Submission to the Senate Inquiry into the Incidence of International Child Abduction to and from Australia

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Terms of Reference

(a) The costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas.

(b) The effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence.

(c) The roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence.

(d) Policies, practices and strategies that could be introduced to streamline the return of abducted children.

(e) Any other related matters.

International Parental Child Abduction (IPCA) is recognised around the world as an act of violence towards a child. It is also one of the most extreme acts of abuse a parent can inflict upon their own child, as well as being a gross violation of a child's international human rights.

The emotional effects on children who become IPCA victims are serious and long-lasting. The effects on parents whose children have been abducted are often emotionally; physically, and financially devastating. In many cases, the psychological profile of an abducting parent creates great concern about the safety and well-being of an abducted child while it is with that parent. The costs to governments are also extremely high in ways other than simply the costs associated with locating an abducting child and having that child returned to its country of habitual residence.

This submission addresses each of the Senate Inquiry's Terms of Reference as follows.

(a) The costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas.

These vary considerably according to three different scenarios:

1) When a child has been abducted to a country that is a signatory to The Hague Convention while parenting matters are before the Family Court of Australia (Family Court) at the time of the abduction.

Under this scenario the abduction is a crime under S65 (Z) of the Family Law Act. However, it is often not recognised as a criminal offence by other Australian Government agencies – particularly the Australian Federal Police (AFP) – because it is not included as a criminal offence within the Crimes Act. These agencies frequently see the international abduction of

a child by one of its parents as a civil matter and not a criminal matter. This is despite the fact it is an offence under the Family Law Act.

This means the only departmental assistance provided to parents whose children have become victims of IPCA is limited to the Central Authority (CA) facilitating the lodging of an application under the provisions of The Hague Convention on the Civil Aspects of International Child Abduction (Convention) with the country the child has been abducted to. The CA then act as a liaison between the CA in the country the child has been abducted to and the parent in Australia whose child has been abducted. It also liaises with other Australian Government agencies as needed.

It should be noted that the country the child has been abducted to must be provided to the CA by the parent whose child has been abducted before the CA will lodge an application. In some cases, however, the country the child has been taken to is not known.

Very limited financial support is available to the Left Behind Parent (LBP) through the CA. This is usually limited to assistance with airfares, etc when a child is recovered and ordered to return to Australia.

The AFP will not provide any assistance within Australia to locate a child who has become an IPCA victim. They will generally not make enquiries to people within Australia who might have some knowledge about the whereabouts of the child. Likewise, they will not seek information that could lead to the child being located from organisations such as banks; telecommunications carriers/providers, or airlines. The AFP will only investigate within Australia if their counterparts in the country the child has been abducted to ask them to make enquiries on their behalf. This cannot be done when the country the child has been abducted to is not known.

The AFP will request Interpol to issue alerts for an abducting parent, but only when an arrest warrant has been issued for that parent. However, the AFP will not request the arrest warrant. The parent whose child has been abducted must make an application to the Family Court for an arrest warrant to be issued. Once this has been issued the parent must then ask the CA to ask the AFP to issue an Interpol Notice.

At the request of the CA, the AFP will ask Interpol to issue a Yellow Notice for an abducted child. This is little more than a missing person alert and is largely ineffective unless it is supported by either a Blue Notice or a Red Notice for the abducting parent, neither of which can be issued unless an arrest warrant has been issued. The effectiveness of the Blue Notice is also questionable at times as demonstrated by the following example.

In a recent Australian IPCA case (2010) an abducting parent was stopped with the child at Johannesburg Airport. The Yellow Notice was triggered for the child but the child's passport was returned to the abducting parent a short time later. The abducting parent later returned alone to Australia but was not stopped even though a Blue Notice was in place. The abducting parent then fled the country shortly afterwards, again without being detected. Neither the parent nor the child have been seen since but it is known that they travelled to several countries before disappearing.

The Australian Passport Office (APO) will not cancel an Australian passport that has been issued to a child who has been abducted unless a carefully-worded Court Order is obtained from the Family Court by the LBP.

Furthermore, the APO is not authorised to cancel an Australian Passport that has been issued to an abducting parent. The only person authorised to do this under the Australian Passport Act is the Minister for Foreign Affairs. The Minister will only exercise this authority in exceptional cases and only when it can be shown that the person has committed a criminal offence within Australia. As with all the other legal processes, it is the responsibility of the parent whose child has been abducted to make a formal request to the Minister to cancel the abducting parent's Australian Passport and even then there is no certainty about their request being acted on.

A typical IPCA case under this scenario will therefore require the parent of the abducted child to make applications to the Family Court for:

- an Arrest Warrant;
- a Location Order;
- a Recovery Order;
- an Order stating that the child is to live with the parent whose child has been abducted (this is the same as a Sole Custody Order);
- subpoenas to obtain details about the abducted child's travel from Australia;
- subpoenas to obtain information about transactions on Australian bank accounts;
- subpoenas to obtain information about telecommunication usage on Australian mobile phones; landlines; Internet, etc. (this can often involve several carriers/providers), and
- an Order enabling the cancellation of the abducted child's passport.

In some cases, additional Orders might be sought, including a Publication Order and an Order suspending payments to the Child Support Agency, amongst others.

This process can take several months to complete and is extraordinarily expensive. Costs in excess of $50,000 to $100,000 are not unusual. These costs do not include legal expenses incurred by the LBP during proceedings that take place in other countries and nor do they include expenses incurred in proceedings that take place when an abducted child is returned. Likewise, they do not include other costs incurred by the LBP such as advertising; private investigators, etc.

Australian Embassy staff in countries a child has been abducted to (or are believed to have been abducted to) will not provide any assistance to the parent whose child has been abducted until the child has been located. Even then their involvement will generally only extend to providing consular assistance such as welfare checks, and assisting with the issuing of emergency passports to enable abducted children to return to Australia. They will charge the LBP fees for services they provide such as witnessing the swearing of affidavits that might be needed to assist with Convention procedures.

2) When a child has been abducted to a country that is a signatory to The Hague Convention without parenting matters being before the Family Court of Australia at the time of the abduction

Under this scenario, departmental assistance will be limited to the CA lodging a Convention application on behalf of the parent whose child has been abducted; liaising with other government agencies on a needs basis, and liaising with the CA in the country the child has been taken to – if known. Australian Embassy staff will only become involved to the extent previously described.

3) When a child has been abducted to a country that is not a signatory to The Hague Convention whether or not parenting matters are before the Family Court of Australia.

Under this scenario, no departmental assistance will be provided to the parent whose child has been abducted. The onus of responsibility for locating the child and having the child returned to Australia rests entirely with the LBP.

If parenting matters are before the Family Court the parent could try making an application to the Court for an arrest warrant to be issued for the abducting parent. The LBP might then be able to convince the AFP and the Federal Director of Public Prosecutions (DPP) to seek the extradition of the abducting parent if the country the parent has abducted the child to has an extradition agreement with Australia.

This, however, does not guarantee the return of the child even in cases where the parent is ordered to return. This is because the parent is being extradited to face criminal charges in Australia whereas the child has not committed any criminal offences in this country and is therefore not subject to extradition. Although it is reasonable to expect the abducting parent would return with the child in most cases, the extradited parent could leave the abducted child with family members or other associates in that country.

The problem also arises with abductions under this scenario that when parenting matters are before the Family Court of Australia, government agencies such as the AFP do not formally recognise that a crime has been committed under S65 (Z) of the Family Law Act and they may well be reluctant to pursue the extradition of the abducting parent.

Australian Embassy staff will only become involved to the extent previously described.

NGOs such as International Social Service (ISS) may be able to provide some support to the LBP. In some cases, they may also attempt to mediate between the LBP and the abducting parent in the country the child has been abducted (see also TOR (c)).

Departmental assistance may be provided to the LBP if Australia has entered into a bi-lateral agreement with the country the child has been abducted to. However, the number of countries Australia has these agreements with is very small.

Under this scenario the CA will not even record the abduction.

Recommendations

Several other recommendations relevant to this Term of Reference are included under Terms of Reference (b), (d), & (e).

1. Departmental assistance should be provided to all LBPs irrespective of whether or not their children have been abducted to countries that are signatories to the Convention.

2. The Australian Government should use its position on the Special Committee of The Hague Convention to encourage as many countries as possible to become signatories to the Convention.

3. Wherever possible, the Australian Government should negotiate bi-lateral agreements with countries that are not prepared to become signatories to the Convention at this time.

4. Australian Embassies and Consulates should not charge for their services to LBPs in cases of IPCA.

5. The Australian Passport Act should be amended to enable the immediate cancellation of Australian passports already issued to abducting parents and their IPCA victims upon notification of an IPCA to the CA.

6. Court Orders such as Publication Orders should be made available to LBPs through an administrative (and cost-free) process instead of through the current expensive and time-consuming Family Court process involving lawyers; Applications to the Court; Affidavits; hearing of evidence; issuing of Sealed Orders, etc.

7. The Australian Government should amend privacy laws to enable LBPs and/or Australian authorities to quickly obtain information from public and private sector organisations that could lead to the location of abducting parents and IPCA victims being identified without the need for expensive and time-consuming applications to the Family Court.

(b) The effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence.

For more than 30 years, the Convention has been successful in having thousands of children who have been abducted by one of their parents across international borders returned to their countries of habitual residence.

However, there are many abducted children who have not been found and there are many children who have been found but not returned to their countries of habitual residence as per the intent of the Convention. The likelihood of this happening is increasing because of weaknesses to the Convention that have developed because of many political and social changes that have taken place around the world since the Convention concluded in 1980, and because of the ways in which its provisions are sometimes interpreted.

For example, the creation of the Shengen Area in Europe in 1985 means that travel between European countries that are signatories to the Shengen Agreement is not subject to any border controls between countries located within that area. This and many other changes brought about by that agreement have reduced the effectiveness of official measures that

are used to detect and locate abducted children, such as Interpol alerts.

When these types of changes are combined with other social changes that have taken place over the past 30 years, such as increased numbers of children born into marriages between different cultural groups; higher rates of relationship breakdowns where children are involved; far cheaper international air travel, and the increased incidence of identity theft on a global scale through the misuse of information technologies, the risk to children of being abducted across international borders and not being located quickly and then returned promptly increases significantly.

These changes also enable abducting parents to take full advantage of Articles 8; 9, and 10 of the Convention which essentially require the LBP to provide the authorities with evidence to show which country the child is in. The vast majority of parents whose children have been abducted across international borders do not have the resources or the networks needed to obtain this information although the governments of the various contracting states do have these types of resources.

LBPs are deeply concerned and very distressed about the liberal ways in which many signatory countries interpret Articles 12; 13; and 20 of the Convention listed under the heading “Limited Defences to Return”. These countries include, but are not limited to: Germany; Poland; Austria; France; Italy; Brazil, and several African and South American countries.

Evidence from IPCA cases around the world show that these Limited Defences are being interpreted far too liberally by courts in many jurisdictions - particularly in cases where the abducting parent is a national of the country a child has been abducted to, and in countries where abducted children have dual-nationality with the country they have been abducted to.

Many abducting parents are aware of these liberal interpretations and go to extreme lengths to ensure these defences will be used to their advantage to increase the likelihood of abducted children not being returned to their country of habitual residence. These include:

- moving the child from country to country to avoid detection for a long period of time;
- moving the child from location to location within countries for a long period of time to avoid detection;
- teaching the child a new language and causing it to forget its native language;
- changing the child’s name and other identification details;
- changing the child’s religion;
- denying the child any contact with its other parent;
- portraying the other parent to the child as a ‘bad’ person;
- telling the child their other parent is no longer alive;
- creating defences based on false allegations against the other parent of physical and/or; emotional, and/or sexual abuse, and
- using a range of stalling and delaying tactics while Convention matters are before the courts that will often extend the six-week period contained in the Convention within which a child should be returned by many months and in some cases, years.

In a number of cases of abducted children being located within contracting states, judges have simply ordered the abducted child to remain in the country the child was abducted to

instead of ordering the child to be returned promptly to its country of habitual residence as was the original intent of the Convention. These judges either fail to understand the intent of the Convention; place nationalism ahead of the child's human rights, or simply choose to ignore the Convention's intent. In other cases, they base their decisions about whether or not to return an abducted child on information and evidence that should be considered by the jurisdiction in which the child has been abducted from as part of that country's legal process for determining custody and access issues.

The Convention is not intended to address these issues. Other than when courts uphold one or more of the Limited Defences provisions for legitimate reasons, the Convention is intended to increase the likelihood of an abducted child being located and returned promptly to its country of habitual residence so that custody and access issues can be addressed.

For example, Brazil has only returned one child to another signatory country since it signed the Convention some 30 years ago. Brazil provides a good example of how liberally some countries interpret the Convention and of how the Convention is so ineffective in some countries that more extreme measures need to be taken by other signatory countries to have an abducted child returned.

This child had been abducted from the USA to Brazil seven years earlier and was not ordered to return because of the extremely liberal ways in which the courts in that country interpreted the Convention's Limited Defences provisions. Domestic and international media attention to the case over a long period of time attracted a large public following in the USA and eventually led to direct political intervention by several US Senators, but the Brazilian Government still refused to return the child. In 2009 the US Congress blocked a trade deal with Brazil worth several billion US Dollars per year and the child was returned to the US within days. No other children have been returned from Brazil since then – including at least one Australian child.

Many signatory countries have not resourced their CAs to the level needed to uphold the international responsibilities that came with signing the Convention. This makes it extremely difficult for CAs in these countries to assist with searches for abducted children and to mount an effective Convention application for the prompt return of abducted children when they are located. It also increases the likelihood of their courts making inappropriate decisions in Convention cases about whether or not to promptly return an abducted child to its country of habitual residence.

Of very recent concern is the 2010 decision by the Grand Chamber of the European Court of Human Rights in the case of Neulinger and Shuruk v Switzerland (see also TOR (d)). In this case, the Court stated it was required to consider the best interests of the child at the current time, rather than at the time of the abduction or at the time of the Swiss courts' Return Order. This is very much at odds with the intent of the Convention.

Abducting parents are now including this decision as part of their defence against an abducted child being returned from European countries. Whenever this defence is successful in Convention cases when they clearly don't reflect the types of circumstances surrounding this particular case, it further weakens the effectiveness of the Convention.

In the primary source of interpretation for the Convention, the Explanatory Report, Professor Elisa Perez-Vera stated the following:

"....it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them - those of the child's habitual residence - are in principle best placed to decide upon questions of custody and access. As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration."[1]

In spite of the spirit and intent of the Convention as conveyed by the Convention itself and further reinforced by the Perez-Vera Report, Article 13b is frequently used by abductors as a vehicle to litigate the child's best interests or custody. Although Article 13(b) inquiries are not intended to deal with issues or factual questions appropriate for custody proceedings, judges in many countries use article 13b to request psychological profiles; detailed evaluations of parental fitness; evidence concerning lifestyle, and the nature and quality of relationships.

There are also serious concerns about countries like Japan which are signatories to the UN Convention on the Rights of the Child yet have not signed the Hague Convention on the Civil Aspects of International Child Abduction. Japan has never returned an Australian child that has been abducted to that country.

The Convention is the only legal mechanism by which abducted children can be returned to their country of habitual residence by contracting states. It is based on the UN Convention on the Rights of the Child that states, in part:

"**Article 7**
The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 8
Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9
States Parties shall ensure that a child shall not be separated from his or her

[1] Explanatory Report on the 1980 Hague Child Abduction Convention (1982). Professor Elisa Perez-Vera. HCCH Publications.

parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

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.

All parents (Parties); signatory governments (State Parties), and legal systems (including Family Courts) are bound by international law to uphold these rights".

The removal of a child across international borders by one parent without the consent of the other parent and/or a competent authority is therefore a gross violation of these rights. Weaknesses in the Convention and the ways in which it is being interpreted by courts are further eroding these rights and undermining the international laws that are meant to preserve them. These weaknesses must be strengthened and the ways in which the Convention is meant to be interpreted need to be addressed as quickly as possible if the flow of abducted children from Australia is to be stemmed and if children who are abducted are to be returned as quickly as possible.

Recommendations

1. The Australian Government should use its position on the Special Committee of The Hague Convention to advocate that judges in Contracting States be educated to an international standard about each country's Convention responsibilities; the role the judiciary is expected to play in maintaining these obligations at an international level; the ways in which the various Articles contained within the Convention should be interpreted, and about the importance of maintaining the integrity of the Convention.

2. The Australian Government should use its position on the Special Committee of The Hague Convention to put pressure on signatory countries to resource their Central Authorities to an agreed international standard based on what is currently world's best practice.

3. The Australian Government should use its position on the Special Committee of The Hague Convention to call for an urgent review of the Convention and the ways in which it is being interpreted by Contracting States so it can be updated to reflect the modern-day realities faced by parents of IPCA victims and the victims themselves; more accurately reflect the contemporary global environment that contributes to IPCA, and restrict the ways in which Articles 12; 13, and 20 are increasingly being interpreted by many signatory countries.

(c) The roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence.

This issue has largely been addressed in response to the other Terms of Reference.

The Australian Government and the NSW Department of Family and Community Services also provide some funding to an organisation called International Social Services (ISS). This organisation provides a telephone referral and support service for families who are affected by IPCA. They also provide a limited role in the area of IPCA Prevention (see also TOR (e) "any other related matters").

(d) Policies, practices and strategies that could be introduced to streamline the return of abducted children.

Australian LBPs quickly come to the conclusion that Australia's laws; policies; practices, and strategies provide a 'green light' to the abducting parent while placing practically every obstacle imaginable in their own path.

Government policies; practices, and strategies generally flow from legislation and it is gaps in existing legislation that are affecting these to the point where they are placing unnecessary; time-consuming, and very expensive obstacles in the path of parents whose children have been abducted. Some of these obstacles are currently insurmountable.

The most obvious gap is that although IPCA is an offence under S65 (Z) of the Family Law Act, this only applies when parenting matters are already before the Family Court at the time a child is abducted. It is not a criminal offence at any other time. As far as can be established, this seems to be at odds with other developed countries including the USA; Canada, and the United Kingdom where more general IPCA legislation is already in place.

One Australian legal commentator has described IPCA as, "....a crime involving force or fraud against the victim's will. As such it is an aggravated species of false imprisonment".[2]

The most frequent argument put forward by the Attorney-General (AG) for not introducing legislation to make IPCA a criminal offence in all cases is that it could reduce the likelihood of an abducted child being returned if the courts in the country the child was abducted to believed the abducting parent would be prosecuted upon their return. However, this argument quickly falls apart because it is already a criminal offence under the scenario of a parent abducting a child internationally while parenting matters are before the court.

In a recent television interview about yet another Australian IPCA case in which the LBP joined the voices of many other parents of abducted children; missing children organisations;

[2] International Extradition and Parental Child Abduction. Chaikin, David A. (1993). Bond Law Review: Vol. 5: Iss.2, Article 1. Available at: http://epublications.bond.edu.au/blr/vol5/iss2/1.

parenting groups, and parts of the Australian media by calling on the Australian Government to introduce anti-IPCA legislation, the AG stated:

> "We need to be careful in sending a message which, yes, potentially has some power as a disincentive, that we don't actually make it more difficult to have children returned, and in particular to cause a situation which is likely to drive the parent who has removed the child further underground".[3]

However, the fact is that in most IPCA cases there are no disincentives whatsoever and the vast majority of abducting parents already have no intention of returning the child. Many of them have been able to go underground and remain there for lengthy periods of time (sometimes years). This is often because of the difficulties experienced by LBPs in locating their children due to the current lack of effective policies; practices, and strategies that flow from the absence of comprehensive anti-IPCA legislation in this country. The more comprehensive the legislation is, the more comprehensive the policies; procedures, and strategies will become. This in turn will increase the likelihood of abducted children being located and promptly returned.

A recent (2010) US case illustrates this point. Two children were abducted from the USA to Europe by two separate parents who were related to each other. As soon as they arrived in Europe they disappeared. Because their abductions were a criminal offence under US legislation, as soon as the US Federal Bureau of Investigation (FBI) were informed they immediately put in place a range of measures to help locate the children and the abducting parents. These included arrest warrants; passport cancellations; passport alerts, and Interpol alerts. They also obtained access to the abducting parents' bank records; telecommunication records, etc.

When the children and the abducting parents were eventually located after having travelled through several other European countries over many months, FBI agents immediately travelled there from the USA with the parents of the abducted children. While they were en-route their FBI colleagues in the USA commenced extradition proceedings against the abducting parents through that country's State Department. Shortly after they arrived in country, the parents were reunited with their children and the courts extradited the abducting parents. The entire recovery and return process was completed within one week.

This is not to suggest that all IPCA cases involving US citizens are resolved as expeditiously as this one (the abducting parents were also facing other unrelated criminal charges in the USA), but it does serve to show what can be done when effective policies; practices, and strategies are put in place that are based on some kind of enabling legislation.

In its recent advice to the AG in which it recommended against extending criminalisation of IPCA to a wider range of circumstances (but not under all circumstances), the Family Law Council cited the aforementioned Neulinger and Shuruk v Switzerland case as an example of the disincentive that criminalisation poses to an abducted child being returned if the abducting parent is facing prosecution in another country. They also said this case, "....may have widespread implications for Convention cases conducted in Europe".

However, their advice omitted the other significant and unique issues that contributed to this

[3] Parent sick of waiting for child abduction action. Lateline, ABC TV. 13th June 2011.

particular decision. These included: the child already having lived for more than five years in Switzerland because of appeals to earlier decisions to return the child; the father's inability to support the child financially; uncertainty about the father's place of residence; the potential for the denial of the child's broader human rights under Article 8 of the Convention for the Protection of Human Rights and Freedoms because of the father's extreme religious views, and the father not showing as much interest in the child as would normally be expected in these types of cases.

Nor did they mention more recent cases involving the criminal prosecution of an abducting parent where the court in the country the child had been abducted to ruled that the possibility of the abducting parent being extradited to face criminal charges in the country the child had been abducted from negated the defence that an abducted child had become settled in that country.

This can be seen in the following extract of a 2011 European ruling in relation to that part of the defence related to Article 12 (b) of The Convention where the abducting parent was facing prosecution in Australia, as well as extradition from the jurisdiction the child had been unlawfully taken to:

> "Moreover, the mother's residence status in (this country) is unclear, and the possibility of the mother's extradition to Australia should be seriously taken into account. All of the foregoing prevents the occurrence of settlement".[4]

The ruling went on to address the case of Neulinger and Shuruk v Switzerland, as follows:

> "The District Court finds that the mother has unsuccessfully invoked Article 8 of the Convention for the Protection of Human Rights and Freedoms. The mother invokes in this context the judgement of the European Court of Human Rights (hereafter ECHR) dated 6th July 2010. In the case to which this judgement of the ECHR relates, there were particular circumstances that, in the view of the District Court, do not apply in the present case, if only because the minor in the aforementioned case had already been living for more than five years in Switzerland at the time of the judgement of the ECHR, and in the opinion of the ECHR, contrary to this case, there were circumstances particular to the father that raised doubts about whether these circumstances would be conducive to the minor's well-being and development upon return. The fact that the mother upon her return to Australia, just as in the aforementioned case, runs the risk of imprisonment, does not in itself impede the minor's return: all the more so as there are no indications that the father will not be able to receive and take care of the minor".[5]

In another recent case (June 2011), a child was ordered by the UK Supreme Court to be returned to its country of habitual residence and in so doing called into question the ruling of the European Court of Human Rights. An article in The Guardian said in part:

[4] Full text of Ruling available on request.

[5] Full text of Ruling available on request.

> "The supreme court's decision is arguably at odds with the judgment of the European court of human rights in Neulinger, in which the Strasbourg court decided that, even where there was no grave risk, a forced return could interfere with the mother's and child's right to a private and family life. The Neulinger decision suggests that the country being asked to return a child to its home country should undertake the investigation into the best future arrangements for the child.
>
> The English court has reconciled the conflict, asserting that the convention is consistent with the article 8 right to private and family life; the supreme court decided that the convention properly balances the two key aspects of a child's best interests in the context of wrongful removal from their home country: to be reunited with their parents and to be brought up in a safe environment.
>
> What this means in practice is that the English courts will continue to be reluctant to refuse the return of a child wrongfully brought here from overseas".[6]

Furthermore, efforts are made in an increasing number of countries to negotiate the voluntary return of an abducted child once it is found (as well as the abducting parent) without entering into the lengthier and more costly Hague Convention proceedings. This is often attempted through a process called Cross Border Mediation (CBM). CBM supports the principal contained in the Convention that whenever possible the abducted child should be returned voluntarily. The way CBM operates varies from country to country and is not used in every country at this time but its use is on the increase. It is an intensive process that includes both parents and is usually facilitated by an independent lawyer and an independent psychologist.

CBM is designed to reach an agreement between the parents that will see the abducted child being returned to its country of habitual residence as quickly as possible while also providing an opportunity for the abducting parent to negotiate their own safe return. This can include obtaining an assurance that the abducting parent won't face prosecution and/or imprisonment upon their return if the abduction is a criminal offence in that country. An agreement reached through CBM is legally binding on each parent and on the jurisdictions that are State Parties (countries) to the case.

Liaison Judges have also been identified in some signatory countries. One of their roles is to liaise between judges in other signatory countries to gain reassurances about the well-being of an abducted child upon its return, and to find ways in which an abducting parent can be returned without facing prosecution. Australia participates in this initiative.

Although the Family Law Council recently advised the AG against a general criminalisation of IPCA because of what they believed was the disincentive it would create for the return of an abducted child, they did provide a way forward that would further enable an abducting parent to avoid prosecution upon their return if a more general IPCA offence was introduced. This would require a clause to be included in the relevant legislation requiring the AG to consent to the prosecution of offences related to IPCA. Their letter said in part:

> "If a requirement existed for the Attorney-General to consent to the prosecution of offences related to international parental child abduction, it would be possible for the

[6] English courts will continue to send home children brought here wrongfully. Guardian.co.uk. 17th June 2011.

> Attorney-General to give a guarantee to an overseas court, in appropriate cases, that prosecution would not be commenced. This would minimise the adverse effect of the existence of the current, and any future, offence provisions on matters under the Convention. The Attorney-General could develop a special prosecution policy to take into account a range of factors, such as the wishes of the 'left behind parent', the views of the overseas court, the effect of prosecution on the children, and the question of the views of a child. If a guarantee not to prosecute was given in a particular case, an overseas court may be encouraged to return children despite the existence of sections 65Y and 65Z or any other expanded offence provision".[7]

Apart from its more obvious deterrent effect (if this information is more widely distributed than it is at present – see TOR (e) "any other related matters"), a more general criminalisation would empower government agencies such as the AFP to obtain information that is required to perhaps establish the country an abducted child has been taken to far more quickly and efficiently than the parent of an abducted child could do, or to more clearly identify the location of a child within a country if the country is known.

Agencies such as the AFP are also much better placed than LBPs to quickly put effective detection measures in place through other Australian Government agencies and through international agencies such as Interpol. These are the same measures they would put in place as a matter of course with any other serious criminal offence involving the fleeing of an offender from this country.

Another argument put forward by the AG for IPCA not being criminalised is because of claims that many abducting parents (68% of who are women[8]) are fleeing relationships that involve physical; sexual; emotional, or financial abuse and that it would be unfair to prosecute an abducting parent under these types of scenarios. Whether or not they are true, it is the case that practically all abducting parents make claims of abuse at some point in the abduction process – either before the child is abducted; while Convention proceedings are underway, or after the abducted child has been returned. In some cases these allegations are made early in the process and become more serious (and sometimes more elaborate and bizarre) at each step in the process. Once again, the Family Law Council has identified a way for this type of scenario to be taken into consideration, as does the increasing use of CBM and Liaison Judges in signatory countries.

When a child is abducted amidst allegations of abuse by one parent against the other, it is a complete denial of that person's human right to a presumption of innocence until proven guilty. It also means the authorities in the country the child was abducted from are denied the opportunity to investigate the allegations and to then put appropriate controls in place to protect the child (and the parent if necessary) while parenting matters (and possibly criminal matters) are being decided in cases where the evidence supports the allegations. In many cases, abducted children are at a very high level of emotional and sometimes physical risk

[7] Letter from Family Law Council to Australian Attorney-General. 14th March 2011.

[8] It is believed the figure for abductions to Non-Hague Convention countries is the reverse, ie it is predominantly fathers who abduct children to these countries.

from the abducting parents who are in fact themselves the abusers and not the parent whose child has been abducted.[9]

If a parent believes it is in the child's best interests to relocate with one parent to another country because of their exposure to an abusive environment, provision exists within existing Australian legislation for that parent to seek a Relocation Order through the Family Court. If necessary, they could also seek the protections that are provided by various child protection and welfare organisations and NGOs across Australia while this process is being followed. If Australian child protection agencies are not able to protect a child in such a high-risk situation then perhaps the Australian Government should be looking very closely at why they can't.

As far as can be established, successive Australian Governments and their agencies have continued to maintain their views against a general criminalisation of IPCA for more than 30 years without ever seeking the views of Australian parents – particularly parents whose children have been abducted. Nor have they ever sought the views of Australian adults who were victims of IPCA as children. Most Australian parents; journalists and other media commentators, and academics are horrified when they learn that IPCA is not a criminal offence in this country.

It appears to many of these citizens that the views of politicians; judges; lawyers; academics; political advisors, and special interest groups are much more important than those of most Australian parents when it comes to making decisions about whether or not to make IPCA a criminal offence in Australia under all scenarios and not just when parenting matters are before the Family Court.

It also seems that successive Australian Governments have been more concerned about the contempt that is shown to the Family Court by the act of abduction when parenting matters are before the Court (and is therefore a criminal offence) while being disinterested in introducing the same type of legislation to address the much larger number of abductions that take place when parenting matters are not before the Court. This means there is an anti-IPCA disincentive and potential criminal sanctions for abducting parents under one scenario but not under the other. This is a major anomaly within this country and it is of great concern to many Australians.

This anomaly has the potential to become even more significant if recent legislative proposals are implemented. A recent article in the Brisbane Courier Mail quotes the AG as saying "....serious consideration...." was being given to a recommendation made to him by the Family Law Council to amend the Family Law Act so that IPCA becomes a criminal offence under section 65Y and section 65Z of the Family Law Act when a parent takes a child out of Australia when there is an agreement in place with the other parent to return that child by a certain date but then fails to do so.

The article goes on to say that, "Council also recommends that the Act be amended to ... include parents who remove a child without the requisite consent or authority in

[9] Parental Child Abduction is Child Abuse. Nancy Faulkner Ph.D. Paper delivered to the UN Convention on Children's Rights (1999).

circumstances where Family Dispute Resolution has been initiated, or an invitation to participate in Family Dispute Resolution has been received".[10]

If these proposals are implemented they will certainly extend the range of IPCA cases that would become criminalised, but they will also fall a long way short of covering the much broader range of abductions from Australia.

These proposals also seem to be closely related to what are already perceived by many Australians as concerns by successive Australian Governments about the abducting parent holding the Family Court and its related processes in contempt than they are about abducted children in general.

In addition to IPCA being a criminal offence in the USA that country has now introduced the International Child Abduction Prevention and Return Act, which could potentially threaten various forms of US assistance to countries that have poor records of helping to locate and return abducted children. The impact this type of action has on countries that don't comply with their Convention responsibilities (or that are not signatories to the Convention) has already been demonstrated elsewhere in this submission.

Recommendations

1. The Hague Convention should remain the primary means by which efforts should be made by the Australian Government to have an abducted child returned to its country of habitual residence. Whenever possible this should be done voluntarily either through direct negotiation between the child's parents; professional mediation, or through the legal process in the country the child has been abducted to.
2. A general criminalisation of IPCA should be included in relevant Australian legislation such as the Family Law Act and the Crimes Act. This would open up many more avenues that can be followed within Australia and in other countries to locate an abducted child and have the child returned far more quickly and far less costly than is possible because of the current absence of a general criminalisation of IPCA. This would apply to cases where children have been abducted from Australia to countries that are either signatories or non-signatories to the Convention.
3. Prosecution and imprisonment should be a last resort in IPCA cases. The purpose of the proposed legislation is to enable more to be done more quickly to locate an abducted child and to then have that child returned promptly as per the intent of the Convention. However, if an abducting parent does not take advantage of voluntary return offers for the child and themselves, then that parent should face the consequences of their actions in the criminal courts if and when they do return.
4. The Australian Government should introduce a similar type of legislation to the US International Child Abduction Prevention and Return Act. This would enable a range of sanctions to be applied to countries that are either not signatories to the Convention; are not signatories to a bi-lateral child abduction agreement with Australia, or that pay scant regard to their Convention or bi-lateral agreement responsibilities when an Australian child is abducted to these countries.

[10] Push to Curb Abductions by Parents. Brisbane Courier Mail. 13th June 2011.

(e) Any other related matters.

IPCA Statistics and Research

Evidence from around the world shows that IPCA is increasing. The numbers are increasing so much and with so little public awareness about this phenomenon that it is now being referred to as The Silent Epidemic.

A recent (2011) media release issued by the UK Government's Foreign and Commonwealth Office (FCO) reported a 10% increase in IPCA to non-Hague Convention signatory countries alone over the previous year. This prompted the FCO Minister to announce she was backing increased efforts in the area of prevention. The FCO estimates that two children are abducted from the UK each week. This is less than the official number of children abducted from Australia each week.

A media release issued in the US on 25th May 2011 (International Missing Children's Day) quoted the US State Department's official in charge of children's issues as saying IPCA was "sharply on the rise" It went on to say that, "In US fiscal year 2006, 642 children were abducted from the United States by one of their parents, and that a report released two years ago by the State Department found that this figure, "....rose to 794 children for the same 12 months in 2007 and to 1,082 in 2008, according to the report. This represents a 50% increase in one fiscal year alone.

Given that the US has a much larger population than Australia, it can be seen that the Australian IPCA per capita rate is very high. This is also the case when the number of Australian IPCA cases are compared to the UK and many other developed countries.

The true scale of the IPCA problem in Australia is not fully known. This is because of shortcomings in the Australian IPCA reporting system and the absence of any comprehensive IPCA research within this country. The official figures seem to vary from a low of about 100 per annum while the AG stated a figure of about 200 during his recent (2011) International Missing Children's Day speech. A figure of about 150 was stated in the aforementioned Lateline TV interview. When the numbers of children taken to non-signatory countries are factored in through nothing more than guesswork because these figures aren't captured in the official reporting process, figures of 300 or more are often used by government officials and other interested parties.

This means that somewhere between two and seven children are being abducted from Australia every single week. The higher (and more likely) figure of 300 represents almost one child a day being abducted from Australia by one of their parents. Some of these children disappear for long periods of time. Some are located but never returned. Some are never seen or heard of again.

The CA was established as a requirement of Australia being a signatory to the Convention. Because of this they only record instances of IPCA to other signatory countries. Even this figure is most likely under-reported because of cases where parents reach agreement between themselves to either return or not return the child without reporting the abduction, and cases where the LBP is under personal threat if they report the abduction. It also doesn't include cases where parents simply don't know what to do or where to turn to for a range of social and or cultural reasons, or those who have simply resigned themselves to not seeing

their children again. Often it does not include cases where an LBP re-abducts their own child.

Recommendations

1. The Australian Government should make a much greater effort to capture; analyse, and report on the total number of Australian IPCA cases. This data should also be made freely available to academics and other interested parties to enable further independent research to be undertaken into the increasing IPCA phenomenon within Australia. This research could also be used to contribute to the global body of knowledge about IPCA.
2. The Australian Government should commission its own research into IPCA to help guide its own laws; policies, and practices. This would also provide evidence-based advice to the AG and ultimately to the Special Committee of The Hague Convention. As with the previous recommendation, this research could also be used to contribute to the global body of knowledge about IPCA.

Child Support Agency Payments

An issue of concern to many parents whose children have been abducted from Australia is that the Child Support Agency (CSA) will not automatically suspend the payment of child support payments to the abducting parent. This means the Australian Government is facilitating the transfer of funds from Australia to other countries to enable abducting parents to remain in hiding, or to avoid having an abducted child returned. This applies even when an abduction takes place while parenting matters are before the Family Court, in other words, after a crime has been committed and while the abducting parent is living the life of an international fugitive.

When one Australian parent whose child was abducted contacted the CSA recently to suspend his child support payments, this is what he was told:

> "I don't care if your wife abducted your sons, I don't care if you can't see them. There are plenty of fathers that cannot see their children. Don't you care about your sons' welfare? You will pay or else! Are you a deadbeat dad?"

After unsuccessfully seeking CSA payments to be suspended, another parent whose child had been abducted from Australia eventually obtained an Order from the Family Court stating that the payments were to be suspended. The CSA had not even advised the parent to do this. They simply told the parent he was legally obligated to continue with the payments and that he faced prosecution if he didn't. The parent was eventually advised by another parent to obtain an Order from the Family Court to suspend the payments until the child was returned. This was done but it took some time to bring the matter before the Court and it was done at considerable expense to the LBP.

Several LBPs have been told by the CSA that if the abducting parent doesn't draw down their child support payments the CSA will hold these funds in a trust account before transferring them to the Australian Government's Consolidate Revenue.

These funds are desperately needed by the parent whose child has been abducted to enable them to put every effort into locating their child and having that child returned as quickly as possible.

Recommendation

1. CSA payments should be cancelled as soon as the Central Authority is notified of an abduction whether or not the country the child has been taken to is a signatory to the Convention. These payments should not be resumed until the child has been returned to Australia. Any payments made by the LBP after a child has been abducted should be returned to the LBP.

IPCA Prevention

While most of the IPCA focus is on the location and return of children who have been abducted, the key objective of the Convention is to prevent children being abducted in the first place. It is intended to act as a disincentive by sending a message that all efforts will be made to promptly return an abducted child to its country of habitual residence. However, for this message to be heard, people need to know about the existence of the Convention, as well as any criminal charges that could be laid against an abducting parent. They also need to know much more about the harmful effects of IPCA on its victims.

About the only truly preventative measure available to a parent who has concerns about a child being abducted from Australia is the Airport Watch. However, hardly any parent in Australia knows about this measure or how to go about having it put in place. This is probably because the only place one can find out about it is on the Family Court website, and even there it is not easy to find unless the person knows what they looking for. The only other measure that has some preventative effect is the requirement for both parents to sign an application for an Australian Passport to be issued to their own children. However, this is an ineffective measure if a passport was issued at an earlier time.

The AG and the Chief Justice of the Family Court of Australia have said publicly that any parent who has a concern about their child being abducted from Australia by the other parent should have an Airport Watch put in place as quickly as possible. This sounds simple, but the reality is that the concerned parent must first engage the services of a Family Court lawyer who must then lodge an application with the court for an Order to be issued stating that an Airport Watch is to be put in place.

This process is expensive and it can take several days before a lawyer can be found and before a meeting can be arranged between the lawyer and the client. To this needs to be added the time to prepare an Application to the Family Court; having the matter listed, etc. While this is underway the child could easily be abducted before an Order is issued.

Provision does exist for an Airport Watch to be put in place urgently without going through the normal process, but this can only be done when a parent has a concern that the abduction of a child is imminent, and if the alert needs to be put in place outside normal court hours. Again, the concerned parent needs to know that this information and the

emergency contact number are available on the Family Court website. The parent will also be required to formalise the Order through the Family Court shortly afterwards.

Parents who are concerned about an abduction will usually turn to an organisation they associate with other types of crimes or other acts of abuse towards children, such as police or child protection agencies. In some cases they will seek advice from the Australian Passport Office. However, in most cases they will turn to state and territory agencies in the first instance instead of the AFP or any other Australian Government agency.

As mentioned elsewhere in this submission, countries like the USA and England are allocating more resources towards IPCA Prevention in efforts to slow down the rapid increase in abductions from their countries. In Australia though, other than the Airport Watch and the need for both parents to sign an application for a child's Australian Passport, there seems to be no other IPCA preventative measures in place.

In response to the recent announcement about an increased focus being placed on IPCA Prevention in the UK, the Reunite UK International Child Abduction Centre said:

> "The latest figures show just how widespread this problem has become. Our statistics for January to May 2011 show a 21% increase in the number of abductions to non-Hague States compared to the same period last year. We have also seen a 21% per cent increase in the number of parents requesting advice on prevention of abduction. This demonstrates there is a need for information on preventative steps that a parent can take and it is essential that we continue to raise awareness of parental child abduction, after all it could happen to anyone."
>
> "The psychological impact on children can be traumatic and for the left-behind parent, the shock and loss are unbearable, particularly if they don't know where their child is. Even after they have been found, the fear and pain of not knowing if they will return home is unimaginable."

The Reunite website also includes the following statement:

> "Over the last few months we have focused on raising awareness of parental child abduction and prevention of abduction. Our outreach work has been crucial in reaching parents in the regions and ensuring they are supported and informed about the steps they can take to reduce the risk of abduction. We will be further developing our outreach work programme over the coming months."

Reunite UK is the leading UK charity specialising in IPCA. According to their website they,

> "....operate the only telephone advice line in the UK offering practical, impartial advice, information and support to parents, family members, and guardians who have had their child abducted, as well as parents and guardians who may have abducted their child". It also says they, "....work closely with the Ministry of Justice, the Foreign & Commonwealth Office and the Home Office and provide specialist training for government departments, lawyers, academics, the police, and others who have a professional interest in international parental child abduction".

There are several missing children organisations and charities within Australia that could provide a similar IPCA Prevention and government liaison role to that performed by Reunite UK.

Allegations of some type of abuse towards either the child; the abducting parent, or both often surround cases of IPCA. In some cases the abducting parent claims their allegations have not been properly investigated by authorities such as police; child protection agencies, and the Family Court itself. They then decide they have no choice other than to flee with the child. Whether or not these claims are correct, it has to be acknowledged that there is at the very least a perception within parts of the community that there is a problem with the investigative process and that it is an IPCA contributing factor. This needs to be addressed as part of the overall IPCA Prevention strategy.

A key part of the investigative process that needs to be reviewed is the way in which the Family Court selects Independent Expert Witnesses (IEW) to investigate allegations of abuse against a child that one parent makes against the other. These are typically professionals in the area of mental health such as psychiatrists and psychologists. From the perspective of parents who've either been accused of some type of abuse or who have made the allegations, the Family Court selection process is often seen as flawed.

This is because each party in a case is expected to nominate an IEW to carry out the investigation. Most parents have no idea about how to select such an important witness and usually rely on their legal adviser to provide them with the name of a professional who has expertise in this area. In cases where both parties agree on the IEW, this may not be such an important issue; however, in cases where agreement can't be reached it is left up to the judicial officer to make a selection from the names the parties have provided to the court.

In high-conflict cases such as those involving disputed allegations of abuse, this inevitably leads to accusations of bias being made by the parent whose professional was not selected against the professional who has been selected - even though the other parent rarely has any knowledge of the professional other than what they've been told by their legal adviser. These views of bias are then sometimes fuelled even further by other parties who have no direct involvement in a case but have their own entrenched views about particular IEWs nominated by the parties; the overall investigative process, and about the Family Court in general.

This problem compounds itself at each step in the investigative process right up to (and after) the investigation has been completed and after a report has been provided to the court as well as to the parents. This is particularly so when the findings do not support the views of the party whose IEW was not selected to carry out the investigation.

The cost of these investigations is borne by the parents and they can range from anywhere between $5,000 to $15,000. Some cases require more than one investigation. When added to the already high costs associated with Family Law matters this can be incentive enough for some parents to abduct a child, but when it is coupled with the perception of bias that already exists in some cases the risk of a child being abducted increases greatly – particularly if one or both parents have strong links to another country; have only lived in Australia for a relatively short period of time; have low incomes; own no assets in Australia, etc.

In cases of allegations of child abuse that do not go before the Family Court, one parent will usually make allegations of abuse against the other through state and territory police and/or child protection agencies. Again, there is a perception by some parts of the community that the

processes these agencies employ to investigate these types of allegations and the qualifications of the investigators themselves are not to a high enough standard. In other cases, allegations of child abuse are initially investigated by these agencies but the matter still goes before the Family Court for determination of parenting matters. In these cases, the court will often order another investigation by an IEW into the allegations. Again, the IEWs are nominated by the parents.

In the absence of any formal risk management system, unless the parents; a lawyer, a judicial officer, or other people involved in the investigative process see the need for an Airport Watch to be put in place, an abduction can easily occur at any point in this process - particularly when the child already has a passport, but also in cases when one hasn't already been issued when matters are first brought before the court. For example, when the abducting parent is able to obtain a foreign passport for the child through an embassy of a country that does not require the signatures of both parents on the application form, or by providing false and misleading information as part of the child's application for an Australian Passport.

In most cases the abducting parent will be seeking a more sympathetic hearing in the country to which they have taken the child (often their own country of birth). In other cases the abducting parent will engage in a process called "Jurisdiction Shopping" in the hope of finding a country that allows them to remain there with the child by invoking one or more of the Limited Defences provisions contained in the Convention. In others, the abducting parent will take a child to a country that is not a signatory to the Convention.

Although the Convention's Limited Defences provisions provide an opportunity for the allegations to be further considered to establish whether or not the abducted child would be placed at an "intolerable risk" by being returned, this is a less than ideal way to investigate these types of allegations. In some cases the passage of time associated with the abduction is so great since the date on which the allegations were first investigated that it is extremely difficult to establish their veracity. The court hearing the Convention application in the foreign jurisdiction also has to rely largely on evidence provided by the jurisdiction of the country the child was abducted from. This means the court will not have the opportunity to examine that evidence in detail; nor will it be able to carry out any form of cross-examination of the IEW and other parties. In many cases, this defence also gets caught up with other defences mounted by the abducting parent. For these reasons alone, IPCA should be prevented in the first place.

Because of a number of recent high-profile Australian IPCA cases, there is now a heightened awareness about IPCA within the Australian media who now seem more willing to help raise public awareness to this growing phenomenon. An annual event that could carry a cost-effective and efficient IPCA Prevention message is International Missing Children's Day (IMCD).

IMCD is held around the world on 25th May each year and Australia is one of several participating countries. The event attracts a high level of political; media, and community interest in several other participating countries including the UK, USA, and Canada. In 2010 IMCD received a much higher media profile in Australia than it appears to have achieved in other years but it was quite distressing for many parents whose children have been abducted to see that in 2011 it passed virtually unnoticed.

Recommendations

1. The Australian Government should allocate far more resources to anti-IPCA Prevention programs than are currently being allocated.

2. All state and territory police and child protection agencies should carry information about IPCA and the Airport Watch on their websites. This information should also be available at state and territory police stations and child protection offices. The same type of information should be readily available to parents who make personal contact with Missing Persons units within state and territory police agencies. This information should also be carried on the APO website. Local community organisations should also play an active role in IPCA Prevention.

3. An Airport Watch should be made available to a concerned parent through a simple and cost-free administrative process instead of through the current time-consuming and expensive Family Court process.

4. The Australian Government should identify a suitable missing children organisation or charity within Australia and provide it with additional funding to enable a much stronger focus to be placed on IPCA Prevention. One such organisation could be International Social Service (ISS) which already receives some funding from the Australian Government to provide counselling services to LBPs and to assist with mediation and other services in the country an abducted child has been taken to. They also provide some IPCA Prevention advice but the availability of this advice is not widely known.

5. The Australian Government should use International Missing Children's Day to further increase public awareness to IPCA (and any associated criminal offences under section 65(Y) and section 65(z) of the Family Law Act, and/or the Crimes Act), as well as to the Hague Convention and to the harmful effects of IPCA on its victims. Several parents whose children have been abducted (and former IPCA victims who are now in a position to talk publicly about their own experiences) would be willing to work with the organisers to develop the campaign each year and to make themselves available for media interviews and other IMCD campaign events.

6. The Chief Justice of the Family Court of Australia should establish and maintain a register of accredited Independent Expert Witnesses (particularly mental health professionals) who are properly trained to investigate child abuse and who are competent to carry out these types of investigations. Judicial officers should then select one (or more) of these experts to carry out investigations to a standard developed by the Chief Justice rather than judicial officers selecting IEWs on the basis of nominations by parents.

7. The Australian Government should review the investigative process used for allegations of child abuse at the state and territory level to establish whether or not they are appropriate and/or meet world's best practice, and allocate funds to improve these processes if the review identifies shortcomings.

8. The Chief Justice of the Family Court of Australia should develop and introduce a recognised Risk Management system for use by judicial officers; lawyers, and others involved in investigating child abuse allegations to formally establish the risk to a child of being abducted while proceedings and/or investigations are underway. This system should be based on the Australian and International Standard for Risk Management (AS/NZS ISO 31000:2009).

9. The Australian Government should capitalise on recent media interest in IPCA through agencies such as the AFP issuing media releases to the Australian media about children who have been abducted – particularly in cases where the country the child has been taken to is not known. It is often the case that someone in Australia knows the whereabouts of the abducting parent and the child or is in contact with them in some way. Media attention could result in these people coming forward with information that could assist with locating the child. Where relevant, these media releases should also be issued through similar agencies in countries an abducted child has been taken to or is thought to have been taken to.

Post-return IPCA Support

International research shows that IPCA victims often experience a range of emotional and behavioural issues and disorders. The longer their time in hiding or isolation from their other parent, the greater is the likelihood that these problems will become deeply entrenched. In many cases, these problems will extend well into adult life. In some cases, IPCA victims eventually take their own lives.

The psychological profile of an abducting parent as identified by Johnston and Girdner also means that in many cases children who have been abducted lead unstable lives under the day-to-day influence of what they describe as an "inept parent".[11] [12]

For these reasons, most IPCA victims will require some kind of specialised trauma counselling after their ordeal. Many will also require additional support at school to address gaps in their learning and to address many of the social issues that arise after leading what were at times very isolated lives without much interaction with authority figures and their own peers.

The parent whose child has been abducted will also require counselling and other forms of support after an abducted child has been returned. As with the immediate IPCA victims, these people often experience a range of emotional and sometimes physical problems long after an abducted child has been returned. The IPCA experience is so dreadful for many parents that they are no longer able to continue with their employment or lead a 'normal' life. Professional support and counselling increases the likelihood of them recovering from their ordeal.[13]

Abducting parents will also need extensive counselling upon their return.

When an Australian IPCA victim is located and returned the Australian Government usually just closes the file on that case. An exception would be when the AFP and/or DPP are

[11] Parental Child Abduction is Child Abuse. Nancy Faulkner Ph.D. Paper delivered to the UN Convention on Children's Rights (1999).

[12] Prevention of Parent or Family Abduction through Early Identification of Risk Factors. Dr Janet Johnston (Judith Wallerstein Center for the Family in Transition) and Dr Linda Girdner (American Bar Association Center on Children & Law).

[13] The Crime of Family Child Abduction: A Child's and Parent's Perspective. US Department of Justice, May 2010.

pursuing criminal action against a parent who abducted a child while parenting matters were before the Family Court. Even in these cases though, a negotiated return through a process such as CBM could result in an agreement being reached that no criminal action will be taken against the abducting parent. If these agencies do prosecute the abducting parent their focus will be on prosecuting their case, not on providing support to IPCA victims and their families.

As with many other aspects of IPCA cases it is left up to an already over-burdened LBP to find this support themselves, often without knowing where to begin.

Recommendation

1. Material should be provided to LBPs and to the abducting parent when the child has been returned to Australia. This material should inform them about the types of issues that might need to be addressed; how to go about having them addressed as quickly as possible, and the names of state government agencies in their own areas that they can contact for further advice. This information should either be provided by the Australian Government or through a Non-government Organisation such as ISS.