



## Relocation and Experiences of Lawful Removal Applications

The Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Abduction Convention) regulates the situation where a child is removed or retained, without the permission of the other parent or the court, in a country other than that of the child's habitual residence. Whilst permission to relocate a child abroad may be sought from the other parent, where this is refused, in some jurisdictions it is possible to apply for permission to do so from the Family Court. A successful application for what is often termed 'lawful relocation' or 'leave to remove' means that the child can be moved across an international border without engaging the Hague Abduction Convention.

By contrast to the Hague Abduction Convention 1980, relocation applications are a matter purely for domestic family law. Where an application for relocation can be made, it is normally the case that it is assessed according to the principles of national law on child welfare as a full custody hearing, assessing all aspects of the child's circumstances and opinion as an aspect of the application by the parent seeking to remove.[1] Research has highlighted that applications for relocation are among the most highly contested before any family court and that they can take a long time to resolve.

As an application regarding the welfare of the child, they should be determined according to the rights expressed in the UN Convention on the Rights of the Child 1989, particularly the primary consideration of the welfare of the child under Article 3 CRC, and the right of the child to be heard in proceedings under Article 12 CRC.[2] Previous research into the outcomes following applications to relocate has argued that the child's views should be central to assessment of a relocation application, and that children may adjust differently to relational change, as opposed to locational change.[3]

[1] For a summary of national approaches, see A Worwood (ed), *International Relocation of Children: A Global Guide from Practical Law* (Thompson Reuters: London, 2016). O Ceran, *Cross-border child relocation in the EU: the Dynamics of Europeanisation* (Intersentia: Cambridge, 2024).

[2] U Kilkelly, 'Relocation: A Children's Rights Perspective' (2010) 1 *Journal of Family Law and Practice*, 23, 35.

[3] J Cashmore, P Parkinson, 'Children's wishes and feelings in relocation disputes' (2016) 28 *Child and Family Law Quarterly* 151. N Taylor, M Gollop, M Henaghan 'Relocation following parental separation: The welfare and best interests of children: Research Report'(University of Otago: 2010).

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However, it is important to note that not all states under their domestic law maintain a form of relocation application whereby permission can be granted by the court for the movement of a child across an international border. In some jurisdictions, there is no process for applying for relocation, which instead relies on parental responsibility being awarded to one parent, preventing the other parent objecting to the proposed movement of the child.[4] This diversity in national law is significant. It means that, in some countries it is not possible to relocate with the permission of the court and, unlike in Hague Abduction Convention return applications, there is little consistency in the form of application and the principles upon which they are decided.[5]

Even where the possibility of making an application does exist under national law, the application requires financial support for the application, which may have very uncertain outcomes. It has been highlighted that, where an application for relocation is made in part for the purpose of separating the child from the other parent, this will be regarded negatively by the court.[6]

Where an emphasis is placed in national law on shared care in some form, this can create a legal presumption against relocation that is difficult to displace. There may also be significant difficulties in terms of cultural bias in the decision-making of the national court.[7] In the context of relationships where there is domestic abuse, this means that an attempt to relocate lawfully with the purpose of escaping domestic abuse will potentially be regarded negatively. There is little research into the field of relocation applications, particularly in the context of applications where the non-resident parent is abusive and the impact of such allegation on relocation applications.

[4] See e.g. Japan, A Worwood (ed), *International Relocation of Children: A Global Guide from Practical Law* (Thompson Reuters: London, 2016), 133.

[5] For a brief summary, see: [Body](#)

[6] J Stather, 'Relocation: Emerging trends and how to prepare an application' [2022] *Family Law* 784, 786.

[7] M Strous. (2023). *International Relocation Disputes and the Risk of Cultural Bias in Family Law Matters: A South African Perspective*. (2023) 31 *The International Journal of Children's Rights*, 268-291.

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## Seeking International Consistency

As an aspect of preventing unlawful international removals, regulation of relocation seems essential to provide a legal framework that is accessible and relatively consistent to allow for the lawful movement of the child with the permission of the court. There have been global attempts to achieve a measure of consistency between jurisdictions:

The Washington Declaration (8) was agreed by the Hague Conference on Private International Law in 2010 agreed with the Centre for Missing and Exploited Children and national representatives that states should have a form of lawful relocation application available, decided on the best interests of the child as the primary consideration, but which should take account of any history of family abuse or violence. It called for further research into relocation.

The European Parliament[9] in 2010 has called for the harmonisation of national law on the relocation of children between EU Member States as an aspect of the law on international child abduction. The Council of Europe has also called on member states to make provisions for the resolution of disputes over international relocation in accordance with the rights of the child.[10]

This paper seeks to provide new empirical data on the links between international child abduction and international relocation.

[8]<https://conflictoflaws.net/2010/washington-declaration-on-intl-family-relocation/?print-pdf>

[9] Policy Department for Citizens' Rights and Constitutional Affairs, '40 years of the Hague Convention on child abduction', (2020), p.15, available at: [IPOL\\_IDA\(2020\)660559\\_EN.pdf \(europa.eu\)](#)

[10] European Committee on Legal Cooperation, Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation.

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## Method

### Sample

The initial sample consisted of 117 fully completed responses to an online questionnaire. This sample included 1 completed entirely duplicate response which was discounted from the dataset (n=116). Four of the respondents were fathers (n=4), 112 respondents were mothers (n=112).

### Survey

An anonymous online survey was developed by GlobalARRK including both multiple choice and open-ended questions. The questionnaire asked details of whether the respondent had made an application for relocation, the reason for their decision in making/not making an application, the funding and the outcomes of their application (if made), and whether they had experienced abuse within their relationship.

The survey was distributed by GlobalARRK to charity service users and was open for responses for two weeks. The survey was made available through a Google form which stated that participation in the survey was entirely voluntary, and all responses were anonymous. Participants had the right to stop the survey at any time. The dataset was summarised in a Google form report and an Excel spreadsheet with no identifiable information in the dataset.

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## Results

This analysis focuses on the applications that were made for relocation and the link to the Hague Abduction Convention 1980.

### Relocation Applications

**53** of the respondents to the survey had made an application for relocation. **37** had not made an application and **24** were trying to make an application, or working towards making one. 1 respondent had made application for the purpose of foreign visits (rather than permanent relocation) and **1** respondent had lawfully relocated with agreement of the left behind parent.

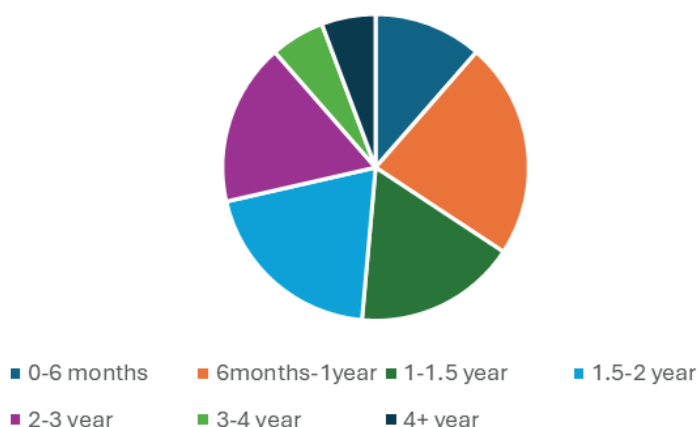
Of the 53 responses that had made an application, **35 were complete** (rather than being involved in ongoing proceedings. Of these 35 responses, applications were successful in 13 applications (**37.14%**), and unsuccessful in 22 applications (**62.85%**).

Time taken to complete applications. In nearly half of cases the relocation proceedings took over 1.5 years with 10% taking over 3 years to complete. 49% of applications took over 2 years to complete.

### Time taken over application:

| Time taken over application | Number of cases |
|-----------------------------|-----------------|
| 0-6 months                  | 4               |
| 6 months - 1 year           | 8               |
| 1 - 1.5 years               | 6               |
| 1.5 - 2 years               | 7               |
| 2-3 years                   | 6               |
| 3-4 years                   | 2               |
| 4+ years                    | 2               |

Time Taken for Completed Relocation Applications



## Relocation and Experiences of Lawful Removal Applications

Of the 35 completed applications, only 1 respondent mother identified that that she had not been subject to abuse.

10 respondents had been involved in Hague Abduction Convention proceedings, but 24 respondents had not been involved in such proceedings.

From this survey, there is clearly a link between Hague Abduction Convention proceedings and relocation proceedings that has previously been observed. There was evidence in the data that mothers regarded allegations of abuse as detrimental to their application and they were actively advised not to report domestic abuse as part of the relocation proceedings:

R.20 application for relocation from England to Canada:

**'I was portrayed as a liar because I hadn't involved police the whole way through. Things only got really bad after relocation denied as abuse very much escalated against my child especially.'**

R.3 application for relocation from UK to EU Member State:

**'I was always advised not to mention abuse as family courts in England do not like to deal with it and it would turn against me. Also, past abuse is no abuse for them. I experience this first hand.'**

Costs and availability of legal aid were also key factors in determining whether an application for relocation could be made.

R.82 application for relocation from Australia to the UK:

**'I don't have the funds to pay and do not qualify for legal aid in Australia. My family helped me out immensely with my fees fighting The Hague. I got a rough "estimate" and it could cost up to \$200,000.'**

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There is evidence that the costs associated with making an application seriously affected the financial situation of the applicant in the long term:

R.20 application for relocation from the UK to Canada:

**'Unable to afford basic necessities, constantly borrowing money and getting into debt.'**

R.84 application for relocation from Australia to New Zealand:

**'Massive stress, low in money, it made me find "other" forms of income which were detrimental to me.'**

R.107 application for relocation from Japan to the UK:

**'In massive debt and complete breakdown relationship with multiple family members I had to borrow all of it from as I had none of my own money.'**

These concerns have evident long-term implications for the welfare of the child involved in proceedings, particularly where they are prolonged and result in financial hardship for the family.

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## For Further Consideration

On signing the Hague Abduction Convention 1980, the Hague Conference has no process for examining whether there is provision in domestic law for a lawful relocation application to be made.

**The Hague Conference should further develop guiding principles for international relocation applications for Hague Abduction Convention 1980 signatories.**

Return applications under the Hague Abduction Convention 1980 are intended to be dealt with within 6 weeks of application. There is no comparable expectation for relocation proceedings.

**Relocation proceedings may be expected to take longer as a full welfare hearing, but should not take over a year and should be supported by access to legal aid.**

Domestic abuse is regarded as a problematic factor in relocation applications providing an argument for separating child from parent which is regarded highly negatively.

**Domestic abuse should not be a negative factor in determining a relocation application.**

For those needing to leave the country urgently, for example if they are in an unsafe situation; destitute or lack immigration status, relocation applications require rapid resolution.

**National legal systems should consider developing processes for expedited or emergency relocation hearing including:**

- **Preliminary directions hearing to identify cases to be expedited**
- **Access to a specialist trained pro bono/funded panel of legal advisors**
- **Priority listing to ensure relocation decision is heard within 3-6 months of application**
- **Hearing in the lower family courts of the jurisdiction to ensure faster process**
- **Expedited appeals process**



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