?
6. And finally, we asked them to Identify the challenges and problems in their jurisdictions.

The following are the key findings:

1. **The answer to the first question highlighted the lack of specific legal procedures in most of the studied jurisdictions**
    - In the majority of Latin American countries, Spain, and Romania, there is no distinct legal framework for handling international relocation and they are processed as travel authorization.
    - These conclusions were ratified, in February 2025, by an appeal judge from Costa Rica and family judges from Argentina, Chile, Romania.
    - In contrast, the UK and the US have clear legal frameworks.
2. **Regarding the 2nd query most countries showed excessive legal delays and high costs**
    - In Argentina, Brazil, Chile, Colombia, Costa Rica, Poland, Dominican Republic and Spain, the survey indicated that cases can take years to resolve, due to lengthy legal proceedings and multiple appeals, even up to 5 years (Argentina, Colombia).
    - Instead in Uruguay, the duration depends on the complexity of the evidence presented. However, first-instance rulings are immediately enforceable and, these cases are resolved in less than one year
    - In New Jersey court backlogs have created significant delays.
    - In the UK these cases are generally resolved within six to eight months. The relocation decision may be appealed, but in practice, judges rarely allow appeals unless a significant new legal issue arises. Judge Sarah Lucy Cooper informed that nowadays it can last more because the delay of the Cafcass to be able to make their report.

As a consequence, these prolonged processes discourage families and promoted illegal relocations.

3. **Considering the 3rd point, judicial discretion and lack of guidelines is the tendency of the family relocation resolutions**
    - In **Latin America** and **Spain**, judges have broad discretionary powers, leading to inconsistent rulings.
    - In **Argentina** in my experience, children's opinions, interdisciplinary evaluations and the status quo are the most relevant factors.
    - In **Chile** they try to ensure that the non-custodial parent can maintain direct and regular contact with the child.
    - In **Poland**, as in **Argentina**, the voice of the child, is given top priority. In addition, the evidence of psychologist's expert opinions is very relevant, but generally they don't recommend relocation.
    - In **Spain** the general trend is to grant relocation when it is required by the parent with exclusive custody. In cases of shared custody, which are becoming increasingly common, the issue becomes more complex.
    - In contrast, the **UK** Court of Appeal's decision in *Payne v. Payne* (2001) established a structured framework for evaluating relocation cases.

4. **In respect to the forth enquiry, it´s difficult to answer if children relocations are granted or denied. It depends on the country and specially on the case**
    - In **Argentina** judges are generally reluctant to grant relocation requests. The exceptions are children over 13 years, who clearly express their desire to relocate.
    - In **Brazil**, they are typically granted.
    - Judge **Miranda** from **Chile** considered that: "*Over the last seven to eight years, there has been an increasing openness toward granting these types of requests".*
    - In **Poland**, they are generally denied in 1st instance, there are more chances in 2nd instance if the child wants to relocate.
    - In **Spain**, the tendency is to grant relocation in cases of exclusive custody, as the right to freedom of residence and the "reasonable" interests of the requesting parent prevail.
    - In the **Dominican Republic**, judges also tend to grant relocation.
5. **One of the most concerning findings in our study is the limited awareness and application of the 2010 Washington Declaration**
    - Reports from **Brazil**, **Chile**, **Colombia**, **El Salvador**, **Spain**, **the Dominican Republic**, **Poland** and **Uruguay** confirmed that the Washington Declaration remained unknown in their jurisdictions in our 3 surveys: 2020 , 2023 and 2025.
    - In **Spain**, recent efforts by the General Council of the Judiciary have included it in judicial training programs.
    - In the **UK**, courts sometimes reference the Declaration, though it lacks binding force.
    - In the **USA**, the Declaration is known but not formally applied

AIJUDEFA has made great efforts to make this declaration be known by webinars, panels in our annual Congress and specially through these reports

6. **Finally the survey showed several problems, and we can point out specially three:**
    1. **The lack of a specific legal process**, that leads to very negative consequences:
        a. **excessively long proceedings** that discourage families
        b. Cases can go through **multiple judicial instances**, even reaching the Supreme Court in certain countries.
        c. And these facts can make **desperate parents' resort to illegal relocations** or child abductions.
    2. **Absence of clear guidelines** in Latin American countries and Spain, that leave judges with broad discretion in granting or denying relocations, and consequently parents fear that Courts will not help them out.
    3. And finally, the **lack of guarantees regarding post-relocation arrangements**, is one of the main reasons why judges hesitate to approve international relocations because:
        a. Judges lose jurisdiction over the case.

b. The uncertainty over how contact and communication between the left-behind parent (and extended family) will be maintained.

c. Concerns about how alimony or child support will be enforced.

The report stated the importance of the 1996 Convention to resolve these matters.

The survey added as other issues:

1. High legal costs,
2. Difficulties with the self-representation in UK and USA
3. Overburdened family courts.

The challenges pointed out in the study were:

a) The need to establish procedural standards that define the steps, evidence requirements, and timelines for handling relocation proceedings.

b) The necessity to develop national guidelines based on the Washington Declaration to limit judicial discretion in relocation cases.

c) The need to guarantee key post-relocation aspects through direct communications or mirror agreements.

Final Thoughts

As I said at the beginning of my presentation the international relocation of children remains one of the most sensitive and complex issues in family law today.

Without proper legal frameworks, we risk damaging parent-child relationships, increasing legal conflicts, and encouraging unlawful relocations.

The time for action is now. We must work together—across nations, jurisdictions, and legal disciplines—to establish efficient, fair, and protective legal mechanisms for international relocation cases.

From AIJUDEFA we are working in this direction:

1. We will have a special panel on Relocation and about this meeting in our Annual Congress that will take place in NY Fordham University from June 10 to the 13th this year.
2. We also propose to create a studying or working group to elaborate a Model procedural law, following the experience of the 1980 Convention on the Civil Aspects of International Child Abduction.

Thank you very much.

International Academy of Family Lawyers (IAFL)

Anna Worwood, Co-Chair of the IAFL Relocation Committee, IAFL Fellow

A Comparative Overview of International Child Relocation Law, Court Procedure and Practice

In advance of the joint meeting in Washington DC from 2 to 4 April 2025, Anna Worwood, Hassan Elhais and Anil Malhotra, in their respective capacities as co-chairs and secretary of the International Relocation Committee of the International Academy of Family Lawyers (IAFL), prepared and circulated a survey seeking responses from members of the Relocation Committee to a relatively large number of questions about Relocation Law, Court Procedure and Practice. The purpose of the survey was to collate information from as many jurisdictions as possible to compare the legal position regarding the relocation of children, the way in which relocation cases are dealt with by the courts and the difficulties experienced by parents and to obtain suggestions about how improvements can be made.

By the date of the Washington meeting, responses had been provided by the following jurisdictions: Alberta, Canada; Ontario, Canada; Alaska, USA; Columbia, USA; Illinois, USA; New York, USA; Texas, USA; Washington DC, USA; Australia; Hong Kong; India; Jamaica; Mauritius; South Africa; Taiwan; the United Arab Emirates; Zambia; England and Wales; Germany; Greece; Italy; Jersey; and Spain. Since the meeting, the Survey has been circulated more widely to all fellows of the IAFL in the hope that information can be collated from other jurisdictions and responses have recently been provided by additional jurisdictions.

Set out below is a summary of the information which had been collated by the time of the meeting and was presented in Washington by Anna Worwood on behalf of the IAFL Relocation Committee. It is important to note that the information which is summarised, has been provided by the members of the IAFL Relocation Committee who responded to the survey (the author is simply reporting that information).

Legal Position

In all jurisdictions, the international relocation of a child can take place with the consent of the other parent or permission from the court. In these jurisdictions, the determination of the question as to whether permission should be given is based on a consideration of the child's best interests, rather than, for example, on any presumption in favour of the primary carer of the child.

Having said this, in a small number of jurisdictions, for example, Germany, Jersey and Taiwan, a parent who has custody of a child is able to relocate the child without obtaining the other parent's consent or permission from the court.

In most jurisdictions, the legal position has not changed significantly over the last 15 years. However, the general view is that it has become more difficult for relocating parents to obtain permission from the court to relocate children. The response from Spain revealed that it has become very difficult to obtain permission to relocate a child from there.

In Canada, Greece and the UAE, there have been significant legislative changes. In Canada, the courts' approach to relocation cases was modified in 2018. They moved away from the

strict/rigid approach which had been formerly applied, to a contextual analysis in which no single factor dominates and all relevant circumstances are considered. In Greece, prior to July 2020, a parent who had custody of a child, was able to relocate the child freely without any limitations because it was thought that such limitations would restrict the freedom of movement of the custodial parent. As a consequence of changes to the law in July 2020 and then in September 2021, a prior written agreement of the parents or a court decision issued upon the request of one of the parents, is now required for the change of the child's place of residence which significantly affects the right of contact of the parent with whom the child does not reside. In the UAE, prior to April 2025, only fathers could apply to the courts to relocate a child. Since April 2025, either parent can now apply.

Reasons for Relocation

Across the jurisdictions, the most common reasons for relocation are the relocating parent's relocation status in the originating country; their new relationship with or remarriage to someone living in the destination country; their improved employment prospects in the destination country; their wish and/or need to return home and/or be closer to family in the destination country; a lower cost of living in the destination country; and/or their need to remove themselves from family abuse or violence. Other reasons which have been suggested, are education (India); medical needs (New York); and foreign service or military postings (Alberta, Washington DC).

Voice of the Child

In all jurisdictions, the voice of the child is recognised and the child's wishes and feelings are given appropriate weight based on the child's age and maturity.

There is variation between the jurisdictions as to the way in which the child's wishes and feelings are ascertained and the voice of the child is considered. In most jurisdictions, the child's wishes and feelings are ascertained by a court appointed expert and separate representation is possible. In some jurisdictions, it is typical for the child's views to be heard directly by the judge depending on their age and maturity (Washington DC, Germany, Greece, Jersey, India and Taiwan) and in some others, it is mandatory for the judge to hear or interview the child directly if the child is older than 12 (Texas and Spain). In South Africa, judges are becoming more open to receiving letters from children.

Confidentiality

In most jurisdictions, including South Africa, the UAE, England and Wales, Germany and Jersey, relocation proceedings are heard in private and are confidential in that the identity of the child is not revealed and/or the judgements are anonymised. In England and Wales, media access and reporting have become more open in recent years although specific rules and limitations apply. In other jurisdictions, for example Spain, relocation proceedings are not private and confidential.

Family abuse or violence

In all jurisdictions, family abuse or violence is accepted as a factor to be considered in assessing the child's best interests and determining relocation cases. In order to analyse allegations of family abuse or violence, the courts will require investigations by appropriate professionals, assessments by experts and/or fact finding hearings.

The decision as to whether to allege family abuse or violence in a relocation case can be a difficult one and this issue generated a large amount of discussion at the Washington meeting. In some jurisdictions, the courts will view the presence of family abuse or violence as a factor favouring relocation but in others, they may not.

It is clear that the issue is complex and requires jurisdictions to work together to explore whether a common approach can be agreed. Whilst the presence of family abuse or violence may be considered to be a factor favouring relocation in some jurisdictions, a parent who wrongfully removes or retains a child to/in that same country which is a signatory to the 1980 Hague Child Abduction Convention, may have difficulty in relying successfully on an Article 13(b) defence to avoid a return order.

Temporary Relocations

In most jurisdictions, temporary relocations may be considered but are not liberally allowed. In Alaska, a relocation can be permitted for a trial period to assess how the child will adjust. In Greece, a temporary relocation can be ordered under the interim measures procedure.

Speed and Cost

In many jurisdictions, contested relocation cases entail significant legal costs and take a long time to be determined. In the jurisdictions we studied, there was a relatively even spread of jurisdictions where the costs were reported to be less than $26,000; between $26,000 and $52,000; between $52,000 and $91,000; and more than $91,000. The costs were reported to be more than $91,000 in Illinois, Ontario, Washington DC, Columbia and Hong Kong.

During the meeting, we heard that in the Netherlands, it takes six weeks for the court to determine a custody (and relocation) case. Whilst this may seem extraordinary, the short amount of time can be explained, at least in part, by the fact that it is very unusual for an expert assessment/evaluation to take place.

In most jurisdictions, the legal process takes between 6 months and a year. In some jurisdictions, namely Illinois, Greece, Spain, Hong Kong, Italy, Mauritius, Taiwan and Zambia, the process takes more than a year. In Greece, a relocating parent could have to wait for just over three years from filing the initial application under the family disputes procedure (the procedure under which the most complicated relocation cases are decided), to obtaining an irrevocable result (including appeals to the second instance court and the Supreme Court). During the Washington meeting, we heard from Marzia Ghigliazza, an Italian IAFL fellow, that the process can take a similar amount of time in Italy. Relocation proceedings appear to take much longer to resolve in jurisdictions where is a right of appeal against a court's decision rather than where conditions have to be met before an appeal can be made.

Legal Aid

In some jurisdictions, legal aid is available for a parent who wishes to relocate a child, at least in some circumstances depending on their income. In practice, many parents who are involved in relocation disputes, do not qualify for legal aid. In other jurisdictions, such as Washington DC, Illinois and Jamaica, legal aid is not available in relocation disputes.

Mediation

In all jurisdictions, mediation is available. In most of the jurisdictions in Canada and the US and in some of the other jurisdictions, for example England & Wales and Greece, it is mandatory in certain contested relocation cases.

Appeals

In all jurisdictions, appeals are allowed in relocation cases in particular circumstances. There is variation in respect of the time limits or conditions under which appeals must be filed. In most jurisdictions, there are no special time limits or relocation conditions for relocation cases.

Enforcement of Orders

It is a commonly held view that it is complex to enforce orders in states which are not signatories to the Hague Conventions of 1980 and/or 1996, and that expert evidence may be required. The methods of enforcement which are utilised after a decision allowing relocation, are similar across the jurisdictions and the most frequently used methods are: mirror orders; written guarantees or undertakings; and the deposit of passports.

Awareness and application of the HCCH 2010 Washington Declaration

In almost all jurisdictions, there is awareness of the Washington Declaration. In most jurisdictions, it is utilised when advising clients and/or making submissions to the court. References to the Declaration are not made in case law.

Improvements

The members of the Relocation Committee who responded to the survey, made the following suggestions for improvements to the process for determining international relocation cases:

1. Expedition of the process (suggested by Ontario, Washington DC, the District of Columbia, Jamaica, Greece and Jersey);
2. Education and training of judges and the general public about international relocation matters (suggested by Alaska, Texas and Spain);
3. Improved international co-operation between jurisdictions (suggested by Jamaica and South Africa);
4. Further involvement of the older child (suggested by England & Wales);

5. Proper and adequate arrangements to allow for the child's voice to be heard (suggested by Mauritius);
6. List of conditions for relocation (suggested by Spain);
7. The removal of the requirement to satisfy a high burden of proof (suggested by New York).

The IAFL fellow who answered the Questionnaire for Greece, explained that the very lengthy process in their jurisdiction potentially erases any benefit of the court application and keeps the relocating parent trapped in Greece with the possibility that they take the risk of committing international child abduction or leaving their child behind. They further explained that over the lengthy period of time, relations between the parents become very tense or breakdown irrevocably to the detriment of the child. They suggested that it would be a positive change if relocation disputes were heard under the interim measures procedure, like Hague cases, rather than under the family disputes procedure as this would reduce delayed hearings and decisions.

Summary

It is clear from the Washington meeting that many jurisdictions around the world are applying the principles contained in the Washington Declaration and positive progress has been made. However, international relocation cases remain some of the most difficult family law cases to resolve; it is very troubling that in some jurisdictions at least, the large amount of time that it can potentially take a parent who wishes to relocate a child, to obtain permission from the court and the high cost of the process can cause a parent to be stuck in a country in which they have little connection and support and/or will leave some parents with no option but to take the risk of committing international child abduction or leave their child behind. Either option is likely to result in the child losing their relationship with one of their parents. In order to reduce the length and costs of the process, it may be considered appropriate for more focused analysis to be undertaken in relation to the approach of the courts across the jurisdictions to requiring parties to engage in mediation and other methods of non-court dispute resolution, such as arbitration.

Global Research on Relocation

Professor Marilyn Freeman, Co-Director, International Centre for Family Law, Policy and Practice; Principal Research Fellow, University of Westminster; Chair, International Association of Child Law Researchers (IACLaR); 4PB Door Tenant; IAFL Associate Fellow

Professor Nicola Taylor, Faculty of Law, University of Otago, New Zealand; Secretary, International Association of Child Law Researchers (IACLaR); IAFL Associate Fellow

Introduction

This article reviews the global research evidence on relocation disputes with a particular emphasis on family members', including children's, perspectives. We presented on this in 2010[1] to help inform *The International Judicial Conference on Cross-Border Family Relocation*, from which the Washington Declaration on International Family Relocation resulted.[2] Now, a decade and a half later, we have provided an updated review of the global research evidence for the Conference on *15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family Relocation*.[3]

We start by setting out the key findings from our 2010 review and then consider the current state of knowledge in 2025 and how it is similar to, or different from, those earlier research trends. Next, we explore the links between relocation and international child abduction: an issue we noted in 2010,[4] but to which little attention was devoted by anyone at the time. However, this has since been redressed[5] and is worthy of yet further consideration because, as Schuz argues, abduction cases "are, in effect, *ex post facto* relocation disputes".[6] We then turn to consider the way in which children's right to identity[7] is taken into account in relocation and international child abduction contexts.[8] Finally, we conclude with future research directions to investigate more comprehensively the links between relocation, abduction and child outcomes. There is, for example, merit in considering the more expansive use of the

1 N. Taylor and M. Freeman, "International research evidence on relocation: Past, present and future", *Family Law Quarterly*, vol. 44, no. 3, 2010, pp. 317-339.

2 This Conference was organised by the Hague Conference on Private International Law (HCCH) and the International Center for Missing and Exploited Children, with the support of the U.S. Department of State. It was held in Washington DC from 23-25 March 2010 and resulted in the publication of the *Washington Declaration on International Family Relocation* (2010).

3 This Conference was co-organised by the HCCH, the International Academy of Family Lawyers (IAFL) and the Embassy of Canada in Washington DC. It was held in Washington DC from 2-4 April 2025.

4 N. Taylor and M. Freeman (*op. cit.* note 1), p. 333.

5 M. Freeman, "Abduction and relocation – Links and messages", *Children Australia*, vol. 38, no. 4, 2013, pp. 143-148; N. Taylor and M. Freeman, "Relocation and international child abduction: The impact on children's identity" in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law,* Edward Elgar Studies in International Family Law, 2025; R. Schuz, "International child relocation after relationship breakdown", in J.M. Carruthers and B.W.M. Lindsay (eds.), *Research Handbook on International Family Law*, Edward Elgar Research Handbooks in Family Law Series, 2024, pp. 130-152.

6 R. Schuz (*op. cit.* note 5), p. 130.

7 Art. 8, 1989 *United Nations Convention on the Rights of the Child*.

8 N. Taylor and M. Freeman (*op. cit.* note 5).

Washington Declaration on International Family Relocation in assisting post-separation parenting disputes to avoid relocation issues escalating into return proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The International Research Evidence on Relocation in 2010

Our 2010 review of the empirical research on relocation following parental separation[9] relied on three different types of studies: i) cohort or survey based studies; ii) the then recently completed qualitative studies in Australia,[10] England[11] and New Zealand[12] on family members' perspectives on relocation disputes; and iii) legal research analysing adjudication trends in relocation cases decided by the courts to ascertain the 'success rates' for relocation applications in various jurisdictions. We found there to be a very substantial body of research on the effects of residential mobility on children from separated and divorced families, but that the findings were mixed:

> "[…] with some studies revealing beneficial effects from relocation, and others emphasizing detrimental or harmful outcomes for children and young people. Overall, however, the empirical research findings indicate "heightened risk" when a child relocates, particularly if there have been prior moves and multiple changes in family structure."[13]

Two contrasting approaches had emerged in the social science research evidence arguing that i) a relocation be allowed to preserve the child's welfare and best interests by protecting their relationship with their primary caregiver; or ii) in the absence of militating factors (like family violence, substance abuse, erratic parenting, etc), a relocation be refused by the courts to promote the child's welfare and best interests through meaningful and regular interactions with both parents. Both positions have waxed and waned in the approaches of various jurisdictions over the years and, at times, been coupled with the debate over whether or not presumptions for or against relocation,[14] or legislative or appellate guidance on how to

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9 N. Taylor and M. Freeman (*op. cit.* note 1).

10 J. Behrens, B. Smyth and R. Kaspiew, "Australian family law court decisions on relocation: Dynamics in parents' relationships across time", *Australian Journal of Family Law*, vol. 23, no. 3, 2009, pp. 222-246; J. Behrens and B. Smyth, "Australian family law court decisions about relocation: Parents' experiences and some implications for law and policy", *Federal Law Review*, vol. 20, 2010, pp. 1–20; P. Parkinson, J. Cashmore and J. Single, "The need for reality testing in relocation cases", *Family Law Quarterly*, vol. 44, no. 1, 2010, 1-34.

11 M. Freeman, *Relocation: The reunite research*, Research Report, Research Unit of the reunite International Child Abduction Centre, London, July 2009.

12 N. Taylor, M. Gollop and R.M. Henaghan, *Relocation following parental separation: The welfare and best interests of children*, University of Otago, Dunedin, New Zealand, 2010; N. Taylor, M. Gollop and R.M. Henaghan, "Relocation following parental separation in New Zealand: Complexity and diversity", *International Family Law*, March 2010, pp. 97-105.

13 N. Taylor and M. Freeman (*op. cit.* note 1), p. 318. The findings were also described as "equivocal" in B. Horsfall and R. Kaspiew, "Relocation in separated and non-separated families: Empirical evidence from the social science literature", *Australian Journal of Family Law*, vol. 24, no. 1, 2010, pp. 34-56.

14 R. Thompson, "Presumptions, burdens, and best interests in relocation law", *Family Court Review,* vol. 53, no. 1, 2015, pp. 40–55.

approach these disputes,[15] should be adopted.

We formed the view in 2010 that "children of separated or divorced parents start out at greater risk of adjustment problems following a relocation"[16] and agreed with Austin that "whether a relocation will actually be harmful or not for an individual child depends on the combination of risk and protective factors that may be present".[17] Relocation disputes are inherently fact-driven and require a contextual assessment to be made of the child and family circumstances, including robust 'reality testing' of the moving and left-behind parents' proposals.[18]

The international Research Evidence on Relocation in 2025

Fifteen years on from the first Conference in 2010, we happily found ourselves once again reviewing global research on relocation for this second Conference in 2025.[19] There has been much less research activity on interparental relocation disputes in recent years with the initial publications primarily drawing on the data collected in the Australian[20] and New Zealand[21] qualitative studies on family members' perspectives, including on children's perspectives.[22]

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15 See, for example, Lord Justice Thorpe, "Relocation – The search for common principles", *Journal of Family Law and Practice*, vol. 1, no. 1, 2010, pp. 35-39; R.M. Henaghan, "Relocation cases: The rhetoric and reality of a child's best interests: A view from the bottom of the world", *Child and Family Law Quarterly*, vol. 23, no. 2, 2011, pp. 226-250, at pp. 247-250; N. Bala and A. Wheeler, "Canadian relocation cases: Heading towards guidelines", *Canadian Family Law Quarterly*, vol. 30, 2012, pp. 271-320; P. Parkinson and J. Cashmore, "Reforming relocation law: An evidence-based approach" *Family Court Review,* vol. 53, no. 1, 2015, pp. 23–39. See also, the recent relocation authorization provisions inserted into the *Canadian Federal Divorce Act* 1985 (sections 16.8-16.94) setting out a detailed legislative framework and clear processes to be followed when a custodial parent wishes to move with their child. Direction is provided in three key areas: notice, defining the best interests of the child, and the burden of proof.

16 N. Taylor and M. Freeman (*op. cit.* note 1), p. 337.

17 *Ibid*., citing W.G. Austin, "Relocation, research and forensic evaluation, Part 1: Effects of residential mobility on children of divorce", *Family Court Review*, vol. 46, no. 1, 2008, pp. 137-150, at p. 140.

18 P. Parkinson, J. Cashmore and J. Single (*op. cit.* note 10), pp. 33-34; See also, N. Taylor and M. Freeman (*op. cit.* note 1), p. 338.

19 For helpful reviews of this empirical research evidence, see P. Parkinson, N. Taylor, J. Cashmore and W. Austin, "Relocation disputes", in L. Drozd, M. Saini and N. Olesen (eds.). *Parenting Plan Evaluations: Applied Research for the Family Court* (3rd ed.), Oxford University Press, in press; R. Schuz (*op. cit.* note 5).

20 P. Parkinson, J. Cashmore and J. Single, "Mothers wishing to relocate with children: Actual and perceived reasons", *Canadian Journal of Family Law*, vol. 27, no. 1, 2011, pp. 11–51; P. Parkinson and J. Cashmore, "When mothers stay: Adjusting to loss after relocation disputes", *Family Law Quarterly*, vol. 47, no. 1, 2013, pp. 65-96; P. Parkinson and J. Cashmore, "Relocation and the indissolubility of parenthood", *Journal of Child Custody*, vol. 15, no. 1, 2017, pp. 76–92.

21 M. Gollop, *Moving on? Parents' Perspectives on the Impact of Post-Separation Relocation Disputes*, PhD Thesis, University of Otago, Dunedin, New Zealand, 2016.

22 M. Gollop and N. Taylor, "New Zealand children and young people's perspectives on relocation following parental separation", in M. Freeman (ed.), *Law and Childhood Studies* Current Legal Issues, vol. 14, Oxford University Press, 2012, pp. 219-242; J. Cashmore and P. Parkinson, "Children's 'wishes and feelings' in relocation disputes", *Legal Studies Research Paper No. 14/100*, University of Sydney Law School, Sydney, Australia, 2014.

Children's Perspectives

Generally, the New Zealand children demonstrated a good understanding of why the relocation occurred and their parent's motivation for wishing to move.[23] They could also appreciate their other parent's perspective, particularly how hard it was for the left-behind parent. The Australian children sometimes offered different perspectives to those of their parents.[24] For some mothers, a move might involve returning to their former 'home' while, for the children, it usually meant leaving their childhood home, friends, and school. Children varied considerably in their reaction to the move and in the amount of say they had and wanted to have in the decision. Some wanted to move or were aligned with the position of their primary caregiver; others were resistant to the move. Sometimes, the siblings held different views. In New Zealand, the children generally regarded the prospect of moving as positive, although some initially reacted negatively.[25] Most spoke of being excited and happy to be moving, seeing it as an adventure with new experiences and opportunities. Other children reported that they were sad or nervous, while some reported mixed emotions, feeling both excited but also sad about leaving friends and family behind. The children emphasised the importance of maintaining a relationship with their non-moving parent. Generally, they were positive about face-to-face contact and accepting of the need to travel, although long car trips were unpopular. Many of the children who used indirect modes of communication (phone calls, text messaging, emailing, video calling, etc.), considered these to be a superficial form of communication. Some also described problems in terms of parental unwillingness regarding the purchase and/or installation of the technology and such close surveillance of its use that they felt they had little privacy to communicate freely with their other parent.

Other Qualitative Research on Parents' Perspectives

One new qualitative study, undertaken in England, involved interviews with 34 parents from 30 families during 2012-2013, all of whom had been involved in a relocation dispute in the English courts within the previous six months.[26] All of the applicants were mothers, and all the respondents were fathers. The focus was on international relocation cases, although six cases involved an internal relocation dispute. Six mothers were successful in being allowed to relocate, and seven were unsuccessful. In two cases, the mothers who were refused permission to take their children overseas decided to move anyway, and their children went to live in their father's full-time care. Nine fathers successfully opposed the application to relocate, while 12 were unsuccessful respondents – one of whom followed his child abroad. The researchers found that their findings supported the earlier English, Australian and New Zealand findings, "particularly in relation to the difficulty of the process as well as the fundamental importance of the relocation decision to both parents".[27]

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23 M. Gollop and N. Taylor (*op. cit.* note 22).

24 J. Cashmore and P. Parkinson (*op. cit.* note 22).

25 M. Gollop and N. Taylor (*op. cit.* note 22).

26 R. George, A. Gallwey and K. Bader, "How do parents experience relocation disputes in the Family Courts?", *Journal of Social Welfare and Family Law*, vol. 38, no. 4, 2016, pp. 394-412.

27 *Ibid*., p. 410.

More recently, GlobalARRK, a UK charity supporting 'stuck' parents,[28] published research exploring the mental health effects on 75 participants of being a 'stuck parent', including the impact on family life and on the child(ren) of the family.[29] The study identified "trends indicating that being a 'stuck parent' is a risk factor for developing depression, anxiety, and PTSD".[30] This research, and another GlobalARRK report on relocation,[31] was submitted to the first HCCH Forum on *Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention* held at Sandton, South Africa, on 18-21 June 2024.[32] An article summarising the Forum's purpose and content[33] noted, in relation to relocation, the disruptive 'ping pong effect' of 1980 Hague proceedings and subsequent relocation proceedings for children:

> "[…] if relocation proceedings could be expedited, that could lessen the numbers of mothers taking their children across borders to flee dangerous situations. This would mean that the child would not have to be relocated more times than necessary, minimising disruption and trauma."[34]

At the Forum, GlobalARRK "reported that in a study of parents seeking transnational relocation, almost 90% claimed they had experienced domestic violence".[35] Barnett, Kaye and Weiner urged the Steering Committee for the 2025 Forum to consider including a facilitated follow-up discussion and breakout session on relocation in their programme.[36]

Finally, in relation to recent relocation research, we note the comparative study of 165 applicant parents' experience of relocation proceedings to return to the country they consider home that was presented at this Washington DC Conference.[37]

The Links Between Relocation and International Child Abduction

Lawful relocation and wrongful or unlawful child abduction share many common features.[38] The background to both events is the relationship breakdown between the parents of the children who are subject to the move. The children may also have been exposed to inter-

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28 GlobalARRK states that a 'stuck' parent is a parent who has moved abroad and is unable to return home with their children because the other parent has forbidden this, or has had to leave their children behind after a relationship breakdown abroad – see: https://www.globalarrk.org/ *Are you a stuck parent?* (last accessed 15 September 2025).

29 L. Kean, O. Momoh and R. Osborne, *International Child Law: The Mental Health Effects on Stuck Parents*, GlobalARRK Research, 2024.

30 *Ibid*., p. 42.

31 GlobalARRK Report, *Relocation and Experiences of Lawful Removal Applications*, June 2024.

32 A second HCCH Forum is being held in Brazil during 2025.

33 A. Barnett, M. Kaye and M. Weiner, "The 2024 Forum on Domestic Violence and the Hague Abduction Convention", *International Journal of Law, Policy and the Family*, vol. 38, no. 3, 2024: http://dx.doi.org/10.2139/ssrn.4981634 (last accessed 15 September 2025).

34 *Ibid*., p. 6, note 32 – citing the presentation by L. Brown from the Australian Attorney-General's Department.

35 *Ibid*., p. 7.

36 *Ibid*., p. 11.

37 N. Hyder-Raman and R. Osborne, *International Relocation of Children: A study of how applicant parents experience relocation proceedings to return to the country they consider home*, GlobalARRK Report, March 2025.

38 M. Freeman (*op. cit.* note 5); N. Taylor and M. Freeman (*op. cit.* note 5); R. Schuz (*op. cit.* note 5).

parental conflict, hostility, and/or violence and, almost certainly, familial tensions will have permeated the home environment for all concerned. Whether the children's move is lawful or wrongful/unlawful, they will experience a physical change of locality, which may involve a change of country or even continent. Sometimes the children will have prior experience of these new places but, other times, they will be completely unfamiliar. Relocation disputes and abduction events are both likely to result in formal proceedings involving lawyers, mediators and/or judges.

These transitions often create huge challenges for the children involved, which do not disappear simply because they have been agreed by the parents or approved by a court. Relationships with left-behind parents and wider family members are tested by both events and may not survive the strain of moving. Adjusting to the reality of the absences in their lives of all that was familiar and secure, including their home, left-behind parent, wider family members, friends, school, culture and language, may trigger emotions for children who have moved which are very difficult to manage even though they are not widely understood, and may amount to a form of cultural bereavement.[39] Research has shown that some children experience positive outcomes from relocation,[40] and that where a move prevents a child from continued exposure to violence and/or abuse, it can perhaps be assumed that any difficulties they encounter may be outweighed by the protection afforded by their removal. However, little is known about the outcomes of cases involving domestic violence or abuse experienced by moving/taking parents and/or moving/abducted children. We recently undertook research with global family justice professionals to ascertain their perspectives on this important issue,[41] and have begun a new project with specialist international colleagues that will engage with family members to better understand the outcomes for children affected by international child abduction (including those which have occurred against a background of domestic violence and/or abuse), whether any further legal engagement occurred post-decision, and what, if any, after-care services were utilised to better support the children and other family members. We plan to publish the results of this research in 2026. We also look forward to the findings from Rhona Schuz's 3-year project focused on Israeli case law and family members' experiences of abduction, 1980 Hague proceedings, and their aftermath.[42]

However, notwithstanding their common features, there are significant differences between relocation and international child abduction. The secrecy under which abduction takes place creates a major burden for children as, if they are included in the secret about leaving, they often feel guilty about not having revealed it to their other parent. If they were not part of the

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39 See M. Eisenbruch, "From post-traumatic stress disorder to cultural bereavement: Diagnosis of Southeast Asian refugees", *Social Science & Medicine*, vol. 33, no. 6, 1991, pp. 673-680; see also C. Jonczyk Sédès, T. Miedtank and D. Oliver, "Suddenly I felt like a migrant: Identity and mobility threats facing European self-initiated expatriates in the United Kingdom under Brexit", *Academy of Management Discoveries*, vol. 9 no. 2, 2023, pp. 187-209, at p. 189.

40 M. Gollop and N. Taylor (*op. cit.* note 22); J. Cashmore and P. Parkinson (*op. cit.* note 22).

41 M. Freeman and N. Taylor, *Research Report - Where international child abduction occurs against a background of violence and/or abuse: A project investigating the effects and outcomes of abduction on children where the abduction occurred against a background of domestic violence and/or abuse towards the taking parent and/or the abducted child*, The International Centre for Family Law Policy and Practice, London, 2024.

42 R. Schuz, *Socio-legal rethinking of the Hague Abduction Convention: Israel as a test-case*, Research project, Israel, 2024-2027.

secret, they feel they have been deceived when they discover what is truly going on. This has the potential to seriously impact their ability to trust, including those closest to them. In either scenario, they have no opportunity to say their farewells, to adjust in advance to a profound change in their lives, nor to access the support of the left-behind parent and family members which is accessible in relocation cases where both sets of family are more likely to remain involved. These special features of international child abduction are more likely to disrupt a child's identity development[43] and potentially cause lifelong challenges, maladjustment or psychopathology.[44]

It is, therefore, important that children are only moved when it is in their best interests to do so and that, where possible, abductions are prevented. It is certainly the case that we know very little about what happens after a relocation or international child abduction has taken place, and whether it did serve the child's best interests. This lamentable lack of knowledge must surely impede parents and judges as they strive to make the best decisions possible in these situations. Schuz correctly asserts that the 1980 Hague Convention is being applied almost blindly and that a better understanding of both types of mobility events is required.[45] The need for such research has also been recognised by the Contracting States to the 1980 Hague Convention in both 2017 and 2023, and we submit that this clarion call for knowledge on child outcomes, including the risk and protective factors that influence these, must now be heeded.[46]

Children and Young People's Right to Identity

The United Nations Convention on the Rights of the Child 1989 (UNCRC) was the first human rights treaty to explicitly recognise, in Article 8, "the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference".[47] It is easy to see how the protected right to preserve family relations may be imperilled by a child's move away from where they have been living their lives. The maintenance of those family relations depends on the goodwill of the parties involved and, in cases of relocation and child abduction, such goodwill is often sadly lacking. It is surprising, therefore, that the application of this vital right has received such scant attention in these fields. Moreover, it is important to note that, even though Article 8 refers to specific components of a child's identity, it does not purport to limit the understanding or protection of a child's identity to those elements which it names, even though that is largely how the

43 See further below.

44 S. Calvert, "Ghosts in our genes: Psychological issues in child abduction and high conflict cases" in M. Freeman and N. Taylor (eds.), *Research Handbook on International Child Abduction: The 1980 Hague* Convention, Edward Elgar Research Handbooks in Family Law Series, 2023, pp. 30-45, at pp. 32, 33, 45.

45 *Ibid*., p. 151.

46 Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (10-17 October 2017), C&R No 81, which *inter alia* acknowledged the need for rigorous research to be undertaken regarding the short-term and long-term outcomes for children and relevant family members, including taking and left-behind parents; Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (10-17 October 2023), C&R 102, which *inter alia* recognised the value of evidence-based research to strengthen the effective operation of the 1980 Convention.

47 UNCRC, Art. 8(1).

Article has been interpreted and applied to date.[48]

It is our view that children's social identities can be profoundly affected by relocation, international child abduction, and the transitions which emanate from them.[49] The roles, relationships and memberships of broader groups which they had established, and which inform an individual's identity, will radically change when a child relocates or is abducted. This comes in addition to the risk to identity development which may already exist as a result of parental separation, and any conflict, hostility or violence to which children may have been exposed.

In some cases of international child abduction, a child's identity may be specifically changed to avoid detection. Unsurprisingly, the result of such a fundamental alteration to a child's view of themselves, and the way that others view them, has the potential for life-changing impact.[50] When a child is returned after an abduction, the threat to their identity and selfhood is often unrecognised in the efforts to re-establish the status quo ante. However, the life to which they are returned may differ substantively from the life they lived before. Their home may have changed, as well as the people with whom they are expected to live, who may now include new stepparents, siblings, and family members. It can be extremely difficult for a previously abducted child to find their place in these circumstances, to know who they are, how they see themselves, and how others see them.[51]

Relocation and abduction proceedings are critical junctures between children and the law. It is therefore essential that children's right to identity is properly acknowledged and protected by the legal processes concerned. This requires a more expansive approach towards the application of Article 8 than has hitherto been adopted, but the Article has more than sufficient scope to provide for this. It is against this enlightened background that lawyers may frame applications and processes, and judges may determine questions of welfare and best interests in court proceedings. Parents and other decision-makers will be impacted by such well-informed change, as will children and young people themselves – particularly when exercising their right to play an active role in the construction of their own identity.[52] This constitutes a shift in thinking and practice, admittedly, but one which we advocate and consider will undoubtedly help improve the quality of decision-making and the outcomes for children and young people affected by issues of family mobility.

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48 S. Bou-Sfia, "Article 8 UNCRC: To protect or neglect? Consideration of its (potential) meaning and effect", in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law,* Edward Elgar Studies in International Family Law, 2025, pp. 24-43.

49 N. Taylor and M. Freeman (*op. cit.* note 5).

50 M. Freeman, *Parental Child Abduction: The Long-Term Effects*, International Centre for Family Law, Policy and Practice, London, 2014.

51 "Most of us have had challenges forming and maintaining our identity and sense of self. … We struggle with making sense of our core relationships in a world already full of complex challenges concerning identity, belief and belonging" – Sarah Cecilie Finkelstein Waters, "Long-Term reflections of a former milk carton kid", in M. Freeman and N. Taylor (eds.), *Research Handbook on International Child Abduction*: *The 1980 Hague Convention*, Edward Elgar Research Handbooks in Family Law Series, 2023, pp. 19-29, at p. 28.

52 J. Tobin, "The evolving scope of international transformations of children", in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law,* Edward Elgar Studies in International Family Law, 2025, pp. 302-319.

Conclusion

The current relocation evidence base remains underdeveloped and we still know very little about the impact of relocation on children's outcomes. This also holds true for the current state of research evidence in the international child abduction field, where knowledge about child outcomes remains elusive.[53] Perhaps the best that can be said in 2025, is what we said in 2010, that whether or not a child's move is in their welfare and best interests depends on the combination of risk and protective factors present. We understand that many more jurisdictions are now focusing on a holistic evaluation of what is in the best interests of the child when determining relocation disputes.[54] Hence, the search for greater certainty and consistency may now well lie in ascertaining what works best in guiding the determination of best interests in such decisions. Is it statutory criteria, guidelines, presumptions, precedents, or some other approach, that works best to direct the best interests' assessment and has the most positive impact on child outcomes?

We renew afresh the calls for further research on child outcomes, but emphasise that this needs to take account of the different approaches now adopted in jurisdictions around the world to the guiding of best interests in relocation decisions. We also encourage greater consideration being given to the links between relocation and abduction. As well, the impact of a move on a child's identity should be recognised as an integral component of any parental and/or legal decision-making process, including in relation to assessment of the child's welfare and best interests and the child's right to express their views.

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53 M. Freeman and N. Taylor (eds.), *Research Handbook on International Child Abduction*: *The 1980 Hague Convention*. Edward Elgar Research Handbooks in Family Law Series, 2023.

54 Anna Worwood (Co-Chair, IAFL Relocation Committee), "A Comparative Overview of Child Relocation Laws and Procedures", Presentation at the conference on *15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family* Relocation, Washington DC, 2-4 April 2025.

Session 8 - The use of alternative dispute resolution and other services in cases of international family relocation

Reunite

Alison Shalaby, CEO reunite

Introduction

It is well acknowledged by judges in England & Wales that relocations are serious and difficult applications to decide:

> "Within private family law litigation there are few more complex decisions to resolve than the question of whether a child should permanently relocate to another jurisdiction. However, what commences as a difficult decision is made harder where (a) the relationship with each parent is acknowledged as being valuable to the child in question; (b) the proposed relocation is distant from this jurisdiction leading to an inevitably high impact on regular contact with the left behind parent, and; (c) where the family are international in character and the applicant has a strong and understandable desire to return to their country of origin. It is in that setting that I am asked to either permit or refuse a relocation application."
>
> *Re I (A Child) (Relocation: Australia)* [2024] EWFC 3 (B)

> "Relocation applications are among the more difficult applications that come before the Family Court. The effects of distance on relationships, often accompanied by cultural and linguistic factors that may shape a child's lifelong identity, raise the stakes above those found in most domestic cases. The modern approach to relocation applications acknowledges the anxiousness of these decisions. Recent authorities in this court aim to help judges reach sound, welfare-based conclusions by approaching relocation cases, whether international or internal, on the same principled basis as with any other important decision concerning children."
>
> *L v F* [2017] EWCA Civ 2121

In 2024, **reunite** received the following 81 relocation cases via its Advice Line:

a. 44 cases where a parent wanted to relocate with their child from one Hague Convention State to another Hague Convention State;

b. 15 cases where a parent wanted to relocate with their child from a Hague Convention State to a non-Hague Convention State;

c. 22 cases where a parent wanted to relocate with their child from a non-Hague Convention State to a Hague Convention State.

These cases include both parents wanting to return to England & Wales as well as parents wanting to move outside of England & Wales.

In England & Wales, decisions on relocation applications – whether to allow them or refuse

them – are made on the basis that the child's welfare is paramount. The same legal framework applies to internal relocations (i.e. relocations from one part of England & Wales to another) and international relocations.

In order to reach a decision, the court will conduct a global holistic analysis and consider the relative advantages and disadvantages of each of the realistic options before choosing which one best meets the welfare needs of the subject child or children. The court should not adopt a linear approach. This means that a court should not start with one option, discount it, and move to the other, but rather should consider all of the realistic options before deciding on which one is the best.

The court process in England & Wales

Before commencing the application, the parents have to attend a Mediation Information Assessment Meeting (a MIAM). They can continue to mediate during proceedings, if they want to, but they cannot be compelled to.

New rules in England & Wales were introduced in summer 2024 which serve to emphasise the importance of mediation and other forms of non-court dispute resolution when it comes to resolving children disputes.

After the application is made, there will be an initial hearing to decide what evidence is needed in order for the application to be resolved. That will usually involve:

a. A statement from the applicant setting out their proposals

b. A statement from the respondent responding to their proposals, and making their own

c. A social work report of some description, either by Cafcass, the local authority or a privately-paid social worker (known as an "Independent Social Worker" or "ISW")

d. If relocation is to a non-1996 Hague Convention country, evidence about the recognition and enforceability of the final order in that country.

Not all cases have a social work report, but most do. The social worker will meet with the child (or children) to ascertain their views, as well as meeting with the parents and reading the evidence filed. The social worker is usually asked to make recommendations on (a) whether the application should be allowed; and (b) in any event, what the arrangements should be for the child to see their parents either in this jurisdiction or the jurisdiction they move to.

In some cases, it will be necessary to investigate and determine allegations of domestic abuse. That might be undertaken by way of a separate fact-finding hearing which takes place before the social work report is in, or as part of the final hearing. Issues of domestic abuse have played more of a prominent role in relocation cases in recent years.

It also might be necessary to obtain psychiatric or psychological evidence about the impact of a refusal of permission to relocate on the applicant parent. The court in England & Wales might want to understand how that impacts on them and how that will, in turn, impact on the welfare of the child. An expert assessment like this will only be obtained if it is decided by the court that it is "necessary", and so that will usually require some kind of relevant history of mental health difficulties.

Once all of the evidence is in, there will be a further short hearing called a "Dispute Resolution Appointment" which is an opportunity to try and reach an agreement, usually with the benefit of the recommendations of the social worker.

If an agreement is not reached, the application will be listed for a final hearing. That will usually take 2 or 3 days and will require evidence from the social worker (who usually goes first) followed by the parents and any third parties (although it is relatively uncommon to have third parties). At that hearing, the Court will determine whether the child should be permitted to relocate and, if so, what the arrangements should be for them to spend time with the left-behind parent.

Challenges within the court relocation process

- Lengthy court proceedings: inconsistency in the length of proceedings across areas of England & Wales - much depends on the courts and their availability. Other issues which can impact upon the length are the issues in the case, i.e. whether a fact-finding hearing is necessary and also the type of welfare report. Some Cafcass reports can take 24+ weeks, whereas independent social worker's can be from 6 – 12 weeks.
- Costly court proceedings: legal aid eligibility is limited and privately paying for lawyers is often outside many parents' means.
- Lack of judicial continuity: each hearing could be before a different judge and/or a different level of judge.
- Parental conflict escalates: this arises in cases where allegations may be made against the parties which require court determination, or that are not determined, but are contained within the evidence.
- Some parents can be deterred from entering mediation, especially when there are long welfare reports which can take close to 6 months. A parent may wish to wait to see what the recommendation is first, to assess their own 'merits' and 'strengths' about their position and seek to introduce delay because it suits them.

Challenges post-relocation

Even when relocation is permitted by a court, problems may arise post-relocation if the relocation order is not carefully crafted. Examples that **reunite** have seen are:

- Courts retaining jurisdiction post-relocation, rather than letting the court of England & Wales take over;
- Unrealistic and impractical orders, e.g. requiring frequent and expensive travel overseas by the child to maintain the relationship with the left-behind parent;
- Vague contact arrangements that are open to interpretation, giving rise to further conflict and result in the need for a further court application

Is there a role for mediation in cases of international relocation?

There is absolutely a role for mediation in cases of international relocation and many parents within England & Wales do choose to mediate and are able to reach a binding outcome from the process of mediation. Some parents choose to mediate rather than make a court application, completely rejecting the court process, whilst others may choose to mediate alongside an ongoing relocation application to the court.

Benefits of mediation in relocation cases

reunite has been offering mediation in international children's cases for more than two decades and has built up a body of evidence to support the use of mediation. Parents who have participated in mediation report a number of benefits from having mediated in cases of relocation:

- Parents stay in control over decisions made affecting their family
- The process is confidential, leaving parents free to say what they really think and resolve practical and emotional issues
- It is quicker than the court process
- It is less expensive than the court process
- It is a lot less stressful (provided that parents are able to negotiate)
- Children can be consulted confidentially without reports going to the court
- There is more flexibility around the parents agreeing on a number of issues

Drafting an agreement

Parents entering into mediation do so hoping that the mediation process will result in a legally binding agreement that benefits and supports the future arrangements for their family. The drafting of an agreement, a Memorandum of Understanding (MoU), is an integral part of the mediation process and one in which individual parents are carefully engaged. Moreover, the joint drafting of the Memorandum of Understanding can be a very powerful experience for parents and is often key to assisting them in re-establishing communication and forging an enduring working relationship to the benefit of their children for the future.

The purpose of any agreement reached through mediation in international children's cases is to, *inter alia*:

a) Agree upon future arrangements for the children;

b) Eliminate the need for court proceedings;

c) Provide a framework to enable co-parenting across international borders;

d) Provide a framework to enable a child to have a meaningful relationship with both parents;

e) Reduce conflict;

f) Improve communication.

To achieve the above, any agreement should be very specific on what has been agreed, should not have any unresolved matters that will need discussion and agreement in the future that could give rise to conflict, should not be ambiguous, and should be specific enough to be enforceable, i.e. should be specific enough to show where breaches to the agreement have arisen.

reunite mediators have spent many years developing the current Memorandum of Understanding document. In doing so, we have the benefit of working directly with parents to gain an understanding of how best to record the outcome of their mediation in a way that is sensitive to the difficulties and conflict between them, sensitive to the psychological aspects

of inter-parental relationship breakdown, and which assists, as far as it is possible and practicable, a return to a normative pattern of communication and behaviour. The outcome from mediation must therefore be more than simply the agreement - it must also reflect parental commitment and be achievable once the relocation has taken place.

Work undertaken with parents throughout the mediation process culminates in a joint drafting exercise between parents and mediators and is aimed towards careful 'reality testing' of the proposed arrangements (including careful consideration of the effect any arrangements will have for each child). The mediation process provides an opportunity to think through practicalities and contingencies and a reinforcement of the decisions they have reached together for the benefit of their children. In doing so, it is hoped that it will assist them (in time) to re-establish trust and that their agreement will form the framework for an enduring parenting relationship between them. In turn, this reduces the risk of a need to make an application to court but, most importantly, benefits the children of the family. As this is the case, it is of considerable importance that the structure of the agreement, the language used, and the arrangements set out, coalesce into a document which stands as both an agreement and a framework for their future parenting relationship.

The Memorandum of Understanding arising from mediation therefore has a dual purpose. It must stand as a reflection of the autonomous decision-making of the parents and it must be capable of being translated into a binding agreement once the parents have received legal advice on the terms proposed. Importantly, it is focused on the future rather than rehearsing the past. It therefore should be worded sensitively but clearly so as to ensure there can be no misunderstanding or misinterpretation and, importantly, is appropriate to the jurisdictions involved. Essentially, if the overall purpose is to achieve a binding agreement, any document must set out clearly, succinctly and unambiguously what the terms of any agreement are.

Mediation where there are allegations of domestic abuse

It is possible to mediate where there are allegations of domestic abuse, and as part of the assessment process the mediator will work to create a safe space in which this can happen. The assessment meeting is a confidential and supportive interview at the outset of the mediation process. It enables the mediator to explore with the parent issues such as domestic abuse, mental and emotional health, risk-taking behaviours, substance abuse etc. It enables the mediator to ask questions about communication and dealing with everyday conflicts and decision-making, concerns for self or for the child(ren) and whether they are frightened of their former partner.

The mediator must remain mindful of all forms of domestic abuse and of safeguarding concerns, not just violence, i.e. emotional abuse, coercion/control, financial abuse, risks to children, and will discuss openly with the parent the appropriateness of entering/continuing with mediation. The mediator will need to know and understand about the potential risk involved, the worries and triggers, and what appropriate safeguards/safety planning should be considered and put in place. In addition, the mediator will need to assess the capacity of each parent to play a full part in the mediation, especially if it is one where they will be making decisions with their former partner.

It is important that victims of domestic abuse have the opportunity to resolve their dispute out of court and in a confidential setting. The overarching principle of mediation is 'Do No Harm' and mediation practice is governed by principles which provide the framework for ethical practice. Mediators should:

- Provide a safe and balanced environment for discussions;
- Ensure that mediation is a positive choice for those who use it;
- Ensure that imbalances of power can be addressed;
- Respect individuals and their right to make their own decisions;
- Respect their right to confidentiality of discussions (with exceptions);
- Take responsibility for ensuring the safety of all, especially vulnerable adults, children and young people.

The 'risk assessment' is not a one-off process at the outset of the mediation. It is, and should be, a continuing appraisal and reappraisal of risk as the mediation progresses and should be considered every time the mediator meets with the parents.

Conclusion

There is a role for mediation in cases of international relocation and yet too often it is not suggested to parents. Even when parents participate in mediation and do not reach an agreement around the relocation, there are still benefits to be derived – improving communication, exploring options, a better understanding of positions, needs and wishes, preparing for a judicial decision. Until mediation is more widely offered and utilised, parents will continue to be forced down the court route and all that entails – financial burden, delays, further conflict and heartache.

Overview of a mediation training initiative for Central Authorities under the 1980 Child Abduction and 1996 Child Protection Conventions

Marzia Ghigliazza, International family lawyer, cross-border family mediator, IAFL Fellow

Building Solidity in Cross-Border Family Mediation: The Italian Pilot Project

> "These things, however, must be done in such a way that consideration is given to strength, utility, and beauty." – *Vitruvius*

I. Introduction

In today's globalised world, an increasing number of families live across borders. Whether through marriage, relocation, employment opportunities, or migration, family units now span jurisdictions, cultures, and legal systems. While this reality presents rich opportunities, it also introduces complex legal and human dilemmas — particularly when families face separation or conflict. In such cases, traditional domestic remedies often fall short. Transnational disputes over custody, residence, and visitation rapidly reveal the limitations of domestic frameworks and judicial timelines.

Italy, despite its long-standing civil law tradition and active participation in international co-operation instruments, had no national structure in place to handle these conflicts through mediation. This absence stood in contrast to the obligations Italy assumed under international conventions and EU regulations. It was within this vacuum that a group of actors, under the leadership and active participation of the Italian Central Authority (CA), chose to act.

The Italian Pilot Project on Cross-Border Family Mediation (CBFM) was launched in 2023 with the aim of building a sustainable, integrated, and professional system for the handling of cross-border family disputes through mediation. The goal was to create a mechanism that could respond to real-life conflicts in a timely, human-centred, and legally sound manner, offering families an alternative path that honours the best interests of the child and the rights of all those involved.

The project's inspiration came not only from legal necessity, but also from a broader architectural vision: the classical principle of *Vitruvius* — that anything constructed should balance strength (*firmitas*), utility (*utilitas*), and beauty (*venustas*). This framework shaped the project's strategic and operational decisions and helped unify a diverse coalition of partners under a shared mission.

II. The Italian Context: The Void and the Need

At the time of the Pilot's conception, Italy lacked a systemic infrastructure for cross-border family mediation (CBFM). This institutional vacuum was particularly striking given the country's binding international obligations and the increasing number of transnational families. Though family mediation had been recognised as an independent and full profession since 2013

through the adoption of the UNI standard domestic rule[1] and later bolstered by the foundation of FIAMeF[2] in 2016, the cross-border dimension remained underdeveloped — addressed only by sporadic, un-coordinated efforts from individual professionals.

Three layers of urgency informed the project's launch: judicial inefficiency, legal obligations, and social reality.

Judicially, Italy's court system is burdened by long timelines. In international relocation cases, proceedings frequently stretch over six to eight years through three levels of jurisdiction. During this time, children and parents endure significant emotional stress and legal uncertainty. Court decisions rendered after such prolonged litigation often fail to reflect the current needs of the child or the evolving context of the family. Judges, operating within strict procedural boundaries, are unable to offer the kind of holistic, timely, and adaptive solutions required in high-conflict cross-border disputes.

Furthermore, Italian courts — while increasingly aware of cross-border complexity — have historically lacked both the procedural tools and cultural readiness to integrate mediation into return or relocation proceedings in a meaningful way. Judicial referrals to mediation were often generic, with no follow-up, funding, or institutional link to ensure implementation. No formalised relationship existed between courts and mediators, nor were there national guidelines or best practices on CBFM.

Juridically, Italy is party to a number of international and European instruments that mandate or encourage mediation. The 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1996 Convention on Parental Responsibility and the 2007 Maintenance Convention all call for Central Authorities (CAs) to promote amicable solutions. Brussels II-*ter* (EU Regulation 2019/1111), which replaced Brussels II-*bis*, went further by imposing a *direct obligation* on courts and CAs to invite parties to consider mediation at every stage of proceedings (Article 25). Yet, in Italy, these invitations remained largely rhetorical — courts lacked a referral mechanism, CAs had no roster of qualified mediators, and families were left without guidance or support in accessing CBFM.

Even within Italian legislative reforms, the potential of family mediation was recognised but not yet systematised. The *Cartabia Reform* Bill (Legislative Decree No. 149/2022) strengthened the role of family mediation in domestic cases but left unresolved how such mediation should be implemented in the cross-border context. The Ministerial Decree No. 151 of October 2023 later defined access requirements, training standards, and continuing education obligations for family mediators, but again lacked operational detail on international cases.

Factually, the demographic evolution of Italian society further justified the need. In 2023, of the 184,207 marriages celebrated in Italy, more than 29,000 involved at least one foreign spouse. Mixed-nationality unions now comprise approximately 16% of all marriages. Moreover, Italy is not only a country of immigration; it is also a country of emigration. Thousands of Italian children reside abroad with one parent while maintaining ties to the other parent in Italy. The movement of people — and by extension, families — is a defining feature of our time.

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1 UNI administrative Regulation.

2 National **Federation** of the largest Italian Family Mediation Associations.

In the broader European context, the phenomenon of cross-border families is likewise significant. According to the European Commission, approximately 16 million international couples currently reside in the EU, including both married and registered partnerships. Each year, over 140,000 cross-border divorces occur within the European Union. Furthermore, around 1,800 parental child abduction cases are reported annually in the EU alone, demonstrating the urgency and volume of family law matters with a cross-border element. These figures, cited in the Commission's assessments of judicial cooperation in family law, confirm that the challenges Italy faces are mirrored across Member States.

This European data reinforces the need for robust, harmonised systems of alternative dispute resolution and mediation, particularly CBFM, which allows national authorities to meet legal obligations while addressing the emotional and cultural complexity of international family life.

This trend is particularly visible in the geographic areas covered by the largest courts competent under the 1980 Hague Convention in Italy: Rome, Milan, Florence, Bologna, Trieste, Naples, Bari, Palermo. All of these cities are not only major urban centres but also hubs of international mobility, hosting foreign communities, international schools, consulates, and a high number of cross-border families. Judges in these districts increasingly face international relocation disputes, child return applications, and recognition/enforcement proceedings involving foreign judgments.

Yet, no public institution had developed a coherent operational response to the challenges this mobility entails for family life. There was no pre-mediation infrastructure, no pool of mediators trained in cross-border frameworks, and no shared language between courts, mediators, lawyers, and the Central Authority. The result was a disjointed system: formal obligations unmet, families unsupported, and professionals isolated. Existing national family mediation associations had no mandate, no training or resources to take the lead on cross-border issues. Meanwhile, Central Authority staff lacked internal protocols, time, and trained contacts to refer families to structured mediation paths.

This was the **void** into which **the Pilot Project intervened**. By bringing together public institutions and private professionals, the project aimed to shift from *ad hoc* responses to a **structured and replicable model**. Its launch represented a **new phase**: one in which Italy began to construct — not merely recommend — a system capable of realising the promise of cross-border family mediation.

III. The Vision: A Construction for International Families

The Pilot Project **was not born of abstract theory** but of **architectural** intent. It was conceived as a purposeful response to an identifiable void: a **structure** designed to connect, support, and sustain families navigating international separation. The metaphor of construction — drawn from Vitruvius' classical principles of *firmitas, utilitas* and *venustas* — guided not only the project's philosophy but also its design, stakeholder alignment, and operational rollout.

This vision considered CBFM not merely a service or intervention, but a necessary infrastructure to be integrated within Italy's justice ecosystem. The 'building' imagined would be strong (institutionally anchored), useful (functionally equipped for real families), and beautiful (ethically grounded in respect, neutrality and dignity).

The foundation was laid within the public sphere: the CA, housed within the Department for Juvenile and Community Justice of the Ministry of Justice. Its **institutional mandate and**

supranational obligations made it the natural **entry point** for cases, and its public legitimacy allowed it to convene diverse actors with credibility.

The framework included:

- **FIAMeF**: the Federation of Italian Family Mediation Associations, which assured professional quality standards, oversight, and geographic representation;
- **reunite:** the international centre for child abduction mediation based in the UK, providing training and technical mentorship based on decades of cross-border casework;
- **The University of Milan-Bicocca** and **University of Genoa**: anchoring academic legitimacy, evaluation, and long-term capacity-building;
- **EJNita 2.0**: the European Judicial Network's Italian component, responsible for building awareness within the judiciary and integrating EU tools such as *Aldricus*;
- **Professional associations**: AIAF, CAMMINO, and UNCM — providing legal practitioner access, bar visibility, and practical engagement; and
- **ICALI**: the network of Italian lawyers for international child abduction (a LEPCA offshoot), bridging legal expertise with mediation practice.

Each partner brought its **unique function**, mandate and audience. Their synergy was not aimed at uniformity but **complementarity**. Just as architectural integrity depends on the cohesion of distinct components — beams, joints, columns — so too did the Pilot depend on **preserving the functional identities of each stakeholder while creating a common framework of action**.

The envisioned system had to be both centralised and decentralised: centralised in terms of coordination (via the CA), but decentralised in its delivery (with mediators and courts across the country involved). The structure aimed to be agile enough to respond to different linguistic, cultural, and procedural demands, while maintaining a shared methodology, protocol, and ethos.

Importantly, the vision was not to replace litigation, nor to promote mediation ideologically. Rather, it was to operationalise mediation as a complementary, parallel path — offered early, consistently, and professionally, in line with European and international standards. The initiative aimed to restore the human scale to transnational family conflicts, offering parties a space to communicate, negotiate, and co-construct solutions without relinquishing legal protections or rights.

Finally, the architectural metaphor extended to sustainability. A beautiful façade alone would not suffice. The system had to endure institutional change, funding cycles, and stakeholder turnover. That required written protocols, public legitimacy, transparency mechanisms, and professional supervision. By embedding the Pilot within both institutional and civil society spheres, the design allowed for accountability and adaptability.

Thus, the vision of the Italian Pilot Project was not simply to test mediation in cross-border cases, but to demonstrate how law, policy, and practice can jointly construct a structure capable of supporting families across borders, cultures, and crises. A space that could endure — and serve — as a true legal infrastructure for international families.

IV. Choosing the Right Moment: Legislative and Institutional Readiness

The Pilot Project was not launched in a *vacuum*. Its timing reflected a **strategic alignment between legislative developments, institutional readiness, and professional maturity**. Over the **decade** preceding 2023, Italy had experienced a slow but steady evolution in its legal and policy landscape concerning family mediation.

In **2013**, the UNI standard administrative ruling formally recognised family mediation as a professional activity, establishing minimum qualifications and ethical guidelines. This milestone introduced coherence to a previously fragmented sector. Three years later, FIAMeF was founded, creating a national federation that brought together professionally **recognised** family mediators from across the country under a common banner of quality assurance and continued professional development.

The **2022** so-called *Cartabia Reform* was pivotal. It introduced significant amendments to Italy's civil and family procedure codes, making **mediation** in general more visible, more accessible, and in some cases, a prerequisite for judicial proceedings. In parallel, the Reform introduced **family mediation** as such for the first time in a Law Bill and affirmed the need for multidisciplinary collaboration in family law cases — a principle essential to the pilot.

By **October 2023**, the regulatory framework had crystallised. Ministerial Decree 151 codified the rules for entering and remaining in the family mediation profession. With this legal infrastructure in place, the conditions were finally ripe for a national project addressing cross-border mediation specifically.

This national evolution was echoed at the supranational level. The consolidation of **Brussels II *ter*** in August 2022 placed mediation at the heart of European judicial co-operation in family matters. **Article 25** of the Regulation reinforced a duty already present in the 1980 and 1996 (and 2007) Hague Conventions: to actively encourage parties to explore mediation before resorting to litigation.

In this context, the Italian CBFM Pilot Project was launched not as a temporary experiment, but as the practical realisation of both national policy and international obligation. Its foundations rested on a confluence of political will, institutional capacity, and legal necessity.

V. From Blueprint to Practice: The Training Component

Training was the **cornerstone of the project**. The quality and credibility of the entire initiative hinged on the selection, preparation, and supervision of a pioneering group of mediators who would embody the project's values and put them into practice in cross-border family disputes.

The core of the training programme consisted of **two intensive in-person modules**, each spanning **five days** and totalling approximately 32–34 hours. These were delivered in collaboration with and by **reunite**, drawing from the organisation's decades of experience in the mediation of international child abduction and relocation cases. The modules were **spaced three months apart**, allowing participants to reflect, consolidate knowledge, and begin to internalise the interdisciplinary and intercultural competences required in this field.

Topics covered included:

- The procedural frameworks of the 1980, 1996, and 2007 Hague Conventions;
- Brussels II *bis* and II *ter* Regulations, with a focus on mediation referrals and judicial co-operation;

- Ethics and impartiality in cross-border mediation, particularly in high-conflict and multicultural cases;
- Communication techniques with parents and children in deeply entrenched family disputes.

The **juridical content** was intentionally **limited** to a maximum of three half-days per module. This pedagogical choice was grounded in the recognition that mediators are not legal advisors, but neutral facilitators whose task is to foster constructive dialogue and support parental decision-making in parallel with legal proceedings. While mediation is a dispute resolution process, it does not result in a legally binding order, unless the parents take the necessary steps set by domestic law to make their agreement a legally binding Court order/agreement.

Experiential learning was central. Roleplays and simulations, often based on real-case scenarios, enabled trainees to practise skills in environments requiring procedural discipline, emotional intelligence, and cultural awareness. Sessions were safely video-recorded and reviewed collectively as part of an integrated feedback loop.

What set this training apart — both in terms of ambition and methodology — was its embedded **internship component**, offered in two distinct stages and designed to bridge theory and real-world practice in an unprecedented manner.

Following the first module, participants were given the opportunity to join an initial internship phase consisting of **structured observation of live assessment sessions and mediations** conducted by senior **reunite practitioners**. This enabled them to witness, in real time, the application of protocols, risk evaluations, and rapport-building techniques across borders and languages.

After the second module, and once core competencies had been acquired, a second, **more advanced internship** phase began. Participants now entered into **a phase of co-conduction**, where they jointly delivered assessments and participated in the facilitation of cross-border mediations, under the close guidance of experienced reunite trainers. This **co-mediation experience** allowed trainees to apply their skills in real cases involving international parental disputes — an exceptional opportunity to operate "on the ground" while receiving continuous supervision and structured feedback.

To date, each trainee has completed more than 30 hours of internship, a number that continues to grow as the process remains ongoing. This hands-on element proved essential not only for consolidating learning, but also for building professional confidence and accountability in a highly sensitive and legally complex domain.

Cohesion and trust were actively cultivated throughout the process. Informal exchanges via WhatsApp groups, shared meals, and social events contributed to a strong group dynamic. A crucial factor in fostering this cohesion was the **deliberate limitation of participant numbers**: the training group was intentionally kept small — **no more than 15 to 18 professionals per cycle** — to ensure close interaction, personalised feedback, and mutual trust-building. This structure enabled a **deep and lasting collegial bond** to develop among the participants and with the trainers. The **continuous presence of a Central Authority officer** throughout the process further reinforced institutional engagement and public accountability.

The outcome is a group of **12 professionals** who are not only trained, but also **tested in practice, socially bonded, supervised, and integrated** into an emerging ecosystem of cross-border mediation services. Their profiles are geographically diverse, professionally balanced

(half of the delegates are experienced family mediators with a **psycho-social background**, and the other half with a **juridical background**), and institutionally recognised—making them a foundational resource for the development of sustainable mediation networks in the context of international family law.

VI. Protocol and Operationalisation

Once training concluded, the focus shifted to implementation. The operational heart of the Pilot was the shared **Protocol** — jointly developed and **adopted by all institutional and professional stakeholders**. This document outlined, in a clear and coordinated way, the procedures through which cross-border mediation cases would be referred, assessed, managed, and monitored. It defined institutional roles, timelines, communication flows, and financial arrangements.

Key provisions included:

- **The CA** as the single institutional point of contact, receiving and screening mediation requests;
- **A pre-mediation desk** staffed by senior mediators trained in CBFM, responsible for assessing suitability, conducting information sessions, and responding to questions from families, legal professionals, courts, and social services;
- **Assignment of pairs of co-mediators** with balanced legal and psychosocial profiles, based on language skills, regional proximity (if possible), availability, and specific experience relevant to the case;
- **Flexibility** in format—sessions could be conducted in-person or remotely, and interpretation was systematically ensured when needed; and
- **Institutional involvement** in monitoring timelines and receiving basic updates from the mediator pairs for data and accountability purposes.

Crucially, the Protocol addressed **cost** in a transparent and sustainable way. The pre-mediation and assessment phases are provided free of charge. For actual mediation, a capped rate of €80 per hour per co-mediator, per parent, was set. The **CA** committed to funding the first four hours of mediation (€640 total), ensuring that initial engagement would not be discouraged by cost barriers. Beyond this threshold, parties would decide if they wished to continue and under what financial arrangements. This model allowed families to access high-quality mediation without initial financial risk, while acknowledging the professional value of mediators' time.

Additional procedural guarantees were introduced:

- Mediators were required to co-sign confidentiality agreements with parties;
- Each case included at least one post-mediation follow-up session or feedback report;
- The CA retained a case tracking chart for all files referred to mediation; and
- The **list of accredited CBFM mediators** was publicly accessible and regularly updated.

The **Protocol** also included an innovative provision for **ongoing supervision by reunite**. Mediators involved in the Pilot agreed to participate in quarterly case reviews — peer-led sessions coordinated by REUNITE together with FIAMeF, in collaboration with the CA and

international trainers. These will serve both as quality control and as a reflective space for continuous learning.

In short, the Protocol transformed a general legal mandate into a tangible, actionable mechanism. It created bridges between courts and mediators, between institutions and families, and between legal obligations and human responses. It proved that cross-border family mediation in Italy could be not only encouraged, but organised and delivered with professionalism, equity, and coherence.

VII. Lessons Learned: From Fragmentation to Framework – Tips and Traps

The Italian Pilot Project on Cross-Border Family Mediation was not born from a blank slate. Rather, it emerged **from a sedimented history of mistakes, institutional silences, and fragmented practices** — paired with the valuable lessons drawn from the **successes and evolutions of other States' mediation projects**. It is a product of trial and error, and its strength lies precisely in having been shaped by both setbacks and the insights gained from comparative reflection.

In Italy, previous efforts to promote cross-border mediation often failed due to predictable, yet unresolved issues. Mediation was at times judicially recommended without any contextual support or practical follow-up. Courts lacked reliable referral mechanisms. Central Authority staff had no network of trained mediators to contact. Legal professionals were hesitant to trust the process, and families were left unsure of what mediation actually meant, what outcomes they could expect, or how their legal rights would be protected.

These early setbacks were compounded by the absence of national coordination. Efforts remained isolated — dependent on the goodwill of individual judges or mediators rather than anchored in any shared procedural or institutional vision. There was no consistent funding, no supervision system, and no monitoring of quality or impact.

But Italy was not alone in confronting these issues. **Other jurisdictions** — particularly France, the Netherlands, and the UK — had already begun grappling with similar challenges. Their projects provided not only inspiration but a **roadmap**: training protocols, co-mediation models, pre-mediation screening processes, and the integration of mediation into Central Authority case management. The Italian Pilot drew directly from these experiences, adapting their methodologies while consciously avoiding known pitfalls.

This is why the **Pilot began not with training alone, but with institution-building**. It focused on mapping the actors, setting shared goals, clarifying mandates, and ensuring that every element — from course design to case intake — was co-owned by all involved. It deliberately selected a small and cohesive cohort of mediators. It built in supervised internships and role-play based on actual case typologies. It involved CA officials from the beginning — not as observers, but as co-architects.

It also consciously avoided conflating legal and mediation roles. Legal content in training was carefully limited and positioned. Mediators were expected to be facilitative, not adjudicative. This distinction, often blurred in earlier initiatives, was kept firm.

In this sense, the Pilot was a product of humility. It did not pretend to invent CBFM. Instead, it stood on the shoulders of prior attempts — both domestic and foreign — and tried to build a structure that was more durable, more realistic, and more aligned with families' actual needs.

The result was a system that learned from what had not worked, borrowed from what had, and was brave enough to test, adapt, and reframe as it went. It became not only a response to legal obligations, but a laboratory for developing a uniquely Italian, yet internationally informed, model of mediation.

The mistakes of the past were not obstacles — they were the foundation. And the progress of other States was not competition — it was a source of guidance. Together, they shaped a project that remains open to iteration, grounded in practice, and committed to the families it is meant to serve.

Tips

- Begin with stakeholder mapping and institutional alignment before launching any training.
- Build the pilot under the roof of Central Authority to ensure public legitimacy.
- Create a steering group with clearly defined roles and a sense of collective responsibility.
- Limit the cohort to experienced accredited domestic family mediators—balanced geographically and professionally over the Country.
- Integrate CA officers in training activities to foster mutual understanding.
- Rely on external trainers with specific cross-border experience, and adapt their content locally.
- Use assessment and pre-mediation sessions as training components, under supervision.
- Focus on experiential learning: simulations, roleplay, and co-mediation.

Traps **to Avoid**

- Do not import foreign models without adapting them to the national context.
- Avoid generic invitations to mediation without follow-up tools or trained professionals.
- Do not over-emphasise legal training — mediation is a distinct and facilitative skill.
- Avoid turning English language into a prerequisite — ensure simultaneous interpretation is available.
- Do not let training occur in isolation from institutional coordination.
- Avoid mixing mediation and judicial roles — role clarity sustains credibility.
- Do not marginalise bar associations — engagement with legal professions is essential.

These concrete tips and traps, distilled from both domestic missteps and international guidance, continue to inform the refinement of the Pilot. They serve as a practical compass for replication and sustainability, in Italy and beyond.

VIII. Institutional Anchoring and Dissemination

From the outset, the Pilot Project was designed not as an isolated professional initiative but as a **publicly recognised and institutionally anchored programme**. Its anchorage within the **CA** was not symbolic — it was **strategic**. The CA's leadership, under the direction of its Head

Giuseppe VINCIGUERRA, proved decisive not only in convening the project's early stakeholders but also in ensuring that the Pilot was translated into institutional commitment, financial backing, and long-term viability.

This anchoring was achieved through a series of deliberate actions:

- The development and adoption of a shared operational Protocol, co-signed by all key institutional and professional partners;
- The institutional presence of the CA throughout the training and internship process, with direct engagement of senior officers;
- The public registration of trained mediators, accessible through the CA and affiliated bodies; and
- The continuous engagement with judicial offices to align referral practices with the mediation infrastructure.

One of the most significant **milestones was securing funding for the mediation services** (and not already for the training!). In **2024**, the Head of the CA successfully obtained a budget allocation of €20,000 from the **Ministry of Justice**. This achievement was not merely administrative — it was the result of strategic negotiation, made possible by the fact that the **Pilot already had in place a trained and accredited network of mediators**. The Head of the CA could present not a theoretical plan, but a functioning service ready to be activated, in view of the signature of the Protocol. It was precisely the existence of a competent and geographically balanced CBFM roster, supported by a coherent institutional model, that enabled the argument for immediate funding to succeed.

The Minister's allocation of resources represented a concrete institutional endorsement of CBFM as a necessary and sustainable component of Italy's family justice system. This support legitimised the Pilot in the eyes of judiciary, bar associations, and administrative actors. It demonstrated that mediation was not merely recommended in international instruments, but recognised at the national level as a valuable and fundable public service.

Dissemination efforts mirrored this institutional strategy. **Guidelines** were circulated to judges across the competent Courts under the 1980 Hague Convention and ordinary Family Courts, encouraging structured referrals and coordination with CA. The **EJNita 2.0 network** hosted thematic workshops, promoting knowledge-sharing between national and European actors. An electronic opened guide (*vademecum*), under the direction and contribution of Prof. Costanza HONORATI, was published on **Aldricus**, the Ministry's official legal cooperation portal, offering technical and procedural information to professionals and families alike.

Furthermore, the Pilot's outputs were integrated into the CA's ongoing training efforts for judges and social workers, ensuring that mediation was not seen as external to the judicial process but as an integral part of it. This **institutional embedding** was reinforced by public events, professional symposia, and cross-border exchanges, giving the project visibility and coherence.

In sum, the Pilot's institutional anchoring was not an afterthought — it was its **condition of possibility**. The success of the funding request, the CA's strategic role, and the integration into judicial and administrative practice mark a **turning point** in Italy's approach to cross-border family mediation. They affirm that CBFM is no longer an experimental or optional tool, but a publicly acknowledged, structurally supported, and operationally active mechanism for resolving international family disputes.

IX. Looking Forward: Sustainability and Replicability

The Pilot Project has laid the foundation for a **permanent and operationally scalable model of cross-border family mediation** in Italy. The next phase aims not only to consolidate what has been achieved but to extend and reinforce it structurally, ensuring that CBFM becomes a lasting and integrated component of the national justice system.

A central priority is the evaluation of the pilot phase through the systematic collection and analysis of data from completed mediations. This includes measuring party satisfaction, assessing mediator performance, identifying procedural bottlenecks, and mapping the efficiency of referrals. A monitoring and evaluation mechanism is currently under development, with feedback loops between mediators, Central Authority staff, and courts to inform continuous improvement.

In parallel, the training of a second cohort of cross-border family mediators is already planned. This new group will be selected from under-served regions and will complement the existing roster, expanding geographical coverage and reinforcing equity of access. The training will replicate the same high standards as the initial course, while incorporating adjustments based on the first cohort's feedback.

On the institutional side, the CA is working to digitalise referral tools, making the intake process more efficient and accessible. A bilingual online form is under development, aimed at assisting both professionals and families in initiating the mediation process. In addition, multilingual pre-mediation materials and orientation videos are being created to facilitate informed access for non-Italian-speaking parents.

A further **priority is the formalisation of judicial practices**. The project is advocating for the adoption of a standardised national mediation **referral decree**, to be used by judges across the competent courts under the 1980 Hague Convention. This measure would provide clarity and consistency, improving the quality and enforceability of judicial invitations to mediate.

A distinctive and **valuable feature** of the Italian Pilot was the opportunity afforded to trainees to **observe live reunite-led mediations and to participate in internships and co-mediations under the guidance of experienced international trainers**. This approach proved to be an extraordinary professional development tool and a bridge between theory and real-world complexity. Exposure to real cross-border family dynamics, with all their cultural, linguistic, emotional, and legal intricacies, gave mediators a rare opportunity to test and refine their skills in authentic settings. It was not only a pedagogical success but also a unique structural innovation that positioned Italy as a leader in hands-on, experiential CBFM preparation.

X. Conclusion: Strength, Utility, and Beauty in Practice

The Italian CBFM Pilot Project is more than a procedural innovation. It is a demonstration that systems grounded in public cooperation, professional competence, and institutional coordination can deliver humane, durable solutions to some of the most difficult legal problems families face. It has offered a working model that restores dignity to parties and restores agency to judges seeking alternative remedies.

The **Pilot** did not eliminate the complexity of cross-border family disputes. But it introduced a new way of responding — one that is quicker, more responsive, and more respectful of the lived realities of international families. It introduced a "third way" that bridges the formality of court with the flexibility of dialogue.

Its strength lies in its institutional grounding; its utility in its responsiveness to need; its beauty in the dignity it affords to families during their most challenging moments. The process does not deny conflict — it gives it a space to be transformed.

In short, it is a Vitruvian structure — an example of how law, policy, and practice can work together not only to fulfil legal mandates, but to embody the spirit of justice itself. What has begun as a pilot may soon stand as a permanent institution — one that shows what collaboration, vision, and commitment can achieve when directed to serve international children and families.

Author's Note: The author wishes to express sincere gratitude to the Italian Central Authority, reunite, FIAMeF, the Universities of Milan-Bicocca and Genoa, EJNita 2.0 network, and all national family law associations. The Pilot would not have been possible without the dedication of trainers, trainees, administrative staff, and institutional allies who believed in the value of building a solid, useful, and beautiful system for cross-border family mediation.

The author also extends thanks to the families who participated in early mediations. Their trust in the process has not only made the project real but has reaffirmed the value of listening, collaboration, and hope in international family law.

GlobalARRK

Roz Osborne, CEO GlobalARRK

Each year, thousands of parents, predominantly mothers, find themselves 'stuck' abroad, unable to legally return to their country of origin with their children after a relationship breakdown, often involving domestic abuse or family violence. Most of these parents are not wanting to move to a new country; they are seeking to go home. Under current national relocation frameworks, it can be extremely difficult to get permission from the court to 'relocate' back home. Yet this cohort - commonly referred to as *stuck parents* - often face immense legal, practical, and psychological barriers to staying. This can then lead to parents 'taking' their children without permission and being accused of 'international child abduction' under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

As the CEO of GlobalARRK, a UK-based international charity supporting these families, I have had the privilege - and the heartbreak - of witnessing thousands of such cases. Since 2012, we have supported over 3,000 families, including over 300 new clients in 2024 alone. This article draws from our experience, our data, and the lived experiences of the families we serve to argue for a trauma-informed, child-centred, and rights-respecting approach to international relocation disputes.

Who Are Stuck Parents?

The term 'stuck parent' describes a parent living abroad who wishes to return to their home country with their children but is legally prevented from doing so without the other parent's or the court's permission. These are not cases of parents seeking a "bright new future" overseas; they are overwhelmingly seeking safety, recovery, and support in familiar environments.

Based on GlobalARRK's 2024 support data:

- 98% of our clients are primary carer or sole carer mothers
- 90% of our clients reported experiencing domestic abuse.
- 43% faced significant language barriers in their current country.
- 47% did not have legal representation.
- 38% lived in insecure housing.
- 20% lacked legal residency rights in the country they were "stuck" in.

These figures paint a stark picture of vulnerability and legal limbo. Often, these mothers are entirely responsible for the care of their children, yet they are denied the ability to return to a place where they have rights, family support, and stability.

GlobalARRK has adopted a trauma-informed model across its services based on the 6 trauma informed principles of safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, voice, and choice, and cultural, historical, and gender issues. We offer:

- One-to-one emotional support and legal information.
- Free legal Clinics and linking to pro bono legal support.

- Lived experience peer networks for survivors to share, heal, and advocate.
- Domestic abuse recovery courses for 'stuck' parents.
- Trauma-informed training for legal professionals and NGOs.
- Advocacy at national and international levels to reform systems.

International Families in a Globalised World

In today's globalised society, many families live and work abroad without developing deep legal, familial, or cultural roots in their host country. This reality raises critical questions about how 'habitual residence' is defined and assessed — particularly in cases where the family have moved temporarily or lived in that country for a short period of time and the emotional and cultural home remains elsewhere.

It also supports concerns raised by Professor Weiner, who observes: *"Courts rarely explore the noncustodial parent's ability to relocate with the custodial parent and child; rather, they limit the inquiry to exploring whether visitation can be restructured to account adequately for the change in physical geography. The normative question - whether a noncustodial parent should follow the custodial parent when the custodian wants to move with the child - is rarely, if ever, considered."*[1]

In addition, a striking insight is that in 30% of the cases we support both parents are nationals of the country to which one is seeking to return. This challenges the widespread assumption that international relocation cases always involve cross-cultural or cross-national dynamics as well as raises questions around the potential mobility of the 'left behind' parent.

Such oversights can leave international families without legal options that reflect the complexity of their lived realities.

The Role of "Home" as a Protective Factor

At the heart of many relocation requests is the need to return "home." For most of the parents we support, *home* is not an abstract idea—it's a place where:

- They have citizenship and legal rights.
- They understand the language and systems.
- They have access to housing, healthcare, and education for themselves and their children.
- They are surrounded by supportive networks of family and friends.

In relocation cases involving domestic abuse, remaining in a foreign country - isolated, without support networks, and sometimes without legal status - can enable post-separation abuse to persist, obstruct recovery, and prolong the dynamics of coercive control. In such circumstances, returning to one's home country, where the individual feels safe, understood, and legally protected, often represents the most powerful protective factor available. No

[1] **Inertia and Inequality: Reconceptualizing Disputes Over Parental Relocation** *Merle H. Weiner, 2007*

amount of police protection, court orders, or refuge services can replicate the security and stability that a familiar and supportive environment can provide.

The Harvard Centre on the Developing Child[2] has demonstrated that a parent's mental health and stability are among the most critical factors in a child's resilience. When courts deny relocation to a parent who has fled abuse, they may be denying that child their most powerful protective factor: a thriving caregiver.

A Case Study: "Everything I Do Is Illegal"

Below is an anonymised transcript from one of our helpline calls, shared with permission. The mother, originally from Australia, had moved temporarily to an Eastern European country with her new partner. Shortly after the birth of their child, the father became abusive, including assaulting her while she was holding their newborn. The father then left her within months and said she was not permitted to travel with the baby. When she tried to apply for relocation back to her home country of Australia, legal professionals advised her *not* to disclose the abuse, fearing it would hinder her application. Instead, they encouraged her to seek permission for a temporary holiday - permission that was denied, twice.

She told us:

> "Everything I do is illegal. When I had mastitis when I was still breastfeeding. I couldn't even go and get a prescription medication because I don't have ID for them to enter into the system to provide me with a doctor's prescription. […] I can't even drive legally, […] I mean, I've got a license, a valid full license, but if I was to be pulled over, I'd be in a fair bit of trouble.
>
> I have told the father that I am in a very difficult position in terms of the visa situation. I don't have the right to stay here, which means I don't have the right to buy a car or rent property, do anything. I don't have any legal rights, so that on top of raising a small child and just my general distance from my whole family for this entire time has put me in a really difficult position mentally. I mean, my child has had a couple of medical emergencies, and I haven't been able to effectively take care of her because of the language barrier. Also, because of my lack of transport options, I had to wait for a bus and then also call a taxi. And these things are quite overwhelming for me to deal with on a daily basis. So I've told him that I am going to have to leave without Mollie, and he's said to me on numerous occasions that he can't take care of her. He doesn't want to give her over to his parents either. […] He doesn't actually care about having you know, custody over Mollie or even exercising his parental rights. It's more the control aspect of playing around with me."

Eventually, after years of struggle, this mother was awarded full custody in the 'stuck' country of Eastern Europe. The father has visitation rights he has never exercised. She had cared for their daughter entirely alone from the start without a possibility of getting a visa or the right to live or work in that country. Yet, the family court denied her 'Leave to Remove' application to return to her home country of Australia. It is not hard to understand why that parent decided

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[2] https://developingchild.harvard.edu/ (last accessed 15 September 2025).

to 'take' her child back to her home country and risk going through the Hague Convention 1980. Her story is not unique. Every day, GlobalARRK hears from new parents in similar positions.

The Hidden Trauma in Relocation Cases

Legal arguments against granting relocation often focus on concerns that the child's relationship with the 'left behind' parent may suffer or that a move could disrupt the child's daily routine. While these factors are undoubtedly important, they must be weighed against the practical and psychological impact on the child and their primary carer of being 'stuck' far from the place they consider home - particularly when safety, stability, and emotional wellbeing are at stake.

GlobalARRK's Mental Health Report[3] looks at the psychological impact of being a stuck parent and highlights just how profound this trauma can be. Stuck parents typically suffer with high levels of anxiety and depression, with scores three times higher than the general population. Levels of trauma were also high with 77% identified as having post-traumatic stress disorder. This suggests that the experience of being 'stuck' and all that this entails is a risk factor for depression, anxiety, and PTSD.

International relocation proceedings frequently exacerbate existing stressors, owing to their inherently adversarial nature, protracted timelines, prohibitive financial costs, onerous evidentiary requirements, and the presumption that victims of domestic abuse should enable contact between their child and the abuser. For many vulnerable families, engaging in relocation proceedings carries a significant risk of compounding trauma.

Relocation: Prevention is better than cure

GlobalARRK serves on the steering committee for the Forum on Domestic Violence and the 1980 Hague Convention. Improving the way the Hague Abduction Convention 1980 operates is vital to improving outcomes for vulnerable families. However, wouldn't it be better if families could access a safe, fair, timely and legal route home via an application for lawful relocation? We strongly advocate that *prevention is better than cure*. In many cases, timely, safe, and legally supported relocation would prevent unnecessary Hague abduction proceedings altogether.

Recommendations

The GlobalARRK report[4] on how our clients experience relocation proceedings to return to the country they consider home, presented by Nishat Hyder-Rahman, makes 9 key

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3 L. Kean, O. Momoh, and R. Osborne "International Child Law: The Mental Health Effects on Stuck Parents", GlobalARRK Research (2024) (https://www.globalarrk.org/research/ (last accessed 15 September 2025)).

4 N. Hyder-Rahman and R. Osborne, "Relocation Report: A study of how applicant parents experience relocation proceedings to return to the country they consider home". GlobalARRK Report (2025) (available at www.globalarrk.org/wp-content/uploads/2025/03/RELOCATION-REPORT-20032025.pdf (last accessed 15 September 2025)).

recommendations:

Procedural Recommendations:

1. Reduce the length of relocation proceedings to less than 1 year.
2. Introduce an expedited procedure for those applicants who need to relocate urgently.
3. Increase access to legal aid for those applicants whose cases have merit but who lack means.

Recommendations for Policy and Practice:

4. Assess applications for relocation based on factors that are weighted in the following order of priority:
    i) Whether relocation would help protect the child from harm, recognising that harm to the parent will equate to harm to the child.
    ii) Whether the primary/sole carer applicant is able to live in the child's country of habitual residence in order to continue caring for the child. Relevant factors include: immigration status, financial situation, housing situation, safety.
    iii) Whether the primary/sole carer applicant is able to function effectively as a parent in the child's country of habitual residence. Relevant factors include: mental health challenges, language barrier, absence of a support network and post-separation abuse.
5. Ensure that in cases involving domestic abuse the requirement placed upon the applicant/relocating parent to 'support and facilitate' a relationship with the non-relocating parent only applies when:
    i) It is demonstrably in the child's best interests, and
    ii) It is implemented in a trauma-informed manner.

Critically, this requirement should not prejudice relocation applications where there is a history of/ongoing domestic abuse.

6. Ensure that law and policy pertaining to relocation is based on trauma-informed principles and informed by those with lived experience and their advocates, via active consultation.
7. Build expertise in international relocation across the legal profession, primarily, lawyers and judges, and the institutions that are involved in relocation proceedings (e.g. social services). Importantly, there must be commitment to overcoming unconscious bias given the diversity within families who face international relocation proceedings.
8. Build expertise in domestic abuse and trauma across the legal profession, primarily, lawyers and judges, and the institutions that are involved in relocation proceedings (e.g. social services), with a view to developing best practices.
9. Notwithstanding the fact that relocation is a matter that is currently addressed within national legal systems, aim for greater global consistency in granting relocation proceedings.

Conclusion

We all want children to grow up safe, loved, and supported. We want them to maintain meaningful contact with both parents, where it is safe and in their best interest. We want survivors of abuse to rebuild their lives in safety, free from control.

Current relocation systems, while intended to work in the best interests of children, sometimes inadvertently perpetuate harm. It is time to review international relocation frameworks through a trauma-informed lens. We must recognise that for many parents, the desire to 'go home' is not an act of obstructiveness - it is a matter of survival, stability, and the opportunity to support and care for their children.

Mediation experience

Alexander Jones, Lawyer / Mediator

Cross-border relocation cases are challenging under the best of circumstances, as any agreement or judgment to allow relocation results with a child living in a different country than a parent. The 2010 Washington Declaration on International Family Relocation outlined a series of agreements for principles that should apply to cross-border family relocation. As part of those agreements, Paragraph 4 identified twelve specific factors that a court should consider in exercising discretion along with a catch-all provision allowing the court to consider "any other circumstances deemed to be relevant by the judge." The focus of this paper is to outline how two of those factors, namely family violence and the views of the child, can be considered and addressed while trying to resolve a cross-border dispute through mediation.

The Association of Family and Conciliation Courts ("AFCC"), in conjunction with the American Bar Associations Sections on Dispute Resolution and Family Law, the Association for Conflict Resolution and Academy of Professional Family Mediators in 2025 approved Model Standards for Family and Divorce Mediation ("Model Standards").[1] The Model Standards describe mediation as "a participant-centered process grounded in the values of integrity and fairness and designed to ensure that all participants are supported, respected, and valued. It aims to promote safety and wellbeing; achieve realistic outcomes; and support equity and full participant engagement regardless of gender, age, culture, religion, immigration status, or socio-economic status." In practical terms, mediation can be more cost effective – both financially and emotionally – than litigation. It is also normally a faster process than a litigated one and, more importantly, if an agreement is reached both parties have more of a vested interest in the successful implementation of the result. Mediation, as a process, respects the parties' self-determination.

The Model Standards are comprised of sixteen different standards that seek to provide guidance for mediators regarding responsible practice and to inform participants about what they can expect in the mediation process. While the definitions and various standards can help frame how both domestic violence and the voice of a child can be successfully addressed in a mediation context.

Family Violence

One of the agreed upon factors relevant to decisions on international relocation from the 2010 Washington Declaration is whether there is "any history of family violence abuse, whether physical or psychological." Over the years there have been different schools about participation in mediation when family violence is present. One school of thought is that such cases should never be mediated as the victims are forced to negotiate with an abuser. Another school of thought is that such cases should always be mediated so that there is a forum outside of court so that victims of family violence are not left alone to navigate the situation. It is respectfully suggested that a more nuanced path be taken, one to understand the scope

[1] https://www.afccnet.org/Portals/0/PDF/Model-Standards-for-Family-and-Divorce-Mediation-Updated%202025-7-22.pdf?ver=5LBqekcLCogrlS03SVYwqA%3d%3d (last accessed 15 September 2025).

and spectrum of behavior to determine whether the situation is indeed one that is viable for mediation or not, and, if it is viable for mediation, what type of process should be used.

Given the topic, it is important to start by defining terms. As different jurisdictions have different definitions and considerations for family violence, for purposes of this discussion, the definition of the term "domestic abuse" is offered as one lens through which the topic can be considered.

The Model Standards define domestic abuse as follows:

"Domestic abuse involves physically, sexually, economically, psychologically, and coercively controlling behaviors directed by or against current or former family or household members. These behaviors may occur alone or in combination. They vary from family to family in terms of frequency, recency, severity, manner, directionality, pattern, intention, circumstance, and consequence. (People may also refer to domestic abuse as domestic violence, family violence, or intimate partner violence).

- Physically aggressive behaviors involve the intentional use of physical force with the potential to cause injury, harm, disability, or death.
- Sexually aggressive behaviors involve unwanted sexual activity that occurs without consent through the use of force, threats, deception, or exploitation.
- Economically aggressive behaviors involve the use of financial resources to intentionally diminish or deprive another of economic security, stability, standing, or self-sufficiency.
- Psychologically aggressive behaviors involve intentional infliction of harm to emotional safety, security, or wellbeing.
- Coercively controlling behaviors involve harmful conduct that subordinates the will of another through violence, intimidation, intrusiveness, isolation, or control."

This definition clearly covers a wide variety of behavior.

Standard V of the Model Standards expressly addresses domestic abuse. It states "[t]he mediator shall screen for domestic abuse, assess the nature and context of the abuse, and, in consultation with each party, determine whether a mediation process can be designed to address barriers to self-determination and informed decision-making." The Model Standard elaborates as follows:

A. The mediator shall screen each prospective party, separately and confidentially, for the possible existence of past or present domestic abuse, including but not limited to coercive control, prior to seeking their informed consent to mediate. The mediator shall screen and monitor for indications of domestic abuse throughout the mediation process, whether or not it was identified at the outset.

B. When domestic abuse is identified as a possible issue, the mediator shall examine the nature and context of the abuse and help each party assess its impact on their meaningful participation in the mediation. The mediator shall inquire separately and confidentially if parties believe they will be safe and able to make autonomous decisions; will be able to participate in good faith; and will have access to information, the applicable law, and their procedural options. The mediator shall help the parties determine what, if any, safeguards and process modifications will effectively address specific concerns. If barriers to effective participation can't be remediated, the mediator shall help the parties explore other available options for dispute resolution.

C. The mediator shall not undertake mediation without specific training on identifying the nature, context, and dynamics of domestic abuse, including but not limited to coercive control, and its impact on parenting, co-parenting, children, and the mediation process. Mediators shall obtain ongoing and updated training on these topics.

D. The mediator shall facilitate the participants' formulation of parenting plans that protect the physical safety and psychological wellbeing of the parties and their children.

The Model Standards use the term shall to describe the screening process, thus emphasizing the importance of what is considered mandatory action by the mediator.

The first step is thus for the mediator for screen for domestic abuse. There are a variety of tools to use to conduct the screening: the Mediator's Assessment of Safety Issues and Concerns (or "MASIC"); the Family Law Doors Program; or SAFeR are just several examples of screening protocols. The mediator should ensure that they are adequately trained to conduct such screening.

The screening for domestic abuse should be both intentional and continuing throughout the mediation process. The purpose of screening is to determine whether or not the potential participants are able to engage in the mediation process without coercion or control. The mediator ought to be considering if the participants can effectively advocate for their needs and the needs of their children, safely participate – both during and after the mediation process – and can voluntarily agree to the outcomes.[2]

Assuming that the decision is made to move forward with mediation, it is important to consider what that process looks like. Are the participants in the same room? Are they in the same physical space but in different rooms utilizing shuttle diplomacy? One option to consider is making sure that the physical space is set up to be more conducive to safety – such as setting up an office with meeting spaces on different sides of the office along with separate entrances. Another consideration is potential encounters before or after the mediation session. Consideration ought to be given as to whether to stagger arrivals and departures to avoid chance encounters with the other party. Perhaps mediation is possible but with the added protection of conducting it in a courthouse, where there is security present and individuals entering are screened for weapons.

Another consideration is whether the mediation process ought to be conducted virtually. There is research to suggest that online mediation is not as effective as in person mediation. If the mediation is going to take place virtually, it is important to establish additional safeguards for the process to make sure that participants have access to the necessary technology and that there are not others present out of the screen that could be influencing the mediation or, with the case of a child, potentially inappropriately overhearing the discussion.

The answers to those questions will help define what the process looks like and how a mediation process can be done effectively when domestic abuse is present. That is not to say that mediation should always take place when domestic abuse is present. There is no amount

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[2] For a much more detailed discussion of the role of family violence in mediation, Chapter 13, written by Profession Kelly Browe Olson, entitled Intimate Partner Violence and Family Dispute Resolution in Family Dispute Resolution, edited by Peter Salem and Kelly Browe Olson (Oxford University Press, 2024) provides a much more comprehensive discussion on this topic.

of experience that a mediator can have, nor are there any techniques or safeguards that can be put in place when the power imbalance between two individuals so great or the domestic abuse is of such magnitude that one participant effectively lacks self-determination. In such cases, mediation should be either screened out or, if mediation has commenced, the mediation ought to be terminated.

The views of the child having regard to the child's age and maturity.

The 2010 Washington Declaration further noted that one of the factors for the exercise of judicial discretion to allow or deny relocation are a consideration of "[t]he views of the child having regard to the child's age and maturity." There is, however, no specific defined process on how the child's views are to be obtained and assessed. Different jurisdictions have taken a wide variety of approaches on how that information is to be obtained, ranging from judicial interviews to attorneys representing children as a participant in the adversarial process to having the children interviewed by a third party such as a mental health professional appointed by the Court to obtain that information. If not done correctly (or even if done correctly) there is the potential risk of including the child directly in the decision-making process. In the context of international relocation, a child could be left with the feeling that they are being forced to choose between their parents or if they express an opinion that they are responsible for the outcome.

The Model Standards provide some guidance on how to integrate a child's voice in the mediation process. Specifically, Standard X states "The mediator shall assist participants in discussing the best interests of the child and determining how to include a child's voice in the mediation process when one or more children are involved." Entitled Child-Centered Process, Standard X states the following:

A. The mediator should encourage the participants to explore options available for parenting arrangements as well as their costs and benefits. The topics for discussion should include, among others, the following:

    1. an age-appropriate parenting plan addressing the child's time-sharing schedule and the parental decision-making responsibilities, with appropriate levels of detail as agreed to by the parties. Inclusion of or referral to a child development specialist may be appropriate;

    2. a plan for revising parenting plans, including but not limited to dispute resolution mechanisms, as the developmental needs of the child and the circumstances of the parents evolve over time;

    3. the effects on the child's development of continuing parental conduct, including but not limited to domestic abuse, child maltreatment, and persistent parental conflict, and how to ameliorate the effects on the child; and

    4. information about community resources and programs that could help families cope with the consequences of family reorganization, parental conflict, domestic abuse, and child maltreatment.

B. The mediator should be trained about the impact of culture and religion on parenting philosophy and other parenting decisions, as well as their impact on the mediation process.

C. The mediator shall inform any court-appointed child representative that the mediation is taking place. If the representative participates, the mediator should, at the outset, discuss with that representative the effects of their participation on the mediation process and the confidentiality of the mediation. Whether the representative participates in the mediation session or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the child.

D. The mediator should inform the parents and court-appointed child representative about the options for the child's input, including but not limited to the child's direct participation.

E. Prior to any child participation or input in the mediation process, the mediator should consult with the parents and the child's court-appointed representative about whether the child will participate and the form of their participation. This should include a discussion of the benefits, financial costs, and emotional risks of the child's participation based on the child's age.

F. The mediator should inform the participants that the child does not decide the parenting plan but that their input can be useful as a factor to consider in a child-centered parenting plan. The mediator should explain the positive and negative consequences of the child's input.

As with structuring the mediation process with domestic abuse is present, thought should be given to how to structure the mediation process to include the child's voice. or instance, is the child old enough and mature enough to express their views about the mediation process? If they are, who is going to elicit that information? Does the person eliciting the information from the child have the adequate training to do so (as there is a wide variety of research available on how to effectively interview children and more importantly, how not to interview them)? Where is a child interviewed? If necessary, who brings the child to and from the interviews? An individual can be a highly skilled mediator with adults but not have the requisite training on how to interview children, including children of different ages.

Once the information is obtained, the next question is what is to be done with that information. Parents often have strong beliefs as to what they believe that their children want, beliefs that are often incorrect or that reflect their own biases as to the ultimate outcome. It can be a powerful experience for parents to hear information from their children, presented by a neutral who has gathered that information in a thoughtful detailed way, about what a child is thinking or feeling about a particular situation. It would not be unprecedented for the child to have more insight into the entire situation – both with respect to the challenges that the parents face, the impact that potential outcomes can have on the child, and options for resolution - than either parent has. It would also not be unprecedented for parents, when learning their child's perspective, to see another path forward and the importance of compromise. It can be both surprising and result in successful outcomes with parents that hear what their child thinks and feels, particularly in a confidential mediation process. If successfully done, the litigation positions can fall by the wayside and the parents, armed with newfound information about their child's perspective and needs, can work together to address a child's needs in a more collaborative way. Hearing their child's voice can help them see things from a different perspective, one that they could not consider without new information.

With or without resolution, there ought to be consideration given to closing the loop with the child after the mediation process. There should be a plan in place to articulate to the child what is going to be done with the information that they provide, how that information is going to be shared with their parents, and that the child is not going to be the ultimate decision

maker about what happens but that their input can be considered by their parent. There should also be a plan on how to give the child feedback after the mediation takes place about what happens with the information they shared, whether an agreement is reached or not.

Conclusion

Mediation, if done correctly, can be a powerful and transformative process that can help individuals resolve what can otherwise appear to be intractable disputes. As a personal aside, after having conducted mediations over a number of years, it is repeatedly surprising how much faith individuals put in a process that is managed by a stranger, albeit a skilled one. They are able to discuss topics that they have not been able to talk about – never mind being able to resolve – with a stranger who is helping them manage the process. Thus, even with a seemingly intractable problem such as international relocation, with the right process and open minds, paths forward can be forged where there otherwise does not seem to be one.

Concluding remarks

Philippe Lortie, First Secretary at the HCCH

Right after its adoption in 2010, the Washington Declaration was discussed at the sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions, which took place in two parts, respectively held in June 2011 and January 2012.

The 2011-2012 Special Commission recognised that the Washington Declaration provides a valuable basis for further work and reflection[1] and was supportive of further comparative study of the different approaches adopted in various legal systems to international family relocation in relation to private international law issues.[2] We have done this in various ways over the years. We have adopted many Guides to Good Practice and other resources since the 2011-2012 Special Commission, as Laura has presented earlier, which address, in one way or another, international family relocation. For instance, the Guide to Good Practice Child Abduction Convention: Part V - Mediation provides a lot of information on how mediated agreements, which may include relocation issues, can be recognised and enforced. The Guide to Good Practice Child Abduction Convention: Part III – Preventive Measures as well as the General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children and the Practical Handbook on the Operation of the 1996 Child Protection Convention also address international family relocation.

Back in 2012, the Special Commission also recognised the use of the 1996 Convention in international family relocation, and encouraged States that have not yet done so to consider ratification of, or accession to, the Convention.[3]

The Washington Declaration was further discussed at the 2017 meeting of the Special Commission, where the importance of securing effective access to procedures to the parties in international family relocation cases was recalled. To this effect, the Special Commission noted that mediation services may assist the parties to solve these cases or prepare for outcomes and that the Washington Declaration may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission once again encouraged States to become Parties to the 1996 Convention.[4]

At its most recent meeting, in October 2023, the Special Commission noted that the expeditious determination of international family relocation applications may strengthen the aim of the 1980 Convention of deterring international child abduction and encouraged the

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1 "Conclusions and Recommendations of the Sixth Meeting of the Special Commission on the Practical Operation of the HCCH 1980 Child Abduction Conventions and the HCCH 1996 Child Protection Convention (Part I, June 2011; Part II, January 2012)", C&R No 83 (Part II), available on the HCCH website, www.hcch.net, under "Child Abduction Section" and "Special Commission meetings on the practical operation of the Convention) (hereinafter "2012 SC").

2 *Ibid.*, C&R No 84 (Part II).

3 *Ibid.*, C&R No 85 (Part II).

4 "Conclusions and Recommendations of the Seventh Meeting of the Special Commission on the Practical Operation of the HCCH 1980 Child Abduction Conventions and the HCCH 1996 Child Protection Convention (10-17 October 2017)", C&R No 21, available on the HCCH website, www.hcch.net (see path indicated in note 1).

promotion of the Washington Declaration.[5] Noting the varied approaches of States in this matter, and to ascertain the application of the principles found in the Washington Declaration, the Special Commission encouraged the Permanent Bureau to develop a questionnaire to gather information about procedures that States have in place to facilitate international family relocation.[6] The Special Commission once again underlined the benefits of ratification / accession to the 1996 Child Protection Convention and of the Practitioner's Tool on Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters involving Children[7] in facilitating international family relocation.[8]

So, where does that leave us now? We can certainly say after the past three days that, 15 years later, the 2010 Washington Declaration has stood the test of time. It is fit for purpose, modern, forward looking and based on the best interests of the child. We have to continue our efforts, as we have been doing over the past few days, to raise awareness to the Washington Declaration among judges and practitioners – the users of the 1980 Convention. Through trainings, conferences such as this, the Judges' Newsletter published by the HCCH. Down the road, we may want to give consideration to the development of a Guide to Good Practice on International Family Relocation drawing up from existing HCCH resources and, most importantly, from States recent experiences in this area.

Hearing the presentations and interventions made over the course of this conference is that, while every family situation and conflict is different and should be approached on its own merits, one of the common threads that run through these cases is the importance of prioritising the best interests of the child. On this foundational point, there is clear consensus. The HCCH will do its part to promote the Washington Declaration and good practices in international family relocation but we count on you – practitioners and organisations – to spread the word farther and wider in order to keep the momentum going on this important aspect of our work.

With the consent of the speakers, we have also made public some of the contents of the secure portal page dedicated to this Conference, which can be found here. Background materials and some of the speakers' presentations can be accessed there, which we hope will be of use.

As was alluded to during the 2023 meeting of the Special Commission, a questionnaire will be circulated among Contracting Parties, in order to gather information on international family relocation.

On this note, I would like to wholeheartedly thank the Embassy of Canada, the IAFL and the members of the Steering Committee for their work and for making this conference possible and, a success. My heartfelt thanks also go to the participants, both in person and online, for listening and sharing their ideas.

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5 "Conclusions and Recommendations of the Eighth Meeting of the Special Commission on the Practical Operation of the HCCH 1980 Child Abduction Conventions and the HCCH 1996 Child Protection Convention (10-17 October 2023)", C&R No 53, available on the HCCH website, www.hcch.net (see path indicated in note 1).

6 C&R No 54 of the 2012 SC.

7 Available on the HCCH website at www.hcch.net under "Child Abduction Section".

8 C&R No 55 of the 2012 SC.

Online Survey:

Supporting families following international child abduction

The latest research project undertaken by Professor Marilyn Freeman* and Professor Nicola Taylor+ seeks to investigate what happens following a decision (made by parental agreement or a court) on whether or not to return a child after they have been wrongfully removed or retained across borders. In this study, the views of parents and family members, as well as those of adults who were abducted across borders as children, will be sought.

Professors Freeman and Taylor are aiming to foster a better understanding of the impact of international child abductions, subsequent return proceedings and their outcome on children and their family members, and what support was, or would have been, helpful to assist them.

This research also seeks to investigate whether any further legal proceedings occurred following the return or non-return decision, as well as whether, and to what extent, the abduction influenced or played a role in those proceedings.

Two online surveys are available for completion (in English) through until 28 February 2026 by:

· Parents and family members of children who have experienced their child's removal to, and/or retention in, another country in a way which was considered wrongful in law – https://westminsterpsych.az1.qualtrics.com/jfe/form/SV_agedV42lzL7kS22

· Adults over 18 years of age who were internationally abducted as children - https://westminsterpsych.az1.qualtrics.com/jfe/form/SV_0HBOXOpBs6UCwB0

Your support in publicising the research and sharing the links to the online surveys would be greatly appreciated so as many people as possible around the world can participate. The research has been approved by the Liberal Arts and Sciences Research Ethics Committee at the University of Westminster, London.

Once the data collected from the above surveys has been analysed, a research report containing the anonymous findings will be published on the University of Westminster website in the summer of 2026.

This research is in pursuance of C&R 102 of the Eighth Special Commission (2023) regarding the need for evidence-based research. Its findings will provide much-needed information for the international family law community regarding international child abduction and the operation of the 1980 Hague Convention. It will help to fill the gaps in our knowledge about what happens after a return decision has been made and how best to meet the needs of children and family members.

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