

International Social Service (ISS) Australia

Domestic Violence and International Parental Child Abduction: Towards a Better Response

Project Report

Introduction

Initiatives in policy formulation and service delivery in Victoria ensure that family violence is challenged and the safety and empowerment of survivors is enhanced. This Best Practice Protocol and accompanying project report outline efforts to respond to the needs of an often unrecognised group of mothers and other caregivers who, due to the ongoing impact of family violence, contemplate and sometimes expedite the international abduction of their children. The Best Practice Protocol has been developed to guide practice and to increase capacity at ISS Australia, and within the wider community service, family violence and legal sectors in Victoria to respond to the specific needs of this group. This project has been made possible through a grant of the Victorian Women's Trust, which ISS Australia gratefully acknowledges. Grateful thanks are also extended to Laura Dragonetti, Social Work student of Monash University for her assistance with the data collection informing this Protocol.

Project Aims and Objectives

This project aimed to develop a practice protocol whereby mothers/other caregivers and children impacted by family violence could receive responsive service to enhance their safety while preventing international removal and retention of children.

Project objectives included:

- To review and improve the services of ISS Australia offered to women and children at risk of family violence such that their safety is enhanced and the removal of children internationally is prevented
- To build professional networks between ISS Australia staff and family violence service providers in order to improve referral processes for women and children at risk of international parental child abduction (IPCA) and experiencing family violence
- To increase knowledge of international parental child abduction among family violence agencies such that clients affected by IPCA are referred to ISS Australia for legal advice or social work support

Glossary of Terms

1980 Hague Convention on the Civil Aspects of International Parental Child Abduction

This international law provides a mechanism among its signatory countries for the prompt return of children removed or retained internationally by one parent without the consent of the other. The Convention's intent is to return children to the jurisdiction from where they were removed, and it has no provisions for determinations of a child's ultimate parenting arrangements. In this document it is referred to as the 1980 Hague Convention or the Convention.

Family violence

This document adopts the definition of family violence as outlined in the Australian Family Law Act 1975 as follows:

- “(1) for the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
- (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or
 - (c) stalking; or
 - (d) repeated derogatory taunts; or
 - (e) intentionally damaging or destroying property; or
 - (f) intentionally causing death or injury to an animal; or
 - (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
 - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
 - (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 - (j) unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty.” (Family Law Act 1975 (Cth) s 4AB)

International Parental Child Abduction

This refers to the removal or retention of a child from one country to another by one parent without the other parent’s consent. The use of this term within this report and accompanying Protocol does not imply judgement of or bias against parents who undertake this act.

Abbreviations

IPCA: International Parental Child Abduction
ISS Australia: International Social Service Australia

Organisational Context

International Social Service (ISS) Australia provides social work and legal services to families, children and adults across international borders. Our services include family tracing and reunification, international family mediation, kinship care and other child welfare matters, and assistance for families experiencing international parental child abduction. ISS Australia is the independent Australian arm of the ISS network, represented in over 100 countries worldwide. ISS Australia receives government funding for some services, but relies on fees, donors, membership fees and other income to continue providing a full range of services.

ISS Australia has offered a psychosocial support service for parents and other family members affected by IPCA since 2005. This service, funded by the Commonwealth Attorney-General’s Department focuses on the best interests of children affected by IPCA and includes:

- Information, advice, support and referrals for families and professionals
- Emotional support and short-term counselling
- Practical support and information
- Targeted referrals to assist with specific issues requiring long-term support
- Coordination with other professional services according to clients’ needs
- Community education and training to agencies and community groups
- Advocacy and research regarding the concerns of families experiencing IPCA

- Information for parents concerned about the risk of IPCA or considering international relocation
- Assistance for parents experiencing family violence where there is a risk of IPCA

In 2012, service provision was extended to incorporate ISS Australia's IPCA Legal Service. ISS Australia's International Parental Child Abduction Legal Assistance Service provides free expert legal assistance to:

- Parents in Australia whose children have been taken or kept overseas without consent
- Parents in Australia seeking access to their children who are living overseas

Service staff provide information to parents and organisations about:

- How to reduce the risk of a child being taken from Australia without consent
- Legal avenues available to secure contact with a child living overseas
- Legal avenues available to help recover children from overseas

They provide legal assistance to:

- Recover children who have been taken to or kept in one of the 94 countries bound by the Hague Convention on the Civil Aspects of International Child Abduction
- Enforce access rights regarding children living in a Hague Convention country

ISS Australia's interest in the needs of caregivers in relation to family violence has been present since the inception of the IPCA service. In response to anecdotal observations derived from service delivery with affected families, ISS Australia gained funding from the Australian Government's Domestic and Family Violence and Sexual Assault Initiative to undertake research in to links between IPCA and family violence, and to produce a resource kit for caregivers and staff of community agencies encountering IPCA in their work. (ISS Australia, 2007). A grant from the Victorian Women's Trust in 2011 enabled ISS Australia to conduct further analysis of the agency's client data and interviews with key stakeholders in the legal and community sector to further explore the links between IPCA and family violence, and the issues confronted by service providers in offering support to caregivers and children in situations of IPCA. (ISS Australia, 2012).

In seeking to contribute to the enhancement of the safety of children and caregivers experiencing family violence and at risk of IPCA, and to build capacity of ISS Australia and external service systems to respond to their needs, ISS Australia developed the accompanying Best Practice Protocol. In this way, ISS Australia hopes to contribute to the wider goal of greater service collaboration to enhance the safety, autonomy and resources of survivors of family violence and their children, as recommended in STATE and national policy frameworks. (Commonwealth of Australia, 2016; Victorian Royal Commission in to Family violence, 2016)

[Project Scope and Limitations](#)

Reference is made throughout this document and accompanying Best Practice Protocol to the 1980 Hague Convention and its provisions. The scope of the Protocol extends beyond this Convention, and is equally applicable to situations of IPCA involving non-signatory countries to this convention.

Although the original project design specified the Protocol's beneficiaries as mothers, the use of the term "caregivers" has been adopted as a more inclusive reflection of the diverse families with whom ISS Australia and other stakeholders work.

Document Structure

After presenting a background to the discussion of IPCA and family violence through the review of relevant literature, this report will describe the methodology used to gather data to inform the development of ISS Australia's Best Practice Protocol. The Protocol will then be presented, along with recommendations for ISS Australia for further action.

Methodology

Development of the Best Practice Protocol occurred in three phases:

Phase 1

A literature review was conducted to explore the experiences of caregivers contemplating IPCA and experiencing family violence, as well as any promising practices or recommendations for practice or policy reform. The review examined the experiences of women as recipients of family violence services generally, as well as the specific legislative treatment of mothers and other caregivers who internationally abduct children as a reaction to family violence.

Phase 2

Staff of ISS Australia and from Victorian agencies within the family violence, family support and legal sector were interviewed to explore current knowledge of IPCA, and perceptions of service gaps and ideas for improvements to service delivery to children and caregivers impacted by family violence and contemplating IPCA.

In both instances, convenience sampling was used to select participants. An invitation was issued to all staff of ISS Australia involved in the IPCA psychosocial or legal support service, to attend a focus group to discuss IPCA service delivery, and findings were drawn from staff who accepted the invitation, or who responded to focus group questions by email. The names and contact details of Victorian legal, family violence and community support agencies were drawn from the Infoxchange Service Seeker directory (www.serviceseeker.com.au). Invitations to attend a workshop were issued by email to these organisations, as well as to social work students of Monash University, undertaking placements in relevant agencies at the time the workshop was scheduled. Discussion questions were prepared, based on the project objectives, and were administered to participants at either the ISS Australia staff focus group or external agencies' workshop in the form of semi-structured discussions. Please see appendix 1 for the internal focus group and external workshop questions, and appendix 2 for a list of organisations represented at the external workshop.

Workshop and focus group participants' responses to the discussion questions were documented, and a list of common themes and recommendations for action was generated. The emerging themes formed the basis of the undertakings itemised in the Best Practice Protocol, alongside their recommendations for more responsive services.

Phase 3

A draft of the Best Practice Protocol was developed, and disseminated to ISS Australia staff and external workshop participants for review. Feedback was noted and incorporated in to the final version of the Protocol presented in this document.

Literature Review

The literature referenced in the below review focus on IPCA in the context of the 1980 Hague Convention. No literature was found on the theme of family violence and IPCA involving non-Hague signatory countries. A survey of relevant literature revealed a tendency towards marginalisation and censoring of mothers who removed their children internationally due to family violence from the fathers of their children. Critical legal scholarship highlights inadequacies in the 1980 Hague Convention and proposals for Convention reform in dealing with the issue of family violence, while research of the experiences of survivors of family violence generally points to a need for practical service provision alongside traditional psychological interventions, and support for mothers who choose to remain within violent relationships. Practice literature is unequivocal regarding the detrimental impact of IPCA on children and the need for its prevention.

According to Salter (2014) and Weiner (2000), mothers who remove their children internationally due to family violence from the children's fathers experienced intentional or unintentional marginalisation and stigmatisation through the provisions of the 1980 Hague Convention, despite the contention that such mothers could be acting in their children's best interests by removing them from harmful situations. (Weiner, 2000) Salter (2014), Shetty and Edleson (2005) and Weiner (2000), conjecturing that the Hague Convention first developed at a time when recognition of family violence was less prominent, all argue that the Convention has failed to keep pace with growing understanding of the prevalence of family violence, its harmful impact on women and children, and the greater capacity and willingness of mothers to escape from abuse from a violent x-partner. Salter (2014) points to a demographic shift in the profile of taking parents from almost exclusively fathers when the convention was first developed, to a 70% shift towards mothers by 2014.

The provisions of the 1980 Hague convention itself have also come under scrutiny, with concerns being expressed regarding the inadequate scope of the convention to deal with family violence in the context of IPCA. No specific reference to family violence exists within the convention (Quillan, 2014), nor recognition of a child's best interests, except as they pertain to the detrimental effects of IPCA. (Salter, 2014) Rather, the main mechanism for appealing an order to return under the 1980 Hague Convention is article 13B, which provides that a return may not be ordered if doing so would result in grave risk to the child in question. (HCCH, 1980: Article 13.b; Salter, 2014) This concept of grave risk is narrowly interpreted by judicial Authorities for two reasons. Firstly, judges are keen to uphold the deterrence of IPCA as one of the Conventions hallmark provisions. (Shetty and Edleson, 2005; Quillan, 2014) Secondly, it is believed that in failing to order a return due to allegations of family violence, judges are casting doubts on a signatory's capacity to provide adequate protections for mothers and children, diminishing goodwill and comity among Convention signatories, thereby undermining the framework and purpose of the convention as a mechanism of prompt return. (Shetty and Edleson, 2005)

The lack of recognition of the potential risks of return to situations of family violence is described as harmful to children and their mothers. (Weiner, 2000) Several recommendations are made for reform to the convention to counter this harm and to maintain the Convention's relevance within the context of current understandings of the effects of family violence. Salter (2014) and Shetty and Edleson (2005) suggest the insertion of a clause in the convention requiring that the safety of women and children be considered when ordering returns in cases where family violence is alleged. Beyond reform of the Hague Convention, salter (2014) also recommends that mothers receive accurate information and education regarding the Convention's current provisions, and likely outcomes for them should they flee with their children. Shetty and Edleson (2005) promote the need for further research to inform legislative or policy changes through a clear understanding of the needs of mothers and children fleeing family violence. Specific family

violence training of judicial officials involved in the determination of Hague Convention cases is also suggested. (Shetty and Edleson, 2005)

Consideration of family violence service provision within selected literature points to dilemmas concerning the most useful service response as experienced by violence survivors and their children. Several authors argue the existence of a mismatch between beliefs of survivors and workers about what constitutes independence, with consequential impact on service delivery methodologies. In research with service providers and family violence survivors, Chantler (2006) found that while survivors viewed independence as being able to live free from abuse with their children, workers equated the same concept with less tangible ideas of empowerment through knowledge, information, social connections and the psychological strength to leave an abusive relationship. Other commentators revealed that, while agreement existed between service providers and family violence survivors on the importance of practical supports such as accommodation, financial and employment services, survivors perceived agencies to be less responsive while they chose to remain in relationships with their abusive partners. (Chantler, 2006; Keeling and Van Wormer, 2011) Chantler further reported that survivors felt judged and misunderstood by service providers for staying in their relationships, which was perceived by agency staff as indicative of less personal independence. (Chantler, 2006) Service providers were furthermore perceived as an additional threat, due to their power to remove children and assert other forms of control. (Keeling and Van Wormer, 2011)

In Chantler's study, service providers reported viewing their role as one of psychological empowerment, primarily through strengthening survivors' support networks and information provision in order to stimulate independent activity. Survivors expressed dissatisfaction with a perceived prevailing attitude from agency staff that they accomplish most tasks on their own, and by contrast, expressed a preference for more hands-on support. (Chantler, 2006; Macy et al, 2009) While Keeling and Van Wormer (2011) called for further research in to the types of services most valued by survivors of family violence, Macy et al (2009) proposed that, apart from being offered practical supports, survivors be assisted to reduce isolation through the establishment of support networks with family, friends and other survivors, and be provided with information and resources to assist them to navigate future legal, employment and training avenues. Other useful service interventions identified were the use of psycho-educational techniques to reduce self-blame and increase agency through development of positive coping skills and a reconstituted sense of autonomy and control. (Macy et al, 2009)

In relation to service providers, Keeling and Van Wormer (2011) recommended engagement in self-awareness by staff in order to uncover biases and offer greater sensitivity to women experiencing violence. Waldrop and Resick (2004) reinforce the importance of support being impartially offered to women choosing to remain in abusive relationships, as such support can counter the impact of isolation caused by ongoing abuse and may ultimately facilitate greater autonomy. Macy et al (2009) recommended education of service providers to recognise and understand all forms of violence, the relevant legal context and cultural factors affecting the service users with whom they worked. Services need to meet women's specific practical, cultural and emotional needs, irrespective of their decision to remain in or leave an abusive relationship, and should involve ongoing follow-up once the initial crisis has abated. (Macy et al, 2009)

Commentators agreed regarding the detrimental impact of international removal or retention by a parent on children. This impact can be long-lasting, and can be retriggered by anniversaries long after a child has been returned. (Greif and Hegar, 1992) Effects can include regressive behaviour, (Greif and Hegar 1992), depression, anger, and difficulties in relationship formation (Greif 2000) However, while agreeing that IPCA is likely to have significant impacts on children, Freeman (1998) cautions that it is difficult to measure the

impact of a child's separation from a left-behind parent compared to the potential risk from which the taking parent was seeking to protect the child.

Findings

Analysis of relevant literature and the discussions within the ISS Australia internal focus group and external agency workshop revealed the following themes:

- Education

This refers to education of caregivers regarding the provisions of the 1980 Hague Convention and the potential legal consequences if children are removed to a signatory or non-signatory country. Education of caregivers regarding their legal options within Australian family law, provisions of immigration law if relevant and the existence of family violence support services and ISS Australia's dedicated IPCA service was encouraged by focus group and external workshop participants.

- Legislative Reform

It was proposed by commentators cited in the above literature review that the 1980 Hague Convention be reformed to incorporate specific safeguarding provisions for women and children in cases where family violence is alleged. This theme was not raised by ISS Australia focus group or external workshop participants, so is not incorporated in to the final Best Practice Protocol. However, the final recommendations and next actions acknowledge the value of advocacy in this area as a compliment to service provision activities.

- Collaboration between ISS Australia and Family violence Organisations

Focus group and workshop participants believed that training and information dissemination to staff from family violence and other organisations should be offered by ISS Australia, regarding indicators, consequences and alternatives to IPCA.

- Practical and Emotional support

Responses of workshop and focus group participants, reinforced by a survey of relevant literature emphasised the Importance of facilitating caregivers' access to practical support, particularly related to finances, child care and material aid. Stronger partnerships among ISS Australia, family violence agencies and other community service organisations was seen as the most effective mechanism to ensure caregivers' access to such seamless and timely support.

Internal focus group participants also believed that ISS Australia could commit to the delivery of culturally responsive, non-judgmental services and interactions with caregivers, focused on the safety of children and their caregivers and respectful of client confidentiality.

- Awareness of ISS Australia's Services

This was mainly raised by external workshop participants, most of whom were unaware of ISS Australia's existence or services. Participants expressed strong interest in promotional information and other activities of ISS Australia's specifically informing their practice with caregivers contemplating IPCA. ISS Australia focus group participants also agreed that services from external agencies to caregivers contemplating IPCA could be improved if deliberate strategies were enacted to promote ISS Australia's services and to educate and support service providers working with IPCA to ensure caregivers were aware of their legal

rights and options, consequences of IPCA and could receive support allowing a dual focus on safety and the best interests of children.

- Prevention

Workshop and focus group participants believed that greater investment in support services for caregivers experiencing family violence would reduce the incidence of IPCA.

Recommendations included specific legal advice to caregivers contemplating IPCA, legal support during relocation proceedings, practical and emotional support to reduce isolation of new parents and parents from newly-arrived communities, and access to mental health support, particularly during times of transition in parenting or relationship breakdown.

The accompanying Best Practice Protocol was developed through analysing the above themes, and proposing activities to be undertaken by ISS Australia and the wider service sector in response.

A draft of the Protocol was disseminated to ISS Australia staff and external workshop participants, and their feedback was incorporated in to the final version below.

ISS Australia gratefully acknowledges support from the Victorian Women's Trust in making this project possible.

Victorian Women's  Benevolent Trust

Investing in Women and Girls.