

GLOBALARRK POLICY & PRINCIPLES

THE HAGUE ABDUCTION CONVENTION / RELOCATION



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AREAS NEEDING IMPROVEMENT

- **ACCESS TO RELOCATION**

Relocation / Leave to Remove cases should be fair, accessible to all and completed within a reasonable time period.

- **EQUALITY OF LEGAL AID**

Legal Aid should be equally available to both applicant and respondent in Hague Abduction Convention proceedings.

- **HEARING CHILDREN AND YOUNG PEOPLE**

Children and young people going through Hague Abduction proceedings should have their concerns comprehensively 'heard' and assessed by the court.

- **PROTECTING CHILDREN AND YOUNG PEOPLE**

Children and young people should be safeguarded by clear and effective cross-border communication and cooperation.

- **HEARING AND PROTECTING SURVIVORS OF DOMESTIC ABUSE**

Vulnerable 'taking' parents should have their concerns 'heard' and be better protected.

- **AWARENESS AND UNDERSTANDING / OVERSIGHT**

The public should be made aware of the law before they move abroad.
There should be inclusive mechanisms for feedback and monitoring of the Convention

ACCESS TO RELOCATION / LEAVE TO REMOVE APPLICATIONS

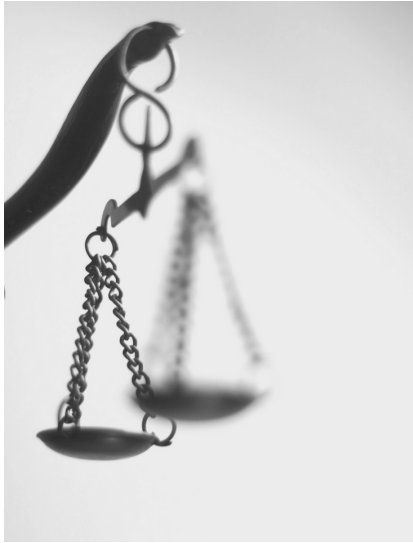
Relocation / Leave to Remove cases should be fair, accessible to all and completed within a reasonable period of 26 weeks.



When one parent wants to move countries with their child and the other parent refuses to give permission an application must be made to 'Relocate' in the family court in the country of the child's 'habitual residence'. Depending on the country of application this can take from 6 months to 5 years. There are serious problems with cases taking this long: If the child had only recently arrived, they may be 'habitually resident' but not necessarily have become truly settled but after a long length of time they most likely would have. In addition, the applicant parent can be experiencing debilitating problems in that country: poverty, lack of visa; isolation; safety issues if subject to domestic abuse. If the length of time was short this is bearable but if it takes years, then the applicant may be forced to leave without the children.

In addition, in many countries there is no legal aid or support available for relocation cases and the applicant must find the funds to apply which is unaffordable for many parents.

If there was a fair and accessible relocation system, there would undoubtedly be fewer 'abductions'. There needs to be a fair and efficient system for parents to apply to court to move countries with their children.



EQUALITY OF LEGAL AID

Legal Aid should be equally available to both applicant and respondent in Hague Abduction Convention proceedings

In England and Wales and many other countries, the respondent (taking) parents are not eligible for legal aid unless they pass a means and merit test whereas the applicant (left behind) parent receives free and automatic legal aid.

This may result in the respondent experiencing disadvantage: a delay in legal advice (which in these summary proceedings can be fatal); difficulties with un-translated documents, limited or no access to interpreters outside the court proceedings themselves, receiving inadequate legal advice from non-expert lawyers and being forced to self-represent in the High Court. In those cases where parents are not receiving adequate legal representation, they will be unlikely to be able to present the relevant facts to the judge and represent their children's interests accurately. Hague Convention cases are highly specialised, with trained lawyers and judges responsible for conducting and hearing cases.

This can ultimately mean that judges may be missing factual evidence and information which can result in them making an order for the child to return to the other country when an exception to return may have been satisfied had the respondent been represented. This return order carries the potential of grave risk to the child and primary carer. The stakes are extremely high in these types of cases; indeed, many children lose contact with their primary carer as a result of 'losing' their Hague Convention case. Both sides need expert legal representation to get to the facts of the case.

HEARING CHILDREN AND YOUNG PEOPLE

Children and young people going through Hague Abduction proceedings should have their concerns comprehensively 'heard' and assessed by the court.

Young persons should be made aware of the possibility of instructing their own solicitor and be given independent support and advice.



The current interpretation of the Convention exception to return requires that the child objects to returning to their habitual residence country, rather than expressing objections to the parent abroad, their living environment abroad or their care arrangements. This technical distinction limits the assessment of the child's opinion and is not an accurate reflection of the lived experience of children engaged in abduction proceedings.

Older children (teenagers) can request that they are 'joined' to the proceeding and have their own separate legal representation, but judges rarely allow this.

PROTECTING CHILDREN AND YOUNG PEOPLE



Children and young people should be safeguarded by clear and effective cross-border communication and co-operation in both countries

There should be a review of cross border safeguarding policy and procedures

In England & Wales, the only guaranteed contact that the 'abducted' child has with support services / authorities is with Cafcass High Court team if they are old enough to be consulted for their opinion. Local social services are not usually involved, the child does not have support from a social worker or any other authority.

There needs to be a routine safeguarding policy and procedure which is transparent and rigorously followed for these cross-border cases. The dots need to be joined up across borders and between social service departments to ensure that returned children are safe.

Often return orders are made in conjunction with protective measures to ameliorate the grave risk of harm to the child. These measures need to be set up in advance of a return taking place. If it is not possible to ascertain that the child will be safe upon return in concrete terms, that return should not take place until it is safe.

PROTECTING SURVIVORS OF DOMESTIC ABUSE

Courts should accept that if there is domestic abuse of the parent then exposure to it will constitute abuse of the child.

When a respondent parent reports that they or their child is at risk of harm if they return to their country of habitual residence the court should take the necessary time to assess that risk before deciding whether to return the child.

If a grave risk becomes apparent during the hearing, then judges should apply the exception to return - Article 13b - without hesitation.

If the judge does order a return of the child despite evidence of domestic abuse, both the child and their primary carer should be safeguarded with enforceable protection orders and concrete planning before they return.

In most Hague Abduction Convention cases the respondent (taking) parent reports that they have taken their child to escape domestic abuse in the other country. 73% of taking parents are mothers and most are returning with their child to their 'home' country. Often there is co-morbidity and other factors such as poverty, homelessness, immigration status and so on that can make a family vulnerable.

Under the Hague Convention, there are 'exceptions' that judges can use to not order that the child returns. One exception is Article 13(1)(b) of the 1980 Convention. It includes the three types of grave risk: exposing the child to physical harm, exposing the child to psychological harm, or otherwise placing the child in an intolerable situation.

Courts are required to deal with return applications very quickly. However, in cases where there are complex safeguarding risks it is not appropriate to make a rushed, uninformed decision.

Where there are allegations made, victims should have their concerns comprehensively heard and assessed to enable the judge to make an informed judgment about whether Article 13b has been satisfied. Courts need to accept the body of research which states that children are harmed both physically and psychologically by domestic abuse. It should be deemed intolerable for a child to have to live with any form of violence including psychological, verbal, financial, sexual, or coercive control.

If, however, the judge does order a return of vulnerable children, it is important that enforceable protection orders and concrete plans are put into place before they return. Otherwise, the court ordered return can result in the child and parent returning to the same unsafe situation that they tried to escape and suffering further.



AWARENESS AND UNDERSTANDING

Those moving abroad should be made aware of the law by the government and comprehensive data should be collected

Most families are not aware of the law affecting their children before they move abroad. When parents separate abroad, they are still often not aware they shouldn't take their child back to their home country unless they have permission from the other parent.

The government should create an awareness campaign aimed at families considering expatriation abroad to make them aware of the law.

Data needs to be collected and published in order to better understand international child abduction including information on numbers of cases; types of cases; going home cases; domestic abuse; nationalities involved and safeguarding risks.

OVERSIGHT OF THE CONVENTION

The Convention lacks oversight mechanisms for ongoing monitoring, review and feedback from the full range of stakeholders including those with lived experience.

The introduction of a new independent monitoring role such as a Commissioner could measure its impact on vulnerable families including victims of domestic abuse.

STAY IN TOUCH

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