

# MEDIATION IN SITUATIONS OF INTERNATIONAL PARENTAL CHILD ABDUCTION – A THIRD WAY



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Recent media reporting once again reminds us of the pain and turmoil consequent to situations of international parental child abduction (IPCA). The grief and pain of the left-behind parent can be imagined, but it is the children who ultimately bear the upheaval and dislocation caused by escalating parental hostility, and one parent's unilateral action to remove them beyond the reach of the other.

As highlighted by the case involving Lebanon, where the straightforward remedy of the 1980 Hague Convention on the Civil Aspects of International Child Abduction does not apply, parents may be faced with the complex and emotionally draining prospect of seeking resolution through the legal system of the country to which their child has been taken. It is perhaps not surprising that desperate parents resort to the seemingly expedient services of so-called child recovery agencies, who hold out hope for a child's swift return. Unfortunately, whether such returns are achieved or not, they leave even greater parental anger and conflict, as well as enormous financial losses for the clients, in

their wake. Further, neither a judicial process nor a child recovery attempt will bring about long-term sustainable outcomes for the children involved. After all, what happens for a child if they are ordered to remain in the country to which they have been removed, or a series of attempted removals and re-abductions are experienced? The adults' focus on the outcome of return does not resolve the child's ongoing parenting needs.

Perhaps mediation can offer a solution to many families caught in this distressing situation.

In 2012, International Social Service (ISS) Australia drew on its extensive experience providing social work services to parents affected by IPCA to develop an international family mediation service aiming to facilitate the resolution of cross-border parenting disputes, including those involving IPCA. The service's philosophy is grounded in the right of all children to maintain a relationship with both parents unless contrary to their best interests, as guaranteed under Article 9 of the UN's Convention on the Rights of the Child. This article, analogous to prevailing principles used in mediation, promotes the contribution of all involved parties in decision-making for children, again with the proviso that the child's best interests are maintained.

As the Australian-accredited family mediators

employed by ISS Australia attest, not all situations are suitable for resolution via mediation. Some parents pose a risk to the safety of their children or the other parent, or the impact of family violence has engendered fear, resulting in a power imbalance which cannot be minimised to enable truly safe and collaborative mediation.

However, many situations can and do benefit from a mediator's facilitation of a neutral and independent process, allowing parents to make decisions best suited to their children's individual needs and the adults' cross-border living arrangements. Mediators assume and seek to cultivate parents' expertise on their children, while also proffering evidence-based insights into children's developmental needs to better inform the mediation process.

Likewise, the scope of mediation discussions is determined by the participants, and can range from a narrow focus on a child's country of residence to long-range planning for the child's relationship and interaction with each parent. It is this participant-determined scope which ensures the benefits of mediation beyond the mechanistic functionality of a legal agreement or court order. Though court

orders are useful in providing clarity, mediation can often complement legal agreements through its attention to planning for children's changing developmental needs, and the enhancement of the relationship between parents and children. Skilful mediation can gradually encourage parents to cast aside their unhelpful binary positions as victim and abductor to those of co-decision-makers for their children.

Though not appropriate in every case of IPCA, mediation nevertheless invites parents to explore an alternative either alongside or instead of traditional legal remedies, and offers the prospect of resolution in situations where parents have limited recourse to the law. Mediation practice is imbued with both advocacy for the rights of children and respect for the expertise of parents. It allows for the developmentally sound planning of children's needs and cross-border parenting arrangements, while encouraging a shift to greater parental collaboration. Most importantly, mediation offers a safe forum for parents while circumventing children's exposure to the potential physical and psychological hazards of re-abduction by child recovery agents.

## Author Profile

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