PARTICIPATION AND COOPERATIVE APPROACH IN THE WORK WITH THE CHILDREN AT RISK AND THEIR FAMILIES

Working Report

August 2014
PARTICIPATION AND COOPERATIVE APPROACH IN THE WORK WITH THE CHILDREN AT RISK AND THEIR FAMILIES

May 6 and 7, 2014

Working Report

August 2014
# TABLE OF CONTENTS

What it the International Social Service?  
The Swiss Foundation of the International Social Service 3

Separated Children: Daily support and long-term perspectives  
The Swiss Foundation of the International Social Service 13

The best interest of the child and its application in the sphere of social and legal protection of children  
Mr. Jean ZERMATTEN, Director of the International Institute for the Rights of the Child, Sion 23

Quality for children – From project to practice  
Mr. Rolf Widmer, Director of the Swiss Foundation of the International Social Service 55

The Interdisciplinary child-focused and mediation based approach in the work with children and families affected by international parental child abduction  
The International Social Service 67

ANNEXE:

Program 89
WHAT IS THE INTERNATIONAL SOCIAL SERVICE?
Swiss Foundation of the International Social Service

1) What is ISS?

1.1 The organization
- 1924 International Migration Service IMS
- → 1946 International Social Service ISS
- Yesterday: Europe/USA
- Today: A worldwide network
- 20 national branches and affiliated bureaus
- 100 correspondents (NGO or Government)
- Policy making: International conventions (children’s rights, family law, adoption)
1) What is ISS?

1.2 Scope of activity

- Children and families separated by borders:
  - Parental conflict (custody, visiting rights)
  - Parental child “abduction”
  - Child abuse, neglect
  - International adoption, Search for origins, Tracing persons
  - Migrants and asylum seekers, undocumented migrants
  - Separated children
- Social and legal intervention in two or more countries
- Mediation / Alternative dispute resolution (ADR)

1.3 ISS in numbers

- ISS global network: 20’000 cases / year
- ISS Switzerland: 1062 cases in 2013
1) What is ISS?

Contact:

ISS General Secretariat (Geneva)
www.iss-ssi.org

Swiss Foundation of ISS
www.ssiiss.ch

2) Fundamental principles of ISS practice

3 key-groups of principles:
- Internationally recognized children’s rights
- A child-focused and needs based approach
- Professional casework standards
2) Fundamental principles of ISS practice

- Internationally recognized children’s rights
  - The best interest of the child (art. 3 UN-CRC)
  - Listening to the opinion of the child (art. 12 UN-CRC)
  - Right of the child to personal relations with both parents (unless contrary to his best interest – art. 9 and 10 UN-CRC)
  - Right of the child to live with his/her family (art. 7 UN-CRC) or in a foster family (art. 20); institutional placement and adoption as solutions of “last resort” (art. 20 and 21) = subsidiary principle

---

2) Fundamental principles of ISS practice

- A child-focused and needs-based approach
  - The child as the generally most vulnerable member of a family system
  - Taking account of Attachment theory
  - Modern social work theories (empowerment theory, strengths-based and solution-focused approach)
  - Distinction between the factual and the legal situation
    - Example: child custody dispute case Switzerland - Serbia
  - Supporting the parent(s) who can give support to the child – the child in need as part of a larger system
2) Fundamental principles of ISS practice

- Professional casework standards
  - Individualized, case by case approach
  - Professional caseworkers – clearly defined function within the ISS national unit
  - ISS-Network support for ISS correspondents and branches (training, methodology)
  - Interdisciplinary teams (social workers, legal experts/lawyers, family mediators) – in some ISS Branches
  - Team-based casework (shared decision making)

2) Fundamental principles of ISS practice

- Professional casework standards
  - Internationally shared working tools
    - ISS Casework Manual
    - International training seminars for ISS caseworkers
  - Intercultural diversity as an opportunity and resource
  - Creativity, openness, pragmatism
3) Decision-making and intervention in the child’s best interest

Assessing the family environment
- The ecogram
- Assessment framework model

3) The Ecogram – step by step

- The ecogram = an advanced genogram
- Start with the genogram: drawing the biological family lines
- Highlighting the concerned children (orange)
- The double parental line: marital relationship and parental relationship: the second can never be broken (you can divorce, but you always will be the parent of your child!)
- Visualize the intercountry aspect and the household
- The rectangle of needs, concerns and responsibilities
- Visualizing the children’s need of parental support
- Introduce any other lines (conflicts, support, etc.) helping to understand the family situation
Participation and cooperative approach in the work with the children at risk and their families

3) The Ecogram

- Marital relationship
- Parental relationship
- Responsibilities / concerns / needs

House-hold

Country 1

Country 2

Assessment Framework Model

Assessment Framework Model (2000)

- Basic care
- Ensuring safety
- Emotional warmth
- Guidance & Bound
- Stability

CHILD Safeguarding and promoting welfare

FAMILY ENVIRONMENTAL FACTORS

- Community
- Resources
- Health
- Employment
- Housing

CHILD DEVELOPMENTAL NEEDS

- Education
- Emotional & social development
- Family & Social relations
- Identity
- Social presentation
- Selfcare

PARENTING CAPACITY

- Parents
- Children
3) Decision-making and intervention in the child’s best interest

- Commentary on the Assessment Framework Model:
  - 3 axes: Parenting capacities – Child’s developmental needs – family environmental factors
  - Interdependence of these three axes
  - National boundaries or “culture” are not key factors for the child’s well being → consequences for ISS intercountry work!
  - Absence of the purely legal situation: secondary for the child’s welfare
  - To be integrated in “ISS Case Summary” and “Requested Services”

4) ISS intercountry intervention methodology

ISS tools of intervention:
- Information
- Legal and social advice
- Home studies (Social reports, assessments)
- Child protection measures
- Mediation
- Legal intervention
- The paramount value: the mediation based approach

- Intercountry intervention model: see next slide
Participation and cooperative approach in the work with the children at risk and their families
Participation and cooperative approach in the work with the children at risk and their families
SEPARATED CHILDREN: DAILY SUPPORT AND LONG-TERM PERSPECTIVES

Swiss Foundation of the International Social Service
Participation and cooperative approach in the work with the children at risk and their families

General guidelines

Attitudes and values, based on the UN-Convention on the Rights of the Child (CRC)

- **Attitudes**
  - The best interest of the child must be a primary consideration (CRC, art. 3.1)
  - Non-discrimination (CRC; art. 2)
  - Right to participate (CRC, art. 12 et 13)

- **Values**
  - Security (CRC, art. 3.2)
  - Respect (CRC, art. 8 and 14)
  - Right to personal relations with both parents, if in the best interest of the child (CRC, art. 9)
  - Future perspectives (CRC, art. 28.1)
Participation and cooperative approach in the work with the children at risk and their families

Ensure the child’s best interest

- Respect the minor’s status
- Facilitate the minor’s participation in line with his age and maturity
- Promote the application of the Convention on the Rights of the Child
- Appoint a person of reference
- Ensure the security and prepare the future

Ethical frame towards minors

- Separated children must be treated as children first and foremost. All considerations of their immigration status must be secondary. Separated children have the same rights and access to assistance and protection then local children
- Separated children are entitled to the same treatments and rights as national resident children
- The situation of each minor must be evaluated individually
Temporary integration

- Temporary integration as an important investment for the future of the child:
  - Facilitate the access to education / apprenticeship
  - Establish a long term life project in co-operation with the minor
  - Support the minor in his everyday life (hobbies, sport, peer groups, etc.)

Assess the minor’s situation

Assess the minor’s situation and his needs in the country of reception

Define a long-term life-plan with the minor

Assess the economical, political, social, family situation in the country of origin
Participation and cooperative approach in the work with the children at risk and their families

Finding a durable and long-term solutions after the assessment

Integration

In the reception country

Re-integration

In the family

In the country of origin (community, relatives, Caregiver)

Integration or re-integration

Depending on

- The home study in the country of origin
- The family’s situation in country of origin
- The medical/psychological structures or institutions
- The political, economical situation in the country of origin
- The long-term projects of the minor
- The best interest of the minor
Participation and cooperative approach in the work with the children at risk and their families

ISS-related issues

Assess the situation in the country of origin

- Depending on
  - The links between the minor and his environnement of origin
  - The socio-economical situation in the country of origin
  - The ressources and the limits of the family
Family assessment (past-present-future)

- How does the family describe the history with its child?
- How does the family describe the separation with its child?
- What were the family’s expectations after the separation?
- What is the relation between the minor and his family? Any contacts?
- What kind of support does the family need in case its child returns?

Example: Angola Case

Sensitize the family in the country of origin

- Necessity to make the families aware of the situation of their child in the country of reception
- Information campaigns about the risks of migration
- Contacts with the families
- ...

West African project of ISS Switzerland: south-south co-operation
Environmental assessment

- What are the employment/education possibilities for the minor in the country of origin?
- What is the political, economical, social situation in the country of origin?

Importance of the trans-national co-operation

- Importance of the contacts and of the dialogue with the family (Who is the right person to establish the contacts with the family?)
- Importance of the training of the social workers because of the complexity of the assessment in the minor’s country of origin

The minor’s preparation for the re-integration

- Work with the links already existing between the minor and his family
- Help the minor re-creating the puzzle of his life
- Work with the minor’s memories or objects from his environnement of origin, culture: pictures, etc.
- Elaborate a life project in the country of origin in co-operation with the minor
- Respect the rythm of the minor during the return preparation
Participation and cooperative approach in the work with the children at risk and their families

Assistance of the family to the preparation of the return of the minor

- Define the role of the members of the family toward the minor
- Define the expectations and the anxieties of the family toward the minor’s return
- Sustain psychologically or materially the family to allow her to play her role

Importance of the co-operation within the country of origin

Conclusions

- Promote a better respect of the subsidiarity principle
- Define and implement precisely the concept of «legal guardian » and « person of reference »
- Consider the minor’s age when the separation took place and not only his majority in the country of reception
- Evaluate the situation of each minor individually
THE BEST INTEREST OF THE CHILD AND ITS APPLICATION IN THE SPHERE OF SOCIAL AND LEGAL PROTECTION OF CHILDREN

Mr. Jean ZERMATTEN, Director of the International Institute for the Rights of the Child, Sion

Guidelines for the alternative care of Children

Jean Zermatten
Projet Klokanek
Sion, 6.2.14
Plan of the presentation

- Art. 20 CRC
- The Guidelines
- Definition
- The Necessity Principle
- The Suitability Principle
- The Participation of the child
- Best interests of the Child
- The Prevention or Promoting parental care
- Promotion of family Reintegration
Participation and cooperative approach in the work with the children at risk and their families

Art. 20 CRC

- The CRC seeks to protect children who are unable to live with their parents or remain in a stable family setting (notably, though not only, in Article 20).
- However, the CRC does not describe in any depth what measures should be taken.
- The same applies to many other topics covered by the CRC. As a result, more detailed, internationally recognised guidance is necessary.
- Reason for the Guidelines

Art. 20 CRC (2)

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.
The Guidelines, development

• Initiative taken by UNICEF; in 2004, SSI is commissioned to issue a working paper
• 2005: The Committee organizes its DGD to the question of children without parental care and recommends to issue Guidelines
• 2006: a group of experts reviews a first draft
• 2006: creation of a group of friends (States)
• 2006-2009: various discussions + meetings
• End January 2009: Brazil proposed a text
• 2009, the Third Committee of UNGA approved
• 18.12.2009: adoption of the resolution A/RES/64/143
The Guidelines, nature

- The Guidelines are a **non-binding international** instrument.
- So, while their general merit for informing the approach to alternative care for children is clearly recognised, **they comprise no obligations** on the part of States or any other concerned parties.
- As a result, provisions of the *Guidelines* are formulated **using the term ‘should’** rather than ‘shall’
- **or ‘must’,** except when existing fully-fledged rights (notably those in the CRC) are being referred to.

The Guidelines, goals

- The Guidelines, being grounded in the CRC are **designed to ‘assist and encourage’ governments**
- to **optimize** the implementation of the treaty, and
- to **‘guide policies, decisions and activities’** at all levels and in both the public and private sectors
- the Guidelines can have a potentially very significant **impact on practice** in this field
- **And serve as a basic reference for the CRC Committee in its Concluding Observations** on States’ compliance with relevant provisions of the treaty
28 a) Children without parental care:

“all children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.

Children without parental care who are outside their country of habitual residence or victims of emergency situations may be designated as:

(i) “Unaccompanied” if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or

(ii) “Separated” if they are separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative

---

28 b) Alternative care may take the form of:

(i) Informal care: any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body;
(ii) **Formal care**: all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures
28 c) alternative care may be:

(i) Kinship care: family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature;

(ii) Foster care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family, that has been selected, qualified, approved and supervised for providing such care;

(iii) Other forms of family-based or family-like care placements;

(iv) Residential care: care provided in any nonfamily-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other short and long-term residential care facilities including group homes;

(v) Supervised independent living arrangements for children
28  d) With respect to **those responsible** for alternative care:

(i) **Agencies** are the public or private bodies and services that organize alternative care for children;

(ii) **Facilities** are the individual public or private establishments that provide residential care for children.

---

29 The scope of alternative care as foreseen in the present Guidelines **does not extend**, however, to:

(a) Persons under the age of 18 years **who are deprived of their liberty by decision of a judicial or administrative authority** as a result of being alleged as, accused of or recognized as having infringed the law, and whose situation is covered by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**Beijing Rules**) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (**Havana Rules**)
Participation and cooperative approach in the work with the children at risk and their families

Definition art. 28, 29 (8)

(b) Care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order, as of which moment, for the purposes of the present Guidelines, the child is considered to be in parental care.

The Guidelines are, however, applicable to pre-adoption or probationary placement of a child with the prospective adoptive parents, as far as they are compatible with requirements governing such placements as stipulated in other relevant international instruments.
c) Informal arrangements whereby a child voluntarily stays with relatives or friends for recreational purposes and reasons not connected with the parents’ general inability or unwillingness to provide adequate care.

- But competent authorities and others concerned are also encouraged to make use of the Guidelines at boarding schools, hospitals, centres for children with mental and physical disabilities or other special needs, camps, the workplace and other places which may be responsible for the care of children.
The Necessity Principle

• This principle presents a clear preventative role for national policy and the need for resources to ensure supportive social work services that seek to prevent the separation of children from their families.

• Acting on the ‘necessity principle’ first involves preventing situations and conditions that can lead to alternative care being foreseen or required.

• The range of issues to be tackled is considerable: from material poverty, stigmatization and discrimination to reproductive health awareness, parent education and other family support measures such as provision of day-care facilities.

The Necessity Principle (2)

Implications for the States:

• clearly establish that the removal of a child from the family should be an action of necessity and last resort

• include a clear National Plan for the de-institutionalisation of the care system and the development of family-based and other appropriate alternative care options

• dictate that poverty alone is never the primary justification for children being removed from their family and placed in alternative care

• ensure that comprehensive criteria are used to assess the capacity of the family to care for the child when a risk to the child in that family has been identified?
The Necessity Principle (3)

- **promote and support** of a range of **appropriate family support services as preventative measures** to ensure children can be cared for within their families?
- provide for **parenting education**, and other relevant supports to parents in particular, for example, adolescent parents, to prevent child abandonment?
- guarantee that parents and children **fully participate** in the decision-making process and are kept **informed** of their rights, particularly their **right to appeal** against a decision to remove a child?
- guarantee that **any placement of a child in alternative care is subject to periodic reviews** to assess the continuing necessity for a placement outside the family, and the possibility for reunification with the family?

The Necessity Principle (4)

- The second action point for the ‘necessity principle’ concerns the establishment of a robust ‘gatekeeping’ mechanism capable of ensuring that children are admitted to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family have been examined.
- The implications here are twofold,
  - requiring **adequate services** or community structures to which referrals can be made, and
  - a gate keeping system that can operate effectively regardless of whether the potential formal care provider is public or private.
The Suitability Principle

- The first aspect of ‘suitability’ concerns matching the care setting with the individual child concerned. This means selecting the one that will, in principle, best meet the child’s needs at the time.
- It also implies that a range of family-based and other care settings are in place, so that a real choice exists, and that there is a recognized and systematic procedure for determining which is most appropriate (‘gate keeping’).
The Suitability Principle (2)

Implications for States

• Foresee a **full range of care options**
• Assign gate keeping tasks to **qualified professionals who systematically assess** which care setting is likely to cater best to a child’s characteristics and situation
• Make certain that residential care is used only when it will provide **the most constructive response for the child**
• Require the care provider’s cooperation in finding an appropriate long-term solution for each child

The Suitability Principle (3)

• **Second aspect**: all care settings must meet general minimum standards in terms of, for example, conditions and staffing, regime, financing, protection and access to basic services (notably education and health).
• To ensure this, a mechanism and process must be put in place for authorizing care providers on the basis of established criteria, and for carrying out subsequent inspections over time to monitor compliance
The Suitability Principle (4)

Implications for States:
• Provide full access to basic services, especially healthcare and education
• Ensure adequate human resources (assessment, qualifications and motivation of carers)
• Promote and facilitate appropriate contact with parents/other family members
• Protect children from violence and exploitation
• Set in place mandatory registration and authorization of all care providers, based on strict criteria to be fulfilled
• Prohibit care providers with primary goals of a political religious or economic nature

Best interests of the child (BIC)

• There are frequent references in the Guidelines to the ‘best interests of the child’. However, much confusion surrounds the meaning and implications of this concept in the context of promoting and protecting children’s rights.
• Misinterpreting the aims and scope of the ‘best interests principle’ can lead in practice to highly inappropriate and harmful responses to children who are without parental care.
• The child has the right to have his/her ‘best interests’ taken into account as ‘a primary consideration’ when decisions affecting the child are made by ‘public or private social welfare institutions, courts of law, administrative authorities or legislative bodies’ (CRC Article 3.1.).
Participation and cooperative approach in the work with the children at risk and their families

**Art. 3 par. 1**

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

- In addition, **numerous other provisions of the CRC make reference to this article**, outlining obligations to consider the best interests of individual children, particularly in relation to questions of family law:
  - Article 9: separation from parents;
  - Article 18: parental responsibilities for their children;
  - Article 20: deprivation of family environment; and
  - Article 21: adoption;
  ...

---

**Art 3. par. 1 : 3 elements**

- If we analyse the best interests principle as a whole, there is no particular explanation of its application: it does not outline any particular duties, nor does it state precise rules. It instead posits a principle that "**The best interests of the child shall be a primary consideration.**"

  There are **3 elements** to this expression.
Participation and cooperative approach in the work with the children at risk and their families

**A right**

- **First**: the best interests of the child are the foundation for a substantive right:
- the **right of the child to have his/her best interests assessed and taken as a primary consideration** whenever a decision is to be taken concerning a child or a group of children
- or **the right of the child to have his/her best interests assessed**, when different interests are being considered in order to reach a decision on the issue at stake

**A right (2)**

- Article 3(1) creates an **intrinsic obligation for States**, is directly applicable (self-executing) and can be invoked before a court
- States have an **obligation to put in place the mechanisms** necessary to consider the best interests of the child. For instance, appropriate legislation must be enacted to underscore the legal obligation of decision-makers (e.g. judges) to consider the right to his/her “best interests” in the decision-making process.
A rule of procedure

• **Second** it is a rule of procedure:
  • whenever a decision is to be taken that will affect a specific child/group of children, the decision-maker must consider the possible impacts of the decision (positive or negative) on the child/children concerned and must give due importance to these impacts when considering the different interests involved.
  • It is also a procedural rule in the sense that art. 3 (1) requires the inclusion of this step in the decision-making process, but it does not impose a solution.

A principle of interpretation

• it expresses **one of the fundamental values** of the CRC. The Committee has identified article 3(1) as **one of the four general principles** of the CRC for interpretation and implementation of all the rights of the child
  • if a legal provision is interpreted in more than one way, one should **choose the interpretation which most effectively** serves the child’s best interests.
  • The rights enshrined in the CRC and its protocols provide the framework for interpretation.
A case by case basis

- The child's best interests concept is complex and it must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3(1), in line with the other provisions of the CRC that the legislator, judge or any administrative educational authority will clarify + make concrete use of it.

- The flexibility of the best interests’ concept allows it to be responsive to the situation of individual children and to evolving knowledge about child development.
BIC

Implications for States:
- they must determine the best interests of the child. This means making a decision on the basis of all information requested and/or made available.
- This responsibility for determining best interests is particularly important where there is a conflict of opinion or where there is no primary caregiver.
- take account of the rights and legitimate interests of any other party (e.g. parents, other individuals, bodies or the State itself) as well as other pertinent factors.

BIC (2)

- When a ‘best interests’ decision has to be made between various appropriate and viable options for a child, it should in principle favor the solution considered to be the most positive for the child – immediately and in the longer term.
- At the same time, any final decision should be thoroughly compliant with all the other rights of the child.
- In a field such as alternative care it is reasonable to expect that in the vast majority of situations, the child’s duly determined best interests should be followed.
- If and when this is not the case, it has to be demonstrated that doing so would seriously compromise the rights and interests of others.
Participation of children

- Too often, children are placed in alternative care without **fully understanding why**, or without being given a chance to express their opinions.
- This clearly **contravenes CRC, art. 12**, which gives children the ‘right to be heard’ in all judicial or administrative procedures affecting them. Placement is clearly one of these situations.
- In many cases, children who are arbitrarily or inappropriately placed in care subsequently make their views known in various ‘non-verbal’ ways, such as withdrawal, refusal to cooperate, runaway or otherwise disrupting the placement.
- This means that their overall experience of alternative care will be resolutely negative and may have serious repercussions for their present and for their future.

Participation of children (2)

- the **Guidelines therefore paid special attention** to the need to consult with every child for whom an alternative care placement might be envisaged.
- **Consultation should cover all decision-making related** to the care setting, throughout the placement and prior to leaving the care system.
- Please see Guidelines **art. 6-7 (principles)**
- Also specific points **art. 40, 57, 65, 67 for example**.
- **This is a key component** of the individualized, case-by-case theme promoted in the Guidelines regarding alternative care decision-making.
Participation of children (3)

Implications for States:
• Ensure that a commitment to children’s views being heard is **embedded in all legislation** and policy relating to children and their families in line with Article 12 of the CRC
• Ensure that **all children have the right to participate regardless of status or circumstances and without discrimination**, (no age limit)
• Support the participation of children in alternative care procedures and processes

Participation of children (4)

• Provide children with **information** so that they can make informed choices and can fully participate in decision-making processes. This should include access to **child friendly versions** of their rights and **free legal representation** of lawyers trained in care matters
• Preserve information on **children’s background and origins** so that children, or others with children’s permission, can research their origins
• Ensure that children are informed of their right to **make complaints**. They should have access to an independent trusted adult to support them take forward a complaint where required
Prevention

Primary level of prevention

- At its primary level, prevention is achieved by ensuring the general population’s access to basic services, social justice and the protection of human rights without discrimination.
- Prevention is therefore grounded in a **wide range of CRC provisions**, from health care (CRC Article 24) and education (CRC Article 28) to birth registration (CRC Article 7), social security (CRC Article 25) and non-discrimination (CRC Articles 2, 30).
- The overall aim is to enable and empower parents to care for their children so that families can remain together.
Prevention (2)

Secondary level of prevention

- The secondary level is the ‘safety net’ and is targeted at individuals and families (and sometimes groups) who are identified or have declared themselves as being vulnerable, and for whom, for whatever reason, primary prevention measures have proved inadequate.
- The children concerned here include those who are at risk of being relinquished and those whose removal from the parental home on protection grounds may have to be considered.
- The first set of measures are providing tailored family support for parents experiencing difficulties in caring for their child.
- The second set of measures focuses on children for whom the risk of being relinquished or withdrawn from the parental home is imminent or current.

Prevention (3)

Tertiary level of prevention

- The name given to actions taken in cases where neither primary nor secondary prevention have succeeded, making – in this instance – entry into the alternative care system unavoidable.
- Efforts at this stage focus on securing conditions that enable a positive re-start and prevent a return to alternative care.
- Prevention at this level is aimed at returning a child in alternative care to the care of his or her parents wherever possible, at an appropriate moment and under appropriate conditions.
- Reintegration is conceived as a gradual process, both before and after the event.
Promoting family reunification

- For children who are in alternative care, and in line with ensuring the placement is appropriate, **options to reintegrate children in their families are a key part of a care review process**

- **Implications for States**: to ensure that the decision to reunify a child with his/her family leads to a planned and gradual process during which the family is provided with relevant support

Agencies, Facilities and carers

- The Guidelines outline a regulatory framework that **emphasizes State responsibility** for the **authorization, monitoring and accountability** of care providers, care facilities and individual carers.

- **Implications for States**:
- oblige care providers to ensure **up-to-date records are kept**, access to those records by children, if required
- set minimum employment standards to ensure suitable working conditions, adequate remuneration of carers and other staff
Participation and cooperative approach in the work with the children at risk and their families

Agencies, Facilities and carers (2)

- **establish criteria** to ensure that care providers **maintain care standards** through personal development of carers and training on relevant issues:
  - for example, **child protection legislation, children’s rights**, the appropriate use of restraint, child development issues and children with special needs
- **ensure the authorization of care** providing agencies and facilities, including the requirement to present policies on staff recruitment
- the standards of care provided, and **procedures to report misconduct**
### Range of care options

- Respecting the principles of necessity and suitability and the requirement for case-by-case decision-making leads to a discussion of the **need for a range of alternative care options** to provide the required flexibility
- Implications for the States:
  - **set a proactive policy** to develop and support the increased availability and use of **foster care and other forms of family-based care**
  - ensure that the **development of the foster care system is adequate to the needs** of communities and consequently also community-based

---

### Range of care options (2)

- allow for **relevant and genuine consultation** with foster carers and foster care organisations
- ensure that residential care facilities provide **suitably individualized care, in small group settings**, with sufficient and qualified staff to deliver appropriate standards of care
- provide **relevant safeguards to ensure that residential care is only used when appropriate**, and that **active solicitation** of admissions by care providers in order to secure financing, is **prohibited**
Family-based alternative care

- Among the range of alternative care options required to ensure the availability of care settings that can respond to the different needs and circumstances of each child, priority is to be given to promoting ‘family- and community-based solutions’
- These may be formal, customary or informal
- Developing such solutions is also a necessary pre-condition for implementing a viable de-institutionalisation strategy

Family-based alternative care (2)

- In addition to pointing to the benefits for most children of family-based over residential care, it is often argued that the cost of supporting a child in foster care is lower.
- This can lead to family-based care being viewed as a far cheaper option.
- It would surely be true if it required little more than attracting a sufficient number of volunteer families with minimal financial compensation.
- This, however, is not the case.
Family-based alternative care (3)

- The need for ‘conditions of work, including remuneration, to be such as to maximise motivation’ of carers
- The importance of setting in place quality assurance regarding ‘the professional skills, selection, training and supervision of all carers’, providing ‘special preparation, support and counseling services for foster carers’ before, during and after placements, and foreseeing a system for matching the child with potential foster carers have considerable resource implications.

Family-based alternative care (4)

- The point is that family-based care tends to be more cost-effective for most children.
- It not only responds more appropriately to most children’s needs but often avoids longer-term expenditures linked with unsatisfactory care outcomes.
- It is vital that cost-effective high quality alternative care rather than simply a ‘low cost’ objective be the driver for developing policy and practice in this field.
Family-based alternative care (5)

- Implications for the States.
- Provide **financing** so that foster care can be adequately supported and developed as alternative care where children require this form of care.
- Ensure that there is **regulation and monitoring** of foster care.
- Promote **awareness of the role of foster** care in order to recruit new carers and highlight its contribution to the care of children.
- Ensure that **the child welfare workforce supports children and foster carers**.
QUALITY FOR CHILDREN – FROM PROJECT TO PRACTICE
Mr. Rolf Widmer, Director of the Swiss Foundation of the International Social Service
Introduction

In March 2004 the three international child care organisations, FICE, IFCO and SOS Children’s Villages, have launched a project which was aimed at assuring and improving the chances of development for children and youth in out-of-home child care in Europe. 32 European countries were participating in the project.

Background of „Quality4Children“

In May 2004, the eastward expansion of the EU was realized

For a number of reasons hundreds of thousands of children in Europe are living without parental care
Background of „Quality4Children“

FICE, IFCO and SOS Children's Villages have identified a big need for developing quality standards in the field of out-of-home child care. WHO and UNICEF have also proclaimed the need for developing quality standards.

Vision of „Quality4Children“

Each child and youth without parental care has to be given the chance to shape his/her future in order to become a self-reliant, self-responsible and participating member of society, through living in a supportive, protective and caring environment, which promotes his/her full potential.
Mission of „Quality4Children“

- To create a European network of stakeholders advocating children’s rights in out-of-home care.
- To develop international quality standards based on by using the experiences and good practices from people directly concerned.
- To promote the implementation and monitoring of the standards at European, national and local level.

Values of „Quality4Children“

- Participation
  We give people directly concerned (children and young people; biological families; main care persons) the relevant voice
- Partnership
  We establish the opportunity to join the project at cross-organizational and cross-national level.
- Commitment
  In our activities we commit to the UN Convention on the Rights of the Child
Values of „Quality4Children“

- Accountability and Sustainability
  We form a committed European advocacy network and use our theoretical and practical experience in the field

- Gender mainstreaming and Diversity
  Gender mainstreaming and the diversity of all those involved in out-of-home care are reflected in the processes

Participating Countries
### Participating Countries

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Iceland
- Latvia
- Lithuania
- Luxemburg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom

### The 18 standards

**Standards 1 à 6: decision and admission process**

- Priority is given to listening, participation and security, respect and non separation of sibship
- There are only 2 questions:
  - what is the best solution?
  - what is the best placement?
- Preparation to placement
- Individual education project

**Conform to CDE**
Participation and cooperative approach in the work with the children at risk and their families

**The 18 standards**

**Standards 7 to 14: placement process**

- Placement meets individual’s needs
- The child stays in contact with his family
- The staff is qualified
- Relationship between the child and the professional
- The child can participate to his own care and prepares for autonomy
- Adequate living conditions
  
  **Conform to CDE**

---

**The 18 standards**

**Standards 15 to 18: Leaving process**

- The leaving process is put in place
- The child is informed and can participate to the preparation of his departure
- A follow-up/support is guaranteed; some care can be provided after departure

  **Conform to CDE**
Outcome of „Quality4Children“

- Q4C Standards Discussion Paper
  Main conclusions from our perspective:
  - Participation, transparency and mutual trust define the culture of communication
  - Planning and evaluation processes contribute to the further development of the care quality (quality assurance / quality development)
  - The life after leaving the care giving organization is adequately planned and supported (aftercare)

Participation – Quality Standards for Children in Out-of-Home care - conclusion

To experience participation in daily life, young people desire that...

- ... they get assured privacy.
- ... they co-decide everyday commodities.
- ... they get individual scope for design and space in and outside the institution.
- ... they experience empathic, reliable and faithful social relationships.
Participation – Quality Standards for Children in Out-of-Home care - conclusion

Young people, who want and should participate, require pedagogues, who...
  ...are honest and authentic.
  ...listen to them.
  ...act friendly.
  ...are interested in them and are committed for them.
  ...encourage and motivate, whom they can trust and who are trusting them.

Participation – Quality Standards for Children in Out-of-Home care - conclusion

Professionals...
  ...leave the definition of participation to the children and youth.
  ...live a participation-supporting attitude.
  ...offer participation-supporting pedagogic tools.
  ...capacitate and empower children and youth regarding participation.
  ...provide information for children and youth regarding their rights and affairs.
Shapes of participation

- Non-participation (manipulation, therapy)
- Quasi participation (information, consultation, appeasement)
- Participation (co-operative negotiation, delegation of decision-making authority upon the clients, control over the conduct of life)

Explain me and I will forget

Show me and I will remember

Participate me and I will understand

Confucius
Participation and cooperative approach in the work with the children at risk and their families
Participation and cooperative approach in the work with the children at risk and their families
THE INTERDISCIPLINARY CHILD-FOCUSED AND MEDIATION BASED APPROACH IN THE WORK WITH CHILDREN AND FAMILIES AFFECTED BY INTERNATIONAL PARENTAL CHILD ABDUCTION

THE EXPERIENCE OF THE INTERNATIONAL SOCIAL SERVICE

Executive summary

International Social Service (hereafter: ISS) has developed different strategies and programs in the specific field of international child parental abduction drawing from 90 years of service to families separated as a consequence of cross border migration. This article presents the general context governing child abduction today, and the experiences developed by ISS Branches across the world when dealing with these difficult cases. International family mediation is now seen as an essential element when trying to offer acceptable solution to the parties involved, even if its practices still need some development and support.

1. Introduction: IPCA from the 1970s to today - The rise of a new global challenge and a new international legal framework to address it

We have to go back to the 1970s to understand the context and the challenges of international parental child abduction today (hereafter: IPCA), as well as the response given by ISS to this phenomenon.

Evolution of society: migration and divorce

In the 1970s, family structures and societies worldwide underwent profound changes which led to a significant increase of IPCA: on the one hand, increasing migration movements were accompanied by more “mixed” or “binational” couples with persons from different countries, different cultural, legal and social backgrounds. On the other hand, in many Western societies, the traditional model of life-long marriage was challenged by the transformation of family models and the increase of divorce rates.

The combination of these two trends led inevitably to an increasing number of children living with separated parents who have a migration background. From there it was only a step to what is now called IPCA.

The following persons contributed to this paper: Auerbach Stephan / ISS Switzerland; Ayoub Jean, Boéchat Hervé and Caratsch Cilgia / ISS General Secretariat; Elvin Andy / CFAB; Freris Helen, Simonds Jessica and Skiotis.
**From legal black hole to a new Hague Convention**

However, in the 1970s neither the UN-Convention on the Rights of the Child (hereafter: UN-CRC), adopted in 1989, nor the Hague convention on international child abduction, adopted in 1980 (hereafter: THC 1980) existed. Therefore, there existed no specific international legal framework at all to address IPCA.

At the time, the only international legal framework potentially being able to address cross border family conflicts and IPCA was the Hague “Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants”, which entered into force only at the end of the decade, in 1969, and with a very poor ratification record of only 14 contracting states. In this context of a legal black hole and increasing social and legal challenges for children, the Hague Conference started to work on a new international convention addressing the issue of cross border child abduction, which eventually led to the Hague “Convention of 25 October 1980 on the Civil Aspects of International Child Abduction”. During the drafting period of this convention in the 1970s, International Social Service played an important role by submitting case studies to the Hague Conference illustrating the principle challenges for children affected by IPCA.

What types of cases were submitted to The Hague Conference by ISS and what type of response the THC 1980 tried to give to these challenges? Understanding this point is crucial if we want to understand the strengths and limitations of the THC 1980 in today’s context and develop solutions that effectively respond to today’s challenges for children affected by IPCA.

**The IPCA pattern found in the 1970s**

In the 1970s the pattern typical was that IPCA usually occurred after the separation of the parents were the custody of the child (children) was, at that time, mostly granted to what was then termed the “main care giver”, generally the mother. In this pre-UN-CRC period, the child was still very much seen as being under the protection of his or her main care giver, the second parent (generally the father) played a secondary role in the life of the child. This family- and divorce-model echoed the larger post-world-war-II model in most Western societies of the father working full-time out of home and the mother as a full time house-wife in charge of the education and care of the children.

In this context, the cases identified as “abduction cases” were two-fold:

1. Married or non-custodial separated or divorced fathers taking the child (children) to another country (often his country of origin) or not returning the child (children) to their place of habitual residence.

2. Married mothers having joint legal custody with her husband, leaving the household during marriage with the child to another country (often her country of origin).

Hence child abduction at the time was seen as the abrupt separation of the child from his or her main care-giver and primary reference person, unless child abduction occurred during the marriage itself where the taking of the child by the primary carer was also admitted as an abduction. Inversely, a legally separated and custodial main-carer (mostly the mother) going abroad with “her” child and cutting him or her off from contact with the child.

---


Participation and cooperative approach in the work with the children at risk and their families

(children) second parent (even if he was holding or co-holding the right to determine the residence of the child) was not seen as equally problematic as the child remained under the care of his or her main reference person. These were the types of cases found by ISS and submitted to the Hague Conference, and the THC 1980 was basically designed to respond to this type of situation.

The THC 1980 main provisions

How did the THC 1980 try to address these cases? Representing the THC 1980 in its totality is beyond the scope of this paper, however the main principles designed to respond IPCA within the context of the social challenges identified in the 1970s are outlined.

- The principle of “prompt return” (art. 1a): the THC 1980 presumes that when a child is “abducted”, he or she is not living with his or her main care giver and should hence be returned to this parent as soon as possible;
- The breach of custody rights: the THC 1980 is applicable when a parent who does not have the sole right to determine the residence of the child takes the child to another country (Art. 5). At the time, joined custody rights or joined parental responsibility, leading to a joined right to determine the place of residence of the child, were the exception;
- The principle of “habitual residence” (Art. 3 and 4), presuming that the country where the child lived before the abduction is best placed to determine the child’s best interest;
- Very restrictive criteria for the abducting parent opposing against the principle of a quick return: only if there is a “grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation”, the return can be refused (Art. 13b);
- A very “weak” place given by the convention to the problem of the violation of access rights (visiting rights) granted to the non-custodial parent: the article 21 on access rights does not offer much leverage and, under the THC 1980, a parent “suffering” from the non-respect of his or her access rights by the other parent does not have much leverage to enforce his or her rights;
- An equally “weak” place given to extra-judicial methods of resolving the underlying family conflict: the central authority created under the convention is mandated to “secure the voluntary return of the child or to bring about an amicable resolution of the issues” (Art. 7c). Family mediation as such is not mentioned or systematically foreseen in the THC 1980. This is understandable since at the time, mediation was not yet sufficiently known as a helpful instrument to address cross border family conflicts.

New legal developments and the changing role of the father

What happened once the THC 1980 entered into force in 1983? A quick look at the status table shows that most of today’s member states ratified the convention only in the 1990s or even after the year 2000, bringing the ratification record up to 90 States today. This still leaves over 100 countries outside of the convention scope.

In the meantime, other important legal and social changes occurred worldwide in the 1990s and after 2000, creating a whole new legal and social context under which the THC 1980 operates today. It is essential to briefly acknowledge these changes to be able to understand today’s challenges with IPCA and the THC 1980.

4 See: http://www.hcch.net/index_en.php?act=conventions.status&cid=24
In the 1980s a global human rights movement emerged and lobbying from civil society in favor of the recognition of the rights of children as human rights eventually led, in 1989, to the adoption by the UN General Assembly of the UN-Convention on the Rights of the Child. Under this convention which is ratified today by all states worldwide except the USA and Somalia, governments and non-state actors are legally bound by the following principle: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (Art. 3, §1). With respect to the parent-child relationship, the UN-CRC places each separated parent on an equally important position with regards to his or her child, by stating: “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (Art. 9, §3).

This right of the child to regular contact with both parents even after parental separation reflects and accelerates a profound change in many societies in the late 20th century, which we could summarize by the increasing role of the father in the daily life of the child. Many states and societies no longer accepted the idea that after separation, a parent who has custody over the child is allowed to keep the child from a regular contact with the non-custodial parent. Hence the UN-CRC strongly supports the idea of the right of the child to have regular contact with both parents, and therefore also obliges States to “combat the illicit transfer and non-return of children abroad” and to “promote the conclusion of bilateral or multilateral agreements or accession to existing agreements” (Art. 11).

**Today’s paradox with the THC 1980**

What bearing do these legal developments and changes in post-separation parenting models have on both IPCA and the ratification and application of the THC 1980 worldwide? We find ourselves confronted today with the following paradox which has a huge impact on the rights of children.

Indeed, while the THC 1980 was initially designed to prevent the separation of the child from his or her primary carer (usually the mother), the most recent global statistical survey published by the Hague Conference shows an inverted picture: In 2008, “69% of the taking persons were the mothers of the children involved”. The statistics also answers the question whether these taking mothers were also “primary care givers”: “In 2008, 88% (207 applications) of taking mothers were the primary or joint primary carer of the child.” In 28% of the cases, the taking person was the father, who was only in 36% of the cases the primary or joint primary carer.

These statistics raise two fundamental questions for any professional aiming to work in the interest of children and families affected by IPCA: 1) Are mothers, statistically speaking, “worse off” than fathers in terms of IPCA, forcing us to see mothers rather as “abductors” and fathers as the “left-behind” parent? And 2) does the THC 1980, designed to respond to social challenges identified in the 1970s, still give adequate (i.e. child-friendly) answers to

---


6 Ibid.
today’s problems and if not, how should IPCA be handled today to promote the best interests of the child?

Abducting mothers and fathers in Hague- and Non-Hague-Countries

The above quoted international statistics establishing that mothers count for up to 70% as “abducting parent” only reflects the situation among the 90 Hague signatory countries. No global official statistics that take into account illicit child removal between Hague and the remaining 100+ non-Hague countries exist, nor among Non-Hague states exclusively.

However, the ISS global casework experience over the past 90 years allows us to say that, if we take into account the non-Hague abductions as well, the balance between abducting fathers and mothers is probably close to 50-50%. Why?

A short look at the global map shows that THC 1980 signatory states are predominantly states of the “Western” world, including only very few countries outside of Europe, the Americas and parts of the Australian-Pacific region. The overwhelming part of Asia and Africa, including almost the entire Arab and Islamic world, is outside of the scope of the THC 1980. ISS casework relating to those countries shows a large predominance abducting father. If these cases were added up with the Hague cases, we can reasonably presume that a balance of 50-50% would be achieved.

Concerning the second question on the “child friendliest way” to handle ICPA today, and on the adequacy of the THC to respond to this objective, the following sub-chapters are intended to give a balanced answer, based on the ISS global casework experience and the specific experiences of various countries.

2. The human, social and legal dimension of IPCA and its impact on children and families

IPCA has different dimensions: the legal dimension addresses whether the removal of the child was illicit or not. This legal dimension is two-fold: the removal of the child can be illicit or not under national law, and if illicit under national law, it can again be illicit or not under international law, depending if both countries concerned are THC 1980 signatory States, or not. On the contrary, if one of the concerned countries is not a signatory State, then the removal will be illicit under the law of the first country, but not necessarily under the law of the second one, making all legal intergovernmental cooperation under the THC 1980 impossible.

IPCA however also has a fundamental human and social dimension, both from the perspective of the parents and from the viewpoint of the child concerned. This perspective and the consequences for the child are not necessarily equivalent to the legal dimension of abduction. If we define “abduction” from a legal point of view only (defined then as a breach of recognized custody or relocation rights), then we have to analyze from a clinical and social viewpoint how this abduction impacts on the well-being of the concerned child. ISS casework experience shows that, depending on the family situation, a legal abduction can be virtually anything from extremely harmful to almost the “least bad outcome” for a child in a given intolerable situation. Three typical case constellations found in ISS inter-country casework can illustrate this further:
**Example 1**

In a case occurring in Switzerland, a divorced Algerian father had visiting rights with his two daughters who were living under the custody of their mother. The parental post-separation relationship was very conflictual. On the last day of a mutually agreed summer holiday in Algeria with his daughters, the father informed the mother by SMS that the girls (aged 3 and 5) would permanently remain in Algeria with him and his new wife, to protect them from harmful “Western” influence. Apart from the overwhelming shock and enormous distress for mother and daughters what are the legal, human and social dimension of this case? Legally spoken, the father abducted the children under Swiss law by violating the mother’s exclusive custody rights, however, there is no legal international instrument between Switzerland and Algeria for cooperation, as Algeria has not ratified the THC 1980. From an Algerian legal viewpoint therefore, the father was not abducting his daughters and the mother had practically no legal leverage to have her daughters returned to Switzerland. However, from a clinical and social viewpoint, the girls were suddenly separated from their main care giver and from their primary reference person in every-day life. So, from a children’s viewpoint, we are clearly facing an abduction (in a sense of a non-consented, non-prepared parent-child separation) even if there is no international legal instrument to address this violation of children’s rights.

In this particular case, ISS offered intensive counseling of the “left-behind” mother and developed with her a tailor-made child-centered strategy for her specific situation. The approach suggested by ISS to overcome this legal blockage and ensure the girls’ rights to have regular contact with both their parents was to use mediation based communication tools and to work closely with both parents to maintain and develop the mother-child relationship across the borders despite the desperate legal situation.

**Example 2**

In a second case, an unmarried separated couple living in Switzerland had a four-year-old boy. The mother was Canadian, the father Swiss. Legally, the parents had joined parental authority but the mother held the custody rights over their son, whereas the father had a large visiting right. The boy actually lived 3 out of 7 days of the week with his father. Then, suddenly, the mother relocated to Canada with their son, without the father’s consent. The legal question in this case was to determine whether the mother was violating the father’s rights to co-decide on relocation, or whether she was legally entitled to move to Canada with the child. In every country, the question to determine whether or not a parent has violated a relocation right, has to be examined carefully, giving or not to the other parent the opportunity to open a return procedure under the THC 1980. The crucial legal question in each case is to know whether a custody right in the sense given by art. 3 THC 1980 has been violated or not. In the above mentioned case with Canada, under Swiss law, although the father was holding joined parental authority and a large visiting right, the mother held alone the right to determine the place of residence of the child. In short, there

---

7 In theory, she has the possibility to file a criminal charge against the father under Swiss criminal law, but generally, states that did not ratify the THC do not persecute their citizens under international criminal cooperation in IPCA cases. However, a criminal charge can lead to the incarceration of the abducting father when back on Swiss soil. Experience shows that in some cases, this helped “release” the abducted children, but in others this additional pressure did not help to release the children and even worsened the parental cooperation during abduction.

8 On July 1st 2014, the revised Swiss Civil Code enters into force and will make joined parental authority the default solution for unmarried, married, separated and divorced parents. Moreover, the “right to determine
was no abduction legally speaking (neither nationally, nor internationally). However, the boy was suddenly separated from his father with whom he had a permanent intense relationship, although as a “second carer”, if we may say. Was it therefore an abduction from a child-centered point of view? No, in the sense that the boy was remaining with his main reference person, but yes in the sense that the boy was suddenly loosing his weekly direct contact with his father. If the case would have involved Canada and the United Kingdom for instance, the father would have been granted shared care and the case would have been legally qualified as abduction.

**Example 3**

In a third case, the widely known and published “Wood” case illustrates yet another articulation between the legal and the clinical dimension of abduction for the children. In this case, a Swiss mother separating in Australia from an Australian father illicitly took their two young children back to Switzerland. Immediately, the father filed a THC 1980 return order to Switzerland. After three years of domestic procedures, where the mother argued, she and the children would be facing severe harm in case of return in the sense of the exception - article 13 of the THC 1980, the children were returned to Australia without their mother. However, they were not returned to their father’s home but to various German speaking foster families, as the father was considered lacking parental capacities to raise his children, and the children had lost their English language. Only after additional legal procedures in Australia during one more year were the children finally allowed returning to Switzerland to live with their mother. These four years “in limbo” heavily traumatized especially one of the two children, making intensive psychological care necessary. The legal dimension of this case was clear: the mother was committing abduction under Australian and under Hague law. However, what made the situation psychologically unbearable for the children was not the return to Switzerland with their mother as such, but the legal and psychological pressure exercised by the Hague procedure and the obligation made on the children to return to Australia after several years of procedure and leading to their separation with their main care giver, who always was their mother.⁹

As mentioned in the introduction chapter above, about 70% of the current Hague cases correspond to this third case pattern representing “abducting mothers” returning to their home country with their children after an intercultural marriage or relationship breakdown, sometimes in a context of domestic violence.

**The human dimension of IPCA**

These three case-studies illustrate that the legal, social and human dimension of abduction has different, sometimes even contradictory aspects, and that abduction cannot be reduced exclusively to the legal dimension of the problem. From a clinical and child-centered point of view, these questions have to be asked in every case:

- Who is/are the child’s main attachment figure(s)?

⁹ The “Wood” case was well present in the Swiss media for its evident violation of basic children’s rights during the Hague return procedure. In response to this case, the Swiss Government adopted a new law on child abduction entered into force in 2009 (see also chapter 3.3 below).
- What are the long-term alternatives or perspectives for the mainly responsible parent if he or she cannot legally leave the country to return to his or her home country?
- How can the child-parent relationship with the left-behind parent be organized despite the geographical distance, i.e. how can the right of the child to a meaningful relationship with his or her both parents be guaranteed after the break-down of an intercultural couple, within or outside of a legal abduction framework?
- How does a possible THC 1980 return procedure influence the well-being of the caring parent and the concerned child as well as on the parental communication?
- How is the parental conflict addressed at its root, this is, not at the legal level as such, but on the interpersonal level?

These are the questions ISS typically tries to address through its mediation-based approach for IPCA and its international family mediation project (see next chapters).

3. Highlights of ISS experience in chosen countries

3.1. Germany: the ISS German Branch as a Central Contact Point for Cross-border Family Conflicts and Mediation

*Child Abduction: All parents need help and assistance*

Parents are totally unprepared when their child is abducted. They are shocked, they are scared, worried and furious. Parents who find themselves in such a situation want to know where their child is. They want to have contact with their child, and above all, they want to have their child back.

The Hague Convention on Child Abduction provides a possibility to get their child back by means of court proceedings. But not always do these proceedings work quickly and successfully; in many cases, proceedings drag on for a long time or the return of the child is refused. As the Convention is not applicable all over the world, there are many cases where parents have recourse to national courts of the State to which the child was abducted and often with little chances of success. In desperation, parents turn to various agencies, hoping that they may help them in their struggle for their child. Sometimes it happens that they receive incomplete or incorrect information, which does not make the approach easier but even more difficult. These difficult cases are not the only ones but they make up most of the cases in which parents need help and support.

On the other hand, the parent who has abducted the child also needs help and assistance. He or she is not necessarily aware of the fact that they have done something illegal. Sometimes they are chocked to receive a letter from a court ordering them to return the child to the country of his or her habitual residence. In many cases, parents decide not to return the child because they are afraid of being prosecuted or of losing their child to the other parent forever, or just because of a difficult economic situation or lack of social ties and, last but not least, false information. They defend themselves with all possible means available to them thus making things even more challenging.

To put it in brief: Parents – both the left-behind and the abducting parent – often find themselves in exceptional, complex and emotionally charged situations.
The Central Contact Point for Cross-border Family Conflicts and Mediation

In response to parents’ need for help, the German Federal Government entrusted the German Branch of International Social Service with a mandate as a “Central Contact Point for Cross-border Family Conflicts and Mediation”. This was based on the following considerations:

- To facilitate better streamlining and planning of the procedures, it was decided to set up a central contact point which is networked and cooperates with all the actors involved at national level (including the Central Authority, the federal ministries, and youth welfare offices).

- In many countries of the world, people have scruples about turning to public authorities with their request. Moreover, the abducting parent may feel that the Central Authority represents the interests of the other parent. From the aspect of building trust, it is considered to be important to have a non-governmental agency which is neutral, thus finding access to both parents, standing by their side and giving them advice in their difficult situation, and always putting the best interests of the child in the centre of attention of the parents’ actions.

- Often it is not sufficient to provide legal information. Comparable to a navigator, the contact point should provide information about the socio-psychological and legal aspects, refer the persons to competent agencies and services, and accompany the relevant parent with the help of a national and international network.

- Whenever possible, the conflict should be resolved by out-of-court settlement, e.g. by mediation.

- The best interests of the child are given primary consideration. The counseling which is provided must therefore always put the child and the interests of the child in the centre of attention.

- International Social Service has many years of experience in the field of international family conflict; it is known all over the Federal Republic of Germany and is recognized as a contact agency with professional knowledge.

- Child abduction often occurs as a result of family conflict which has occurred over a long period of time. Therefore, prevention is important. Couples should obtain advice and information as early as possible in order to make sure that abduction of the child will not occur at all.

- Out-of-court settlement/mediation is gaining momentum as an alternative means or a supplement to court proceedings. This applies especially to Non-Convention States, for which court proceedings for the child’s return do not exist. Within the framework of the so-called Malta Process\(^\text{10}\), the Hague Conference on Private International Law has developed a concept which demands that Central Contact Points for Mediation shall be established, which should help resolve conflict and enable the child to return, if possible.

---

\(^\text{10}\) “The Malta Process, which has been a dialogue rather than a negotiation, is aimed towards improving cooperation between participating States in resolving difficult cross-border family law disputes, with a view in particular to the protection of children by supporting the child’s right to have continuing contact with both parent (even though they live in different countries) and by combating international child abduction”. See: [http://www.hcch.net/index_en.php?act=text.display&tid=91](http://www.hcch.net/index_en.php?act=text.display&tid=91)
However, the functions of these **Central Contact Points for Mediation** go beyond the provision of information on mediation and connecting parents with mediators. The reason is evident: in many cases, mediation is the outcome of a counseling process which has lasted for a long time already; there are not many parents who are willing on their own accord to accept out-of-court settlement when their child has been abducted. For this reason, these contact points should also provide comprehensive information and counseling.

**Right of access and legal custody**

Not every family conflict ends up in child abduction. Questions concerning legal custody, access and visitation rights with a child living abroad are a major concern to many parents. Therefore, in order to help parents with these questions too, and to comply with the child’s right to have contact with both parents, the mandate of the Central Contact Point also includes the provision of counseling on these matters.

**The functions of International Social Service as a Central Contact Point**

As a Central Contact Point, the ISS German Branch is available to all callers from Mondays till Fridays, 9:00 to 17:00. It provides information on the legal and factual possibilities available in each specific case, which are different from one State to another. In 2012 alone the questions which reached ISS German Branch were related to 116 States of the world.

Everyone can turn to ISS German Branch: professionals as well as parents. Parents who are afraid that their child might be abducted; parents who want to leave the country together with their child; parents who abducted their child; and parents whose child was abducted – no matter if the relevant State has ratified the Child Abduction Convention or if it is a Non-Convention State. Parents who have questions on legal custody and the right of access. Germans and foreigners, living in Germany or abroad. The only precondition is that the request has some relation with Germany.

Each case of child abduction is unique. Each case requires a specific kind of counseling and guidance. Standardized processes are possible only with regard to the main features. Therefore, the staff members of ISS German Branch (5 social workers and 3 lawyers) usually speak with the callers as often as necessary, giving time and attention to the particularities of the individual case. Does the parent have any contact with the family of the other parent? Which language skills do they have? Is it really about the child’s return, or would it be in the interest of the abducting parent to achieve a clear access arrangement? All this, and even more, is being discussed. If required, other agencies will be involved as well: the Central Authority, youth welfare offices, counseling agencies, mediators, lawyers in Germany and abroad.

AS importantly, the function of the Central Contact Point is to accept the parents with their particular problem, to take them seriously, and to reduce the potential burden on the professionals. All the doings are aimed at one goal: to ensure that the best interests of the child are met, and to find a solution which is acceptable to all the persons involved.
3.2. Children and Families Across Borders (CFAB\textsuperscript{11}): the Experience of ISS in the United Kingdom

In the UK the overwhelming majority of cases are led by the UK government central authority, the International Child Abduction Central Unit (ICACU). This sits within the Official Solicitors office in the Ministry of Justice. They work closely with the Foreign and Commonwealth Office (which has its own child abduction unit to oversee consular assistance in these cases).

ICACU also work with Reunite International, a specialist child abduction charity, and CFAB (Children and Families Across Borders), the UK branch of the International Social Service Network. Reunite provide advice and support to parents and access top specialized legal support both in the UK and around the world. They tend to focus on abductions within Hague Convention countries but will also offer assistance in non-Hague countries, notable Pakistan. Reunite also offer a mediation service if both parents are willing to participate.

There is no central contact point for mediation in child abduction cases in the UK. There is now an expectation of court ordered mediation in divorce cases if indicated, and many UK lawyers have now qualified as mediators so they can offer this service rather than legal representation if mediation is what is required. Many mediation services in divorce organizations exist in the UK and CFAB refer onto these if both parents are in the UK.

All THC 1980 abduction applications in England and Wales are heard in the High Court before an experienced high court Judge. No applications may be heard in lower or regional courts. This is because the UK Court’s are scrupulous about returning abducted children to other THC 1980 member States within the agreed timeframe. There are very few exceptions
to this and the abducting parent in the UK must have extensive objective third party documentary evidence for a 13b exception to be granted. CFAB has experience of applications from individual’s non THC 1980 member States where the UK High Court returns the child to the other country. The only other rare exception when a child is not returned is where the child is of an age where their wishes and feelings can be clearly expressed and they clearly state they do not wish to return without the Judge being concerned the parent has coached the child.

Against this backdrop mediation is often not required in the first instance in the UK as the legal recourse is open to the left behind parent and they have a reasonable expectation that the child will be returned. The UK also has robust and long standing leave to remove legislation which means parents have a legal recourse to ask a court to dispense with the other parents consent and allow a child to be relocated overseas with one parent. These cases are increasingly common in the UK and often involve parents where neither parent is, in fact, a UK national though the family will be habitually resident in the UK.

However when children are taken from the UK to both THC 1980 member States and non-member States return rates are less reliable. Reunite offer a mediation service in abductions to both THC 1980 member states and non member states. CFAB work largely in cases

---

\textsuperscript{11} Children and Families Across Borders (CFAB) is a unique UK-based charity which identifies and protects children who have been separated from family members as a consequence of trafficking, abduction, migration, divorce, conflict and asylum, as well as other vulnerable individuals in often desperate circumstances. CFAB is the ISS branch in the United Kingdom.
involving Libya though have been involved in specific cases with Mexico, Japan and Iran over recent years.

CFAB employ social workers and our approach is to mediate with the child at the centre of the process. With Libyan cases the focus has been the promotion of contact between the child and left behind parent (nearly always the other in these cases). There is seldom any realistic chance of a return in these instances but CFAB also offer parents access to legal support in Libya.

Often the abducting parent will not engage in the mediation process so CFAB then act as a negotiator and try to persuade the authorities is the destination country to recognize UK jurisdiction over the case and return the child. Fundamental in this, and underpinning THC 1980, is the fact that a return does not infringe on the child’s rights or the parents right to Justice and family life. All that is being decided is the venue where the issues will be determined. In the UK, non-UK national parents receive legal aid (there legal costs are paid) for THC 1980 cases so they are in no way disadvantaged. Given the UK has robust and established leave to remove legislation and case law, any parents can legally request permission to relocate so abduction is viewed against this backdrop.

CFAB support all countries joining THC 1980 and all member States rigorously upholding their obligations to return children and not using return cases as a forum to re-play custody, contact or divorce issues. The only issue at play in a THC 1980 case, if 13b issues are not present, is did an abduction or illegal retention take place? If it did then the child must be returned and any other legal proceedings or mediation work can then proceed in the country of habitual residence.

3.3. Switzerland: The 2009 new Swiss Federal Act on International Child Abduction and the ISS experience with mandatory mediation

In the early 21st Century, several cases occurred in Switzerland where the return procedure for a child abducted into Switzerland from a THC 1980 Member State manifestly led to results that were contrary to the child’s best interest. An important part of public opinion began to seriously question whether the THC 1980 still was a legal instrument actually protecting children, or rather an outdated tool doing more harm than good to children and families stuck in cross border parental conflict. Interventions of Members of Parliament asked the Swiss Government to suggest an improved handling of abduction cases, in better respect of the rights of children. Those parliamentary interventions led the Swiss Government to the nomination of a Commission of Experts whose mandate was to elaborate solutions that would be both in conformity with Switzerland’s obligations under the THC 1980 and with children’s rights as recognized under the 1989 UN-CRC.

The Commission came up with the suggestion to create an implementation law of the THC 1980 which would specify how Switzerland would be dealing with THC 1980 cases in the future. The law called “Federal Act on International Child Abduction and the Hague
Conventions on the Protection of Children and Adults” (hereafter: FAICA) was voted on the 21st December 2007 by an overwhelming majority of the Swiss Parliament and entered into force on July 1st 2009.15 Its key-provisions are:

- Interdisciplinary cooperation through a network of experts (art. 3)
- Voluntary and mandatory mediation (art. 4 and 8)
- Expeditious procedure (art. 7)
- Hearing the voice of the child (art. 9 §1)
- Nomination of a child representative (art. 9 §2) and
- Careful examination of the return possibilities for the child, in the light of the “best interest”-principle (art. 5).

As a whole, those provisions offer a new, quite revolutionary frame-work for dealing with IPCA cases. The main idea of the new law is to have an interdisciplinary (instead of solely legal and administrative) approach to IPCA, to make wide use of mediation and other ADR (Alternative Dispute Resolution) methods, and to reinforce the position of the child by giving him or her an independent legal representative during the whole procedure. Through its article 3, the law asks the Swiss Government to ensure cooperation of all involved professionals through the creation of a “network of experts”.

ISS strongly supported and still supports this new law and the ideas standing behind it. From July 2009 to December 2010, ISS was mandated by the Swiss Federal Office of Justice under art. 3 § 2 of the FAICA to set up and coordinate this network of experts. During that time, ISS organized meetings of all involved actors and specific training for international family mediators. ISS was also involved during those 18 months in the handling of over 10 new abduction cases falling under the scope of the new law. ISS was especially mandated to set up urgent international family mediation sessions and to facilitate the dialogue between the concerned parents concerning the return procedures. The ISS experience during that period showed the importance of a mediation-based communication with the involved parents and all actors (lawyers, judges, central authorities) from the very beginning of the procedure. When the THC 1980 return procedure is in its first days, then the parents can more easily be motivated to discuss through mediation, whereas with every week and month under an exclusively legal approach, the positions between the parents tend to harden and amplify misunderstandings and feelings of distress, anger and revenge. For this reason, ISS had the best experience with cases where on the very day of reception of the return order from abroad, the Central authority connected the parents with qualified mediators and consequently suspended the legal procedure for the time the mediation went on.

To set up international family mediation sessions on a practical level, ISS looks in each case on the individual parameters such as: geographical distance, travel possibilities, time available, legal context, language and cultural issues, religion, and last but not least: how can the contact between the child and the left-behind parent best be ensured during this period (distant contact and in-person contact)? This can be done for example by organizing a parent-child meeting in parallel with an in-person mediation meeting between the parents.

15 See the (non official) English text at: http://www.admin.ch/ch/e/rs/211_222_32/index.html. Through the same law, Switzerland ratified two other recent Hague Conventions, the 1996 Hague Convention on international child protection and the 2000 Hague Convention on international adult protection.
Participation and cooperative approach in the work with the children at risk and their families

To summarize, the experience made in 2009 and 2010 under the new FAICA was quite encouraging in terms of better ensuring the rights of children in IPCA cases and a systematic use of mediation. Since January 2011 however, ISS observes that the initially intended extensive interdisciplinary cooperation between professionals is again not sufficiently ensured and that an “urgent intervention team” and a truly systematic use of mediation is yet to be developed.

3.4. Australia: International Parental Child Abduction and Domestic Violence

The 1980 Hague Convention on the Civil Aspects of International Parental Child Abduction makes no mention of family or domestic violence. However, current social work experience highlights that family violence is at times present in cases involving IPCA.

This chapter will highlight the changing and gendered nature of IPCA; briefly describe the impact of family violence on children; outline dilemmas in 1980 Hague Convention cases involving family violence and conclude by offering practice suggestions and recommendations for social workers and other professionals working with families affected by IPCA.

Although there are multiple and debated definitions of domestic violence, for the purposes of this paper domestic violence is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (World Health Organization, 2013).

The Changing Nature of IPCA

While inter-country travel is not a new phenomenon in the developed world, the nature of international migration is changing, increasing and progressively involving people originally from developing countries. The growing ease and affordability of international

travel, advancements in telecommunications and social media and the expansion of opportunities for international employment, education and other exchanges are contributing to the increase of inter-country relationships and the formation of trans-global families (Odhiambo, 2012, 4).

Like the evolving modern family, the profile of parents who enact international parental child abduction has changed significantly since the inception of the Hague Convention in 1980 (Silberman, 2000). Likewise, social work perspectives and attitudes towards family violence have significantly shifted during the course of the last 33 years. From the emergence of often fragmented service responses for survivors of family violence and their children, contemporary social work practice and research has increasingly sought to respond to growing evidence of the link between family violence and the abuse of children, as well as coordinating interventions to maximize the safety of women and their children who are the victims of domestic violence (Tomison, 2000).

‘The formal recognition that child abductors can be victims of domestic violence is relatively recent’ (Weiner, 2000, p.596). In 1980 when the Hague Convention was initially established, it was perceived that most abductions would be carried out by fathers ‘who had lost or feared losing custody to the children’s mother’ (Weiner, 2000, p. 599). Weiner goes on to argue that at the conception of the 1980 Hague Convention the only way in which domestic violence was acknowledged was in the case of fathers who abducted children to further assert control and abuse the mother. However, ‘the modern day abductor is not a discontented father dissatisfied with access arrangements; rather it is often a mother who is the primary carer leaving a failed relationship...the relationship may well have included serious abuse and violence’ (Nicholls, 2011). Research conducted by International Social Service (ISS) Australia in 2012 indicated that 40% of women who abduct their children are motivated to do so due to domestic violence and concerns for the safety of their children. It is also important to consider the gendered nature of IPCA in the context of literature that suggests that victims of domestic violence are at greatest risk when they decide to leave the relationship (Hotton, 2001).

Internationality mothers comprise approximately 70% of abducting parents, this is a trend reflected in many other contracting states such as the UK and USA (Tuouhey, 2012, 15).

Reasons typically cited by mothers for abducting their children include a need to flee domestic violence and/or child abuse (45.5%); a desire to return to their homeland (72.7%), coupled with a longing to return to family and social networks (63.6%); and the desire to improve their economic situation (6%) (Bozin, 2010).

The Impact of Family Violence on Children

Professional literature on children and family violence clearly states that the impact of violence on children’s emotional, social, behavioral, psychological and developmental well-being is serious and can be long-lasting, particularly for infants and young children who are statistically known to be at increased risk (Sety, 2011, 1). Typically, perpetrators of violence often seek to undermine the relationship between mother and child, or threaten to harm the children (Sety, 2011, 1); it could therefore be argued that mothers who abduct their children see it as their only option to preserve their relationship with their children, as well as to secure their safety and that of their children. However, it is encouraging to note that mothers and children can recover from the impact of violence and abuse if they have access to therapeutic services which build on and reinforce their strengths and resilience (Sety, 2011, p1).
Participation and cooperative approach in the work with the children at risk and their families

The 1980 Hague Convention - Dilemmas of Practice

The 1980 Hague Convention provides a limited right to appeal the return of a child to their place of habitual residence, by arguing that the return poses a “grave risk” to the child (Article 13B). Although the 1980 Hague Convention is gender-neutral in its wording, various authors have argued that Hague determinations impact mothers and fathers differently, especially if, as stated above, a mother removes her children in order to escape from family violence perpetrated by the children’s father (Kaye, 1999; Shetty & Edleson, 2005). These authors express concerns that, while seeking to ensure compliance with the Convention’s purpose of returning internationally abducted children to their country of habitual residence, mothers and children are often placed at risk of continued violence and abuse, especially if mothers are unable to access services for the protection of themselves and their children (ibid.). From a legal standpoint Weiner, (2000) examines the possibility that victims of domestic violence and their children could ‘remain in the country to which they fled, while the parties litigate custody in the court of their children’s habitual residence.’ (p.600).

Suggested Interventions and Recommendations

Given the impact of violence and abuse on children, and the 1980 Hague Convention’s narrow focus on a child’s return, what are the child’s rights? Social workers from the ISS international network are clear that ethical social work practice must uphold and preserve the child’s rights and best interests at all times. In relation to IPCA the safety of children is paramount, along with their right to maintain a relationship with both parents provided this does not increase their exposure to risk of harm or abuse. ISS Australia suggests the following interventions in relation to working with families affected by IPCA:

- **Risk assessment:**
  Assessments of risk should occur when a parent first approaches the service and periodically throughout the course of the client’s engagement with the service. The purpose of risk assessment is to clearly acknowledge, identify and manage risks to the safety of children and parents in future case planning. Asking clear and specific questions relating to family violence reinforces to the parents that this issue is being taken seriously by the service.

- **Open discussion and no tolerance of family violence:**
  When family violence is discussed openly between client and social worker, secrecy is lifted and the client’s fears can be discussed with safety plans created. Similarly, openness with clients who have perpetrated violence, accompanied by support to explore and take responsibility for their actions, can contribute towards the process of behavior-change. A useful Australian website, with content in English is: www.adfvc.unsw.edu.au/. The Australian Domestic and Family Violence Clearinghouse contains extensive literature and links related to policy and practice of working with survivors and perpetrators of family violence.

- **Contact facilitation between children and parents:**
  The ISS network collaborates to facilitate long-distance contact between children and left behind parents. This contact most commonly occurs by telephone, or electronic means. In facilitating this contact, the practice employed by the ISS network is for a social worker to engage with each parent in their respective countries, and to assist them...
to focus on the needs and best interests of their children. This can occur alongside any legal proceedings for the child’s return to their habitual residence. The worker in each country offers extensive counselling and support to assist parents to prioritize the needs of their children and to access therapeutic support to manage their relationship issues and other losses. Workers in each country can assist parents to draw up informal goals, guidelines and agreements regarding contact with their children, and offer ongoing support as long as the contact continues.

- Mediation:
  This can occur before or alongside any legal proceedings initiated for a child’s return to their habitual residence. Mediation is a process involving disputing parties in a structured discussion, facilitated by impartial mediators for the purpose of making agreements for solutions to their dispute. Mediation is usually a voluntary process, although it is increasingly being ordered by courts for the resolution of 1980 Hague Convention disputes between parents. Mediation is useful in IPCA disputes as it allows the parents to discuss and decide on issues such as a child’s return and current and ongoing contact arrangements for children. It is important to recognize that, due to safety concerns and power imbalances between participants, not all cases are suitable for mediation, and thorough assessment of participants by the accredited mediator is vital. Mediators assist parents to state the issues in dispute, explore solutions and develop agreements which can be prepared in written form. When mediation in IPCA cases is offered within the ISS network, mediators practice according to the best interests and needs of the child, and actively promote the child’s need for safety within any agreements made by their parents.

Conclusion and Recommendations

Family violence adds a further layer of complexity to the already highly conflictual nature of IPCA. In summarizing best practice and policy in such cases we recommend that:

- Workers maintain awareness of the impact of family violence on children, and always prioritize the best interests of children when working with their parents
- Use engagement and active listening skills to screen for, identify, name and challenge family violence
- Ensure all staff managing IPCA support cases are well trained in assisting both survivors and perpetrators of domestic violence. Train staff to understand and identify the impacts of family violence on children and how best these families can be supported to manage this impact.
- Have access to and an awareness of family violence support services and counselling for victims of family violence, particularly child focused services
- Be aware of the potential for conflicts of interest involved in IPCA work. Ensure social workers are critically reflective, provided with regular supervision and aware of their own ethical and cultural biases or prejudices that might impact their practice.
- Advocate for victims to receive access to culturally appropriate family violence support services in order that women’s safety can be secured without the need for the removal of children internationally
- Agencies serving families should be trained in primary identification and pre-emptive response to risk of IPCA
- Advocate for or conduct research comparing outcomes for children in 1980 Hague Convention cases where family violence is present or absent
Participation and cooperative approach in the work with the children at risk and their families

- Expertise on family violence and child protection should be made available to judges hearing 1980 Hague Convention matters.

The dilemma inherent in service provision to families affected by IPCA is the need to prioritize the safety of children while seeking to mitigate the damage IPCA can cause to children. In order to manage the complex needs of all parties in such cases, ISS Australia outlined interventions which demonstrate the importance of focusing on children's best interests while working alongside legal institutions to ensure legal decisions offer safety to the child within the narrow scope of the Convention. As highlighted in this paper the prevalence of domestic violence is common in situations of IPCA. It is therefore essential for social workers to be informed and aware of the risk of domestic violence and the means by which services can ensure the risk is minimized for children and victims of family violence. ISS Australia proposes preventative measures as well as risk assessments and support, contact facilitation and mediation tailored to meet the needs of each family affected by IPCA, as appropriate means to minimize the impact of IPCA on children and victims of domestic violence.

4. A global project to promote and strengthen International Family Mediation (IFM)

The Institutionalization of International Family Mediation Practice

Since the early 2000’s, international family mediation is increasingly promoted by regional and international political bodies such as the Hague Conference on Private International Law and the European Union for the settlement of family conflict situations involving two countries, when dispute, separation or divorce imply an international relocation of a child with the caretaker to another country.

The political will and efforts of these organizations provide State recognition and institutionalization of IFM practice. Yet, for IFM to become truly accessible to families, the political process must be completed with a number of concrete measures; but, International Family Mediation having no explicit legal basis, global action is hampered by a crucial lack of resources and coordination.

The Reference Centre for International Family Mediation (RC-IFM)

Since 2006, International Social Service (ISS), as a global actor in the field of child protection and international family conflicts, has been engaged in the advancement of mediation practice. Today, ISS’s approach is to support the political effort of States in promoting mediation with a project that will serve as a useful tool to their cause: the establishment of an international platform that centralizes and brings together information, knowledge and IFM competencies from all around the world.

The Reference Centre for International Family Mediation will house all the services needed to effectively use mediation in situations of cross-border family conflicts. RC-IFM services will be set up for families and professionals involved in conflicts such as legal and administrative authorities, mediators, psycho-social and law professionals.

After 18 months (2010-2011) of targeted research and networking in this field, ISS was recognized internationally in 2012 as being an expert coordinating body without corporate interest in promoting international family mediation throughout the world, placing the
organization on good grounding to lead a global project to advance the practice of international family mediation. In this capacity, and on the base of its partnerships and expertises, ISS engaged on different levels - targeting families, professionals and policy makers who all urgently need to be sensitized to the value added of mediation so as to resort to it naturally.

**Pilot Projects**

ISS’s first objective is to publish online the Handbook on International Family Mediation. It will specifically target bi-national, expatriate and migrant families from all around the world and is currently being drafted with the support of an advisory group of top international experts in related fields (international family law, Islamic law, child protection, cultural diversity, mediation and child psychology).

The handbook has the ambition to provide torn up families with a practical tool detailing their options and sharing experiences of other families who resorted to international family mediation. A special focus is set on intercultural aspects of family disputes and on the impact of parental disputes and abductions on children as well as on their primary needs and rights to entertain relations with both parents. It is the first awareness campaign for families worldwide, and it is driven in line with the UN Convention for the Rights of the Child.

Next step will be to host and coordinate the first worldwide consultation among international family mediators. International family mediation has developed high professional standards over the past ten years, especially in Western countries (specialized training in IFM for family mediators, formal and informal networks). International family mediators are now active in their respective countries to promote IFM with families, administrative and legal authorities as well as policy makers. It is time to bring together these activities and form a coordinated and reliable international network of mediators located all around the world.

The collective draft and endorsement of an international professional Charter to be presented before the governments represented in Geneva is a milestone in the institutionalization process of international family mediation practice. The Charter will comprise a code of conduct, a set of best practices and a platform for accreditation of international family mediators. The aim of the project is to advance international family mediation on a very practical level, by creating a functional network across the world. To achieve this, mediation professionals will need to unite, bring together their skills and be given recognition with States.

The third pilot project is to develop a practical manual of IFM for Parliamentarians and legislators worldwide. The grassroots approach of ISS, which is to educate families about IFM, will be complemented by a top-down approach, targeting Members of Parliament and legislators around the world. A practical guide and a set of recommendations to their use will draw their attention to legal implications and impact of cross-border conflicts. The idea is to explain, in textbook form, how mediation and other amicable modes of resolution can meet the existing needs and State strategies. The guide will also give examples of frameworks implemented in some States to facilitate the use of mediation. ISS wants to initiate international political lobbying with legislators through Parliamentarians, to support the gradual introduction of mediation (family mediation and IFM) in countries texts and laws. Such arrangements will facilitate transnational cooperation between States.
in the long term, particularly regarding the recognition and enforcement of mediation agreements from one country to another.

This global pioneer project, engaging all key actors in the field of international family mediation and driven forward with international partners like the Hague Conference of Private International Law is designed to strengthen the institutionalization of IFM practice and centralize reliable information on mediation professionals, mediation processes and national laws. By addressing concrete needs of various groups of professionals involved in cross-border cases, it enhances mediation as an efficient tool to protect children and solve conflicts across regions and traditions. Thus, it serves all endeavors in the field of child protection advocacy.

5. Conclusions

Relationships within a family are complex by nature, and cross-cultural backgrounds make them even more challenging. The overview proposed by this contribution clearly illustrates how romance stories can turn into nightmares for both parents, but even more for the children affected. The challenge to develop a constructive and child-focused post-separation parenting base across the borders has ultimately to be met, despite the end of this love story.

Thanks to its long-lasting experience in helping children families separated by borders, ISS network developed, and still is, a unique expertise to try to support families facing the hardships of separation in the best way possible.

Even though ISS experience with IPCA and THC 1980 could differ from one region to another, different branches have developed innovative methodologies and strategies and gained confidence from both public authorities and beneficiaries.

Over the years, ISS has gathered a unique source of inspiration when speaking about IPCA and international family mediation. In an another illustration and in the framework of a joint larger project of creating national central points of contact for cross border family conflicts, ISS Germany and Switzerland recently opened dedicated websites that focus on transnational family conflicts: www.zank.de and www.family-conflicts.ch.

Despite substantial progress in this area, much remains to be done on national and global levels. Child abduction remains an important phenomenon (according to CFAB, figures doubled in the last 10 years in the UK\(^1\)), and many States still do not offer any sufficient legal or extra-judicial means to address this issue. To that effect, a mediation-based approach to IPCA and international family mediation are the instruments to be developed in order to alleviate pressure within families and traumas on children. Mediation is about dialogue and mutual agreements, about building bridges between people and countries, but it is as importantly a way to remind parents that, at the beginning of the romance story, there was love and that they are – and will always be – the common parents of their child.

The possibility for them to remember this is perhaps as simple as it sounds is a way to find a solution that respects their children and their rights.

December 2013

ANNEXE :
Czech-British non-profit organization kindly invites you to the seminar of the sub-project PF134

Participation and cooperative approach in the work with the children at risk and their families

The place of the event: The Museum of Romani culture in Brno, Bratislavská 67

The time of the event: May 6 and 7, 2014

Besides the Czech experts in the field and the members of our project team, the foreign experts and colleagues from the Swiss partner organization IDE: Jean Zermatten, Paola Riva Gapany, Renate Winter a Rolf Widmer, will take part in the seminar as well as in afternoon workshops.
Tuesday May 6, 2014

Participation and the best interest of the child on the level of the system and institutions of the social and legal protection of children: The rights and interests of the children at risk – the methods and examples of good practice from Switzerland

Workshops on the theme of participation and the best interest of the child on the level of systems and institutions.

8:30 - 9:00 Registration

9:00 - 9:30 Greeting. The presentation of the project and the program of the seminar
(Igor Nosál, Irena Čechová)

9:30 - 10:15 The best interest of the child and its application in the sphere of social and legal protection of children (Jean Zermatten)

10:15 - 10:30 Coffee-break

10:30 - 11:15 The participation of children in the judiciary system (Renate Winter)

11:15 - 12:00 The Swiss system of the social and legal protection of children and the right for participation
(Paola Riva Gapany)

12:00 - 13:00 Lunch

13:00 – 17:00 Workshops on participation and the best interest of the child on the level of system and institutions of social and legal protection of children. The workshop will be lead by the Swiss experts and the members of our project team.

Examples from practice and questions for discussion:
- The methods and examples of the work with children in the cases of intervention and assistance in the family.
- The work with the families of cultural and ethnic minorities
- The methods of communication and planning concerning the children in out-of-home care.
Wednesday May 7, 2014

Participation and quality in the work with children and families

The rights and the best interest of the child in the work with children at risk, their biological and foster families – methods and examples of good practice from Switzerland

Workshops on the theme of participation and the quality of work with clients.

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 - 9:00</td>
<td>Registration</td>
</tr>
<tr>
<td>9:00 - 9:15</td>
<td>Greeting, the introduction of the program (Igor Nosáľ)</td>
</tr>
<tr>
<td>9:30 - 10:15</td>
<td>Quality For Children: The standards of quality in the out-of-home care (Rolf Widmer)</td>
</tr>
<tr>
<td>10:15 - 10:30</td>
<td>Coffee-break</td>
</tr>
<tr>
<td>10:30 - 11:00</td>
<td>Participation and social work in postmodern society</td>
</tr>
<tr>
<td></td>
<td>Prof. Libor Musil, (Faculty of Social Studies at Masaryk University, the department of social policy and social work)</td>
</tr>
<tr>
<td>11:00 - 11:30</td>
<td>Participation in everyday care for children in foster families.</td>
</tr>
<tr>
<td></td>
<td>Igor Nosáľ, sociologist, psychotherapist, lecturer in foster preparation courses</td>
</tr>
<tr>
<td>11:30 - 12:00</td>
<td>Participation and quality of care (standards of quality) in the social services for families at risk (social work with families at risk)</td>
</tr>
<tr>
<td></td>
<td>Doc. Pavel Navrátil, (Faculty of Social Studies at Masaryk University, the department of social policy and social work) The expert in the field of social work, supervision and the methods of improving quality and standards in the work with children at risk.</td>
</tr>
<tr>
<td>12:00 - 13:00</td>
<td>Lunch</td>
</tr>
</tbody>
</table>
13:00 – 16:45  **Workshops on the following themes:**

- participation on the level of the work with clients,
- participation on the level of everyday foster care,
- standards of quality

The workshops will be lead by Rolf Widmer and the members of the Czech project team: Igor Nosál, Jitka Navrátilová, Pavel Navrátil, Simona Venclíková, Eva Janičková and Irena Čechová.

Practical examples and questions for discussion:
- Methods and examples of the work with foster families and social workers
- Supervision and the methods of improving the quality of care in foster families and institutions
- The preparation and further education of foster families
- The preparation and planning of leaving the foster families, institutions of out-of-home care and centers of immediate help.

16:45 – 17:00  **Conclusion**