



Resolving Family Conflicts

A Guide to International Family Mediation



To help you
To protect
your children





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“Resolving Family Conflicts: A Guide to International Family Mediation” is issued by International Social Service (ISS), which works with families in 120 countries to help resolve problems arising from separation and divorce that involve two countries, or when one parent wrongfully removes a child from one country to another.

Parents, lawyers and courts across the world contact ISS for help in such circumstances. ISS, which was established in 1924, provides help in approximately 50,000 cross-border family situations annually. ISS assists parents with counselling, as well as social advice and general information on legal aspects of the situation they are facing, and it works with them towards solutions that take into account the importance of preserving the children’s relationship with both parents as well as with other family members.

This Guide is intended for families all over the world – regardless of their origin, religion and composition – that are experiencing conflict with cross-border elements. It emphasises that the interests of the children are at the core of international family mediation and presents within its pages information, testimonies, studies and experiences reflecting the many benefits as well as the limits of cross-border family mediation.

It recommends international family mediation not as a miracle solution to all the problems that families face during separation across national borders, but as a simple, pragmatic and professional avenue of conflict resolution that ensures individual rights and complements any legal proceedings to settle the disputes.

The first publication of its kind, the Guide is being released at a time when discussions and negotiations are being held internationally to entrench cross-border mediation practices on a legal and professional level.

The Guide was written by Cilgia Caratsch, mediator and coordinator of the Mediation Unit at the ISS General Secretariat under the responsibility of Jean Ayoub, Secretary-General. The publication benefited from the support of an international Advisory Board composed of the following experts in the fields of mediation, international law and child psychology: Stephan Auerbach, Kerstin Bartsch*, Lorraine Filion, Juliane Hirsch, Mohamed M. Keshavjee, Florence N’da Konan, Jennifer McIntosh, Lawrence Moloney, Lisa Parkinson, Kristine Reynaud-de la Jara, Peretz Segal, Marianne Souquet and Sabine Walsh.

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* Ms Bartsch represented the Permanent Bureau of The Hague Conference on Private International Law.

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To help you
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" In a small number of cases one parent was nervous about meeting the other parent [...] but once mediation commenced the parent felt safe and therefore was able to speak freely and unhindered regarding the best interests of the child."

A mediator



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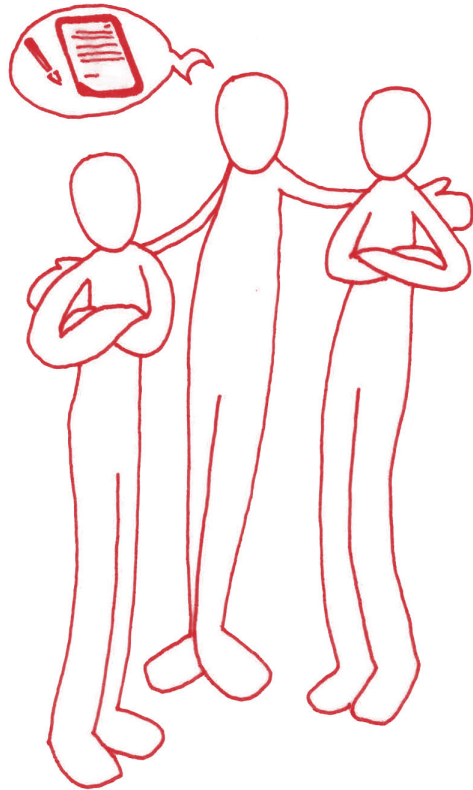
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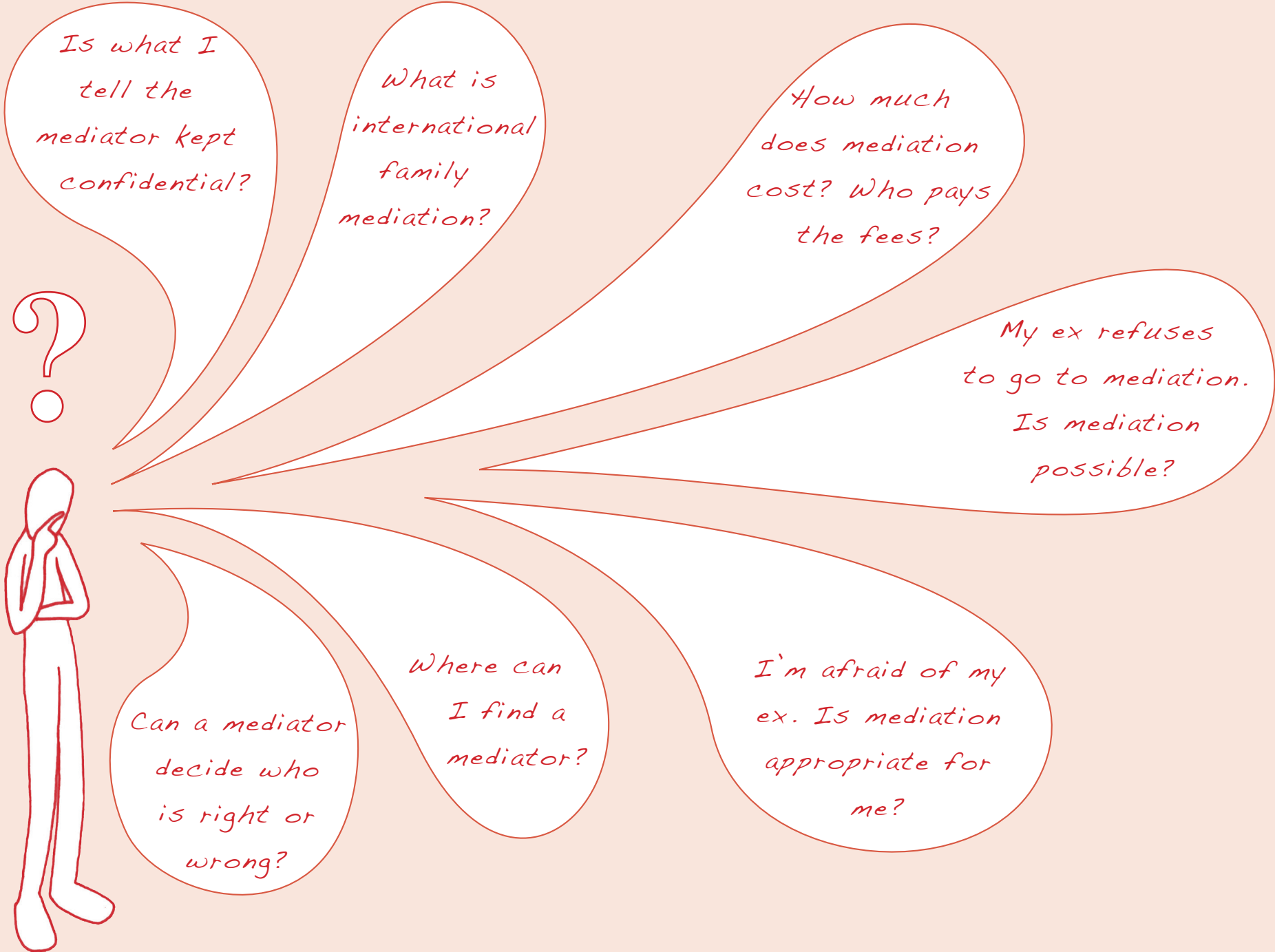
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Section 1

International Family Mediation



Is what I
tell the
mediator kept
confidential?

What is
international
family
mediation?

How much
does mediation
cost? Who pays
the fees?

My ex refuses
to go to mediation.
Is mediation
possible?

Can a mediator
decide who
is right or
wrong?

Where can
I find a
mediator?

I'm afraid of my
ex. Is mediation
appropriate for
me?

"Mediation brought us back to our respective roles as parents, and cleared the rivalries away."

A father

"For the first session we walked on different pavements; at the last meeting we went together and drank coffee."

A mother

Mediation does not take the place of the judiciary system. Mediation completes legal proceedings and allows durable solutions to be found that work for all members of the family.

International family mediation can help you when you are living through a conflict that leads to a move abroad by one member of the family.

International family mediation puts the needs and interests of the children at the centre of discussions.

What is international family mediation?

Family mediation is a structured process in which an unbiased mediator enables members of a family in crisis, generally the parents, to speak in a constructive way about their conflict. The goal is to settle the conflict through communication and exchange, and discuss how they will continue to parent their children, in order to find solutions that work for all family members that are affected.

International family mediation seeks to resolve a family conflict involving at least two countries. For example, this could occur when parents separate because of conflict and one of them relocates to another country.

International family mediation places the needs of the children at the centre of the process. The aim is to seek solutions that can ensure the children's well-being in accordance with their rights as given in the United Nations Convention on the Rights of the Child. **Note 1*

Some important aspects to keep in mind

Participation in the mediation process is voluntary. The mediator has separate discussions with each parent to assess if mediation is appropriate in their situation and whether both are willing to engage in the process.

During mediation, the participants in the conflict themselves look for, explore and formulate possibilities of reaching agreement. They control the results of the mediation because they are the sole decision-makers.

They can suspend or terminate the mediation process at any time if they are not satisfied with the way it is proceeding.

Each participant can be supported by an independent legal adviser to look through the proposals before the decisions are finalised in an agreement that is usually called a mediated agreement. **Note 2*

"Divorce can be so devastating. With the huge legal bill on the horizon I fell ill and ended up in hospital. It is only when I went to mediation that I realised its benefits. I had support from my community who helped me through the Conciliation and Arbitration Board. I realised that my faith, Islam, encourages me to negotiate and come to a fair settlement. I realised then how much can be gained by avoiding unnecessary litigation."

H.V.

"Today, though no longer husband and wife, we are still able to provide nurturing to our daughter and she has grown up without bitterness to either of us. Mediation has this ability of providing a family with respect and dignity, when a relationship has unfortunately broken down."

A father

Mediation is a flexible method of conflict management. It adapts to each particular situation and to every conflict. It makes you the principal actors in finding solutions.

The mediator helps the parents find solutions and maintains a constructive attitude. He encourages all participants to speak up for themselves.

A mediated agreement reflects the decisions taken jointly by the people in conflict.

The participants can also give their mediated agreement legal effect by having it recognised by a court.

What is being said during mediation remains strictly confidential, except in rare cases where the mediation reveals an apparently serious risk to the children or to one of the other participants. The content of such safety clauses varies from one country to another.

Some advantages of international family mediation

Instead of making a clear-cut decision in favour of one or the other parent, mediation takes into consideration the interests of all the members of a family. This approach towards disputes, based on the necessity for dialogue, works equally in the interests of the children and their parents. Thus, it enables all of them to find their place in changed family circumstances, even if it is within the context of an emotionally difficult separation.

International family mediation permits all the participants to verbalise their concerns, express their feelings and put forward their material and organisational needs in a secure environment. They can do this in turn and without being interrupted. The mediator assists the participants to articulate those concerns. With the objective of reaching agreement, he formulates, in the most constructive way possible, what is closest to the parties' hearts. In mediation, the people in conflict speak to, listen to and hear each other.

Sometimes family conflicts occur in the context of differences in cultural or religious practices, or differences between cultural customs in one country and the laws of the country to which one of the parents has relocated. In such cases, international family mediation can help the parties in a marital conflict to arrive at a solution that bridges these differences.

"She [the mediator] was smiling and taking into account our suffering. We were not considered as a case or a file."

A father

"The mediator never let the sessions end on a bitter taste. There was always a positive reflection."

A mother

"The neutrality of the mediator brings a freedom to be, and of expression."

L.B.

Family mediators help each parent to decide if mediation is appropriate for their situation and make informed choices.

The mediators identify the tensions and fears that are at play. They are sensitive to cultural aspects and have an excellent understanding of interpersonal situations.

Contact an ISS desk, your local legal aid office or family courts in your country for information on where financial support for mediation may be available.

The mediators

Both men and women practise as professional mediators, working independently or as salaried employees of mediation organisations. They may be resident in the country where the mediation is to take place, but sometimes in international family mediation a combination of in-country and out-country mediators may better serve the interests of the parties in a conflict.

Professional mediators adhere to a Code of Ethics and a Code of Conduct which they are expected to respect in every situation. They have undergone specialist training that covers all areas relevant to mediation: the law, communication and negotiation techniques as well as psycho-social aspects of a family breakdown. In many countries, professional mediators are officially recognised by a competent authority.

In countries where there is no recognised mediation training, mediators are locally recognised as such by virtue of their experience in resolving conflicts as well as their interpersonal skills. They need to be neutral. It is their ability to identify the nature of a conflict and its impact on family members that enables them to gain the trust of the people coming to mediation. In cross-border cases, these mediators need to collaborate with specialised mediators and administrative and legal authorities.

Cost of international family mediation

The cost of mediation varies. It may even be available free of charge, for example when an authority or an institution orders it or where the service is provided by a state-funded organisation or offered without charge by associations or communities. In some cases, legal aid funds may be available to cover the cost.

Independent mediators charge a fee, which is usually split evenly between the parents or in proportion to each of their incomes. The modalities of payment are normally discussed at the outset of the mediation process.

" My wife agreed to attend mediation, but she did not make a real effort to discuss matters because she felt she was in a position of power legally and that she had nothing to lose. We did not reach agreement."

A husband

"Parties do not arrive in mediation (in my experience) unless they are prepared to talk. Some will be intransigent at first but will be prepared to listen (at some level) both to the other party and to the mediators."

A mediator

Mediation is not a miracle solution; it will not guarantee resolution of the conflict. There are situations where mediation cannot function or where it turns out to be less effective than other methods for resolving the conflict.

Please note! Mediation does not take the place of therapy or relationship counselling.

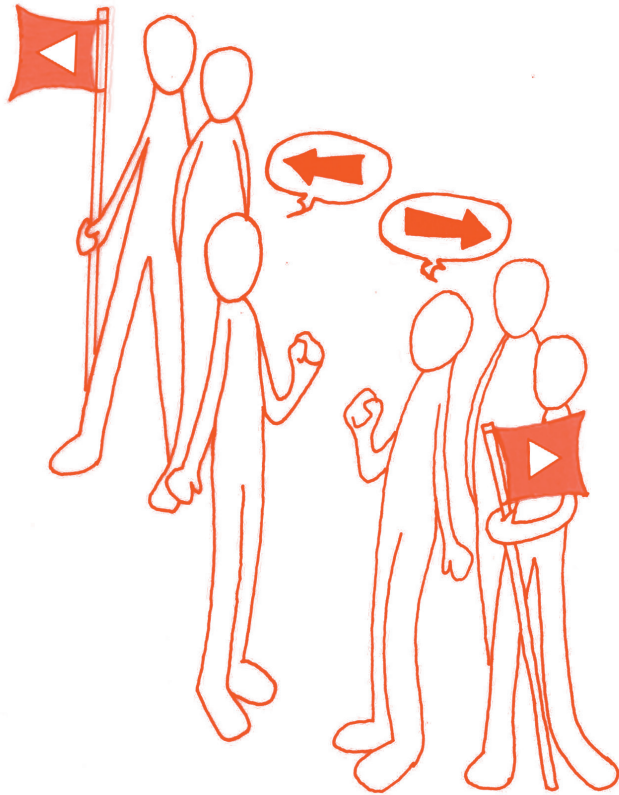
Limits of international family mediation

Mediation is based on the voluntary participation, good faith and engagement of all participants, so it cannot be carried out if one of the parties refuses to participate.

It cannot work if one party makes an attempt to bring pressure on the other party or if one party feels intimidated by the other one. For example, if one strongly fears the other and feels unable to speak out even in the presence of a third person, mediation may not be appropriate. Similarly, too great an imbalance between the couple may prevent success of a mediation.

Dependencies, for example on alcohol or drugs, can also put the discussions, negotiations, and above all continued commitment to the agreements, in peril. Conscientious implementation of the agreement and adherence to it by both parties are fundamental to mediation.

Mediation is not therapy, a source of legal advice or a means of avoiding or delaying legal proceedings. Furthermore, it is not to be used as a way to manipulate or influence the other party.



Section 2

For Which
Conflict and When
Mediation Can
Be Used

Do courts
and administrative
authorities know
about mediation?

What kind
of problems
can mediation
help me to
resolve?

Can I call in
mediation services
after a court
judgment?

My partner
took our children to
another country. Can
mediation help?

I do not have
access to my
children anymore.
Can mediation
help me?



"I was afraid of losing contact with my children. I also feared that they would forget me and grow up without knowing me. I asked myself what I could do to educate them at a distance, to stay close to them outside of daily family life."

A father

Mediation is suitable for addressing cross-border separations and divorces when they also concern children.

Mediation helps people to get a clearer picture of their legal situation when one parent considers moving to another country *before* or *after* a separation.

All questions in relation to maintaining regular contact at a distance between the children and non-residential parent can be discussed in mediation (organisation of holidays, visits, phone calls, etc.).

Family conflict across national borders

A family conflict becomes international in various scenarios involving more than one country. It could happen, for example, when there is a conflict in a family where the parents have different nationalities; in a family which is not living in its country of origin; where the parents live in two different countries; or where one of the parents wants to go and live in another country.

Conflict issues where mediation can help

A parent in a situation of intense conflict or family breakdown may feel the need to separate and relocate together with the children. Because of the high emotions that are often a feature of such conflict, the parents may not be able to discuss the options face-to-face or even through other family members.

Mediation by a neutral person can be of help in such a situation. It enables discussion of the problems facing the family without increasing tensions further.

Thus it is not surprising that parents who choose international family mediation are often those in situations where separation or divorce is about to lead, or has led, to the departure of one of the parents to another country. Mediation is also frequently used in situations of wrongful removal or non-return of a child (see section 6, p.60).

The majority of international family mediations deal with questions relating to parental responsibility, access/visitation rights (also known as contact), and how to maintain links between the children and both of the parents. When the parents live in different countries, it is difficult for them to agree on questions such as those involving the education and day-to-day life of their children. In such cases, mediation can be used to resolve those differences, since it takes into account the diverse conditions in the two countries as well as the rights of all the parties involved.

"I didn't like being 'ordered' to go to mediation. I was very aloof the first time the administrator phoned me because I didn't realise the set-up was so unbiased."

A man

"If parents knew about it, maybe they could start it before filing a court case and save a lot of suffering and stress, especially for the children."

A woman

Mediation can take place before, during and after legal proceedings for separation, custody or divorce.

When you initiate divorce proceedings, you may be invited by a legal or administrative authority to attend at least one information session on mediation.

The discussions between parents facilitated by the mediator are underpinned by the provisions of the United Nations Convention on the Rights of the Child and other relevant international conventions, regional instruments and charters, for example the African Charter on the Rights and Welfare of the Child. *Note 3

International family mediation can also help with resolution of other kinds of family conflict, such as intergenerational friction (for example, maintenance of family ties after children become adults) or inheritance disputes between parties residing in different countries.

Timing of mediation

When mediation is employed at a very early stage and before a judicial procedure is initiated, it can help defuse an escalating conflict. In the case of one parent envisaging a move abroad, mediation can help determine the place of residence of the children and the other parent's access rights. It can thus help to avoid a crisis that might otherwise result in the wrongful removal or non-return of the children.

International family mediation can also be effective at other stages of a conflict and its accompanying legal proceedings. This could happen, for example, if the parties to a conflict decide to go for mediation in parallel with the court proceedings. Or if a judge or a judicial or administrative authority encourages them to consider mediation as a way of resolving their conflict out of court or with the help of a court-connected mediation service. In some countries, the law or a judge may even order mediation before beginning any legal proceedings.

Several international and regional legal instruments aim to protect the right of parents and children to maintain the parental bond between them, when one parent is living in another country. These instruments encourage the amicable resolution of cross-border family disputes and some refer explicitly to mediation as a mechanism to bring about resolution of such disputes.

"The proceedings were complex and long, with much back and forth between the two countries. [...] We chose to attend mediation in order to speed matters up. Then, we realised that we could speak about everything and address questions that were going to come to the surface later anyway [...] for example, how best to organise holidays."

A father and mother giving a joint report

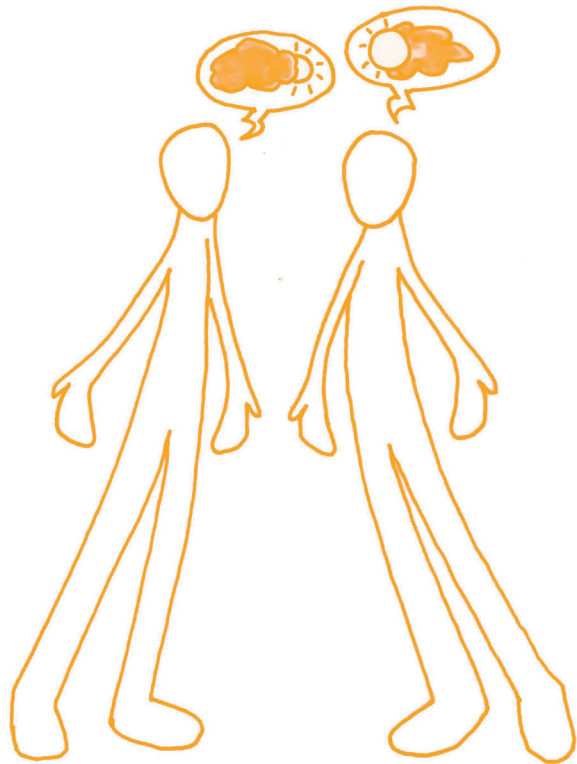
A number of these instruments also address cases of international abduction of children; that is why mediation is also often employed, as a complement to judicial proceedings, after the wrongful removal or non-return of a child (see section 6, p.60).

Sometimes the parties ask for mediation after the court has rendered a decision, to help them reach agreement on the adjustments in their lives that will be necessary to comply with the judgment. This is because court judgments regulate the legal situation but do not necessarily end the human conflict. Mediation in such cases will focus on helping the parties to work out mutually acceptable ways to implement the courts' decisions without further escalating tensions.

In fact, the practice of international family mediation, which has been ongoing since the beginning of the 2000s, is proving to be a successful complement to the legal route for moving such situations forward.

Mediation takes consideration of the human aspects of a conflict. It encourages and facilitates the expression of worries, anxieties and doubts. Everything that is raised in sessions can be taken into account in the body of the agreement reached.

The advantage of mediation in international family conflicts is that it allows one to face up to difficulties that seem impossible to resolve. The biggest challenges are geographical distance between the separated families, multiple legal systems and differences in culture.



Reasons for
Choosing
International
Family
Mediation

Section 3



Will mediation be tailored to my situation?

What are the advantages of going for mediation?

Why should I go for mediation if we already have lawyers who are helping us?

My ex does not accept or understand how things happen in my culture.

I am worried that my partner might take our children abroad and not bring them back.
Can mediation help?

We no longer share the same values. How can we talk to each other in mediation sessions if we cannot do so outside them?

" Now it's a war between laws. Lawyers in this country will give me custody [...] but that custody is not recognised in my husband's country of residence [...] so I'm stuck in a situation where I cannot afford to take the child to the country where my husband is, in case I don't get him back. [On the other hand] I don't want to restrict my husband's access to the child."

A mother

" We agreed that the children would join me here when they were old enough to go to secondary school. This will happen this summer and I am very happy about it. I think I would not have reached this far if I had continued along the path of legal proceedings against my ex-wife. And I would have spent a huge amount of money in lawyers' fees since 2008. "

A father

Mediation, unlike legal proceedings, is adapted to each case. The solutions found are tailored to the families concerned.

Mediation helps to bridge the contradictory decisions that might emerge from court proceedings in different countries.

The parties can play an active role

Mediation provides an opportunity for all the parties in a conflict to set out their points of view and voice their wishes and needs. It gives them an opportunity to take control of the process of separation instead of being ruled by the process itself.

In mediation, the participants agree to listen to each other's views with the support of a third party, which creates a foundation for discussion on an equal basis and can help avoid escalation of the conflict.

Mediation speeds up proceedings and is cost-effective

International family disputes are often complex due to the interplay of different legal systems. A complex legal situation tends to make judicial proceedings lengthy and costly. There is also a risk that adversarial proceedings brought in different countries might give rise to contradictory decisions which, in the worst case, could lead to a stalemate in the case. As a complement to legal proceedings, mediation can help avoid these complexities by enabling the parties to a conflict to arrive at a legally acceptable agreement in a few sessions. Less time spent on a court case would, of course, also mean lower legal fees for the participants.

In countries that are not party to international treaties on family law, the content of a mediated agreement on custody and contact and other related matters can nonetheless be recognised and enforced with the help of relevant legal instruments.

Mediation is flexible and adaptable to each situation

Family mediation permits legal questions to be tackled within the broader perspective of the daily life of the people in conflict.

It allows all concerns that are important to the participants to be included in the discussions, and may also permit the inclusion of children, or of persons who are important in the lives of the children and the

"We have never had problems respecting the arrangement reached in mediation as no one imposed it on us. We discussed it in great detail and it corresponds to the reality of our financial and geographic situation."

A mother

"For example, we agreed that the children would attend a Spanish course once a week so that they would not forget my language and that of their grandparents, with whom they spoke daily while they were here."

A father

Mediation enables the participants to take their future into their own hands and to regulate their daily life. The solutions achieved in mediation are feasible, realistic and, if necessary, can be modified.

parents, in the process. For example, it can give a voice to people from the familial, religious or social environment who play a significant role in the family's life.

Mediation can provide a realistic perspective of the future

In creating a space where the expression of anxieties, worries and doubts of each participant are facilitated, family mediation provides both parties with an opportunity to define and organise the exercise of joint parenting. Proposed solutions can then be tested and modified if necessary.

The process is respectful of the availabilities and capabilities of both parents, while also respecting the right of the child to developmental security and to maintaining links with both parents where that is both safe and possible.

Geographic distance between two parents makes communication and the organisation of family life more difficult, and mediation offers parents time to discuss in detail all the different options for organisation of parental responsibilities such as how to maintain and nurture cross-border parent-child contact.

Mediation respects cultural differences within a family

Families that undergo cross-border conflicts are often multilingual and multicultural. Cultural differences can play a large role in the nature of a conflict, particularly around questions relating to the children. Parents naturally want their children to follow their own cultural practices; the assumption by one parent that the children will be relocated to another country creates fear that they will not be able to maintain links with their cultural and religious heritage.

Mediators are sensitive to questions of cultural diversity and integrate them into the discussions so that the parents can voice what is important to them regarding, for example, the education of their children.

"It makes a lot of difference what culture they [the mediators] come from [...] whether they have lived in this culture and know all intricacies and can pick up all the cues."

A woman

"I sensed that my wife wanted to leave with the children [...]. It was in mediation that she realised what the legal consequences of a precipitous departure would be."

A father

Mediation takes into consideration fundamental questions relating to each person's identity in terms of culture, social background and religion.

If there is a serious crisis in a relationship and there is a possibility of wrongful removal or non-return of your children, try going to mediation.

By helping to avoid wrongful removal or non-return of children, mediation can avoid serious consequences of an affective, emotional and legal nature for the whole family.

Mediation thus also provides an opportunity for taking fundamental aspects of a communitarian culture into consideration while respecting the rights of the people who come to mediation.

Some parents believe that a mediator who shares their cultural and linguistic background will be better at identifying and understanding the conflicting positions resulting from a family breakdown, as well as what is really at stake. They may therefore select mediators whose cultural and religious background reflects theirs.

Mediation can also be carried out with the help of translators or other third parties, for example a cultural interpreter or a person sharing the same cultural origin, in order to facilitate communication. These people are also bound to confidentiality on what is said during mediation.

Mediation can help prevent wrongful removal or non-return of a child

In a situation where one of the parents is anxious about the possible loss, relocation or non-return of a child, mediation enables concerns to be expressed and discussed with the other parent, who may be unaware of it until then. Thus, mediation can defuse frightening thoughts, and it often confirms that both parents are equally concerned about the well-being of the child.

A mediator can provide information about the potential administrative, legal and psychological consequences associated with a hasty departure of a child to another country and thus prompt any parent contemplating such an action to reassess the situation.



How
International
Family
Mediation
Is Carried Out

Section 4

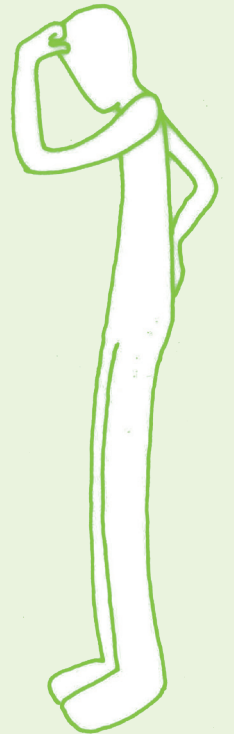
If there are two mediators, does it mean that one will represent my interests and the other my husband's interests?

Can my children participate in the mediation?

Can I have a discussion with the mediator alone?

How can the mediation be carried out if we do not live in the same place?

Can I bring a friend or someone to help me in the mediation?



" I felt like I was caught between two fires with the decision of staying in Africa or returning to Canada. I was able to speak to the mediator alone and to release the tension. That subsequently helped me to talk to both my parents."

Valerie, 15 years

" The purposes of the process were defined and explained very clearly. Even though I was not thinking about any mediation, it convinced me that it might help."

A father

" Before mediation, we had not spoken in over 14 months."

A parent

" The overall attitude gave the immediate impression that the mediator was neutral and would not take sides."

A mother

" With Child Inclusive Mediation you get to hear these other things from the kids, which help. It removed the conflict... it confirmed the children's needs, and there was nothing left to fight about. Before, we were always polarised, but in this mediation, we got somewhere."

A parent

" The presence of a third party discourages use of foul language, walking off, etc."

A father

" The mediation process was very helpful in improving our communication and we reached an agreement. More than this cannot be achieved by a mediation. If 99 mediations finish without an agreement and only one succeeds, I think it is worthwhile to mediate."

A parent

" As long as mediation is seen as an extra chance and not as a remedy, it can work."

A parent

" I felt safe within the mediation process, and I feel that having the mediators present enabled my ex-husband and I to overcome our emotions and talk rationally about the welfare of our son."

A mother

" Mediators have to direct the parents by explaining the court process, legal terms, long term court procedures, the effects on the family, especially the child, and also you have to bear in mind that limited time is available."

A mediator

"I read the bump provided by my ex-partner's solicitor, but because it came from the other side I assumed the mediators were going to be biased (obviously I was still in shock and very paranoid). One chat with the mediator was enough to calm me down though."

S.T.

"Being allowed to leave at any time for the toilet, a cigarette or coffee breaks was a huge help. This eased the overall atmosphere."

A mediation participant

The whole mediation process will be explained to you during the first contact, either by telephone or during a preliminary meeting.

First contact

When you first make contact with a mediation service or mediator, you will be given detailed information on the mediation process, including the principles and rules that all the participants have to accept. This information is usually provided individually to each party, but in some cases it may be given to both parties simultaneously, either in a meeting or, where that is not possible, during a conference call by phone. The mediator will also discuss the suitability of the case for mediation with the parents.

The mediation process

International family mediation can take place in one or several countries, depending on whether the parties that are experiencing a serious conflict still live in the same country or one of them has relocated to another one.

Once both parties have agreed to commence mediation, it takes the form of consecutive meetings. Depending on the mediation service, these meetings can last between one-and-a-half hours and three hours. The number of sessions depends on the circumstances of each case.

In situations of wrongful removal or non-return of a child, where the time frames play an important role and tension is especially high, the mediation can be held in blocs. This can be done over two or three days, from morning to evening with pauses. These mediation sessions are organised in accordance with travel and accommodation arrangements of the parent who travels.

In a classic mediation setting, both parties meet face-to-face in one room, with one or two mediators, as well as translators or cultural interpreters if needed. However, if the circumstances require it, the mediation can be conducted online through an Internet connection.

"The very fact that we entered a room with two people present who were unbiased helped my husband and I to communicate and defused a lot of the animosity between us. The fact that those two people were skilled, experienced and compassionate towards our situation only helped further."

A mediation participant

A mediation is managed by a competent mediator who will ensure it takes whatever form is necessary for success, in accordance with where you live, your responsibilities and your resources.

More and more mediation practitioners use highly effective and secure systems of "online" or "distance" mediation when necessary.

A network of qualified and competent international family mediators is developing gradually across the world. For more information, contact ISS desks and the AIFI networks, as well as the Network of Cross-Border Mediators and Central Authorities. *Note 4

Once a mutually acceptable agreement has been reached, a final face-to-face meeting may be all that is required to finalise it.

In some cases, it may be necessary for a mediator to conduct part of the mediation by shuttling between the parties, holding discussions with each in turn and conveying their views and questions to each other. This could happen, for example, where one parent is afraid of the other or feels too dominated to proceed, or where parents living in countries that are far apart do not have access to modern communication technologies.

Shuttle mediation may also be used initially in some cases to give the parties the opportunity to express their concerns freely to the mediator, particularly when the conflict is very intense and arouses strong reactions in the participants.

Many mediation structures work with two mediators for cross-border family conflicts. Usually, they will both be present during mediation. When the parties live in two different countries, there may be a mediator in each country. They always work together and are not there to represent one or the other party.

Methods used by mediators

Mediators do not take sides. They do not form judgements or give personal opinions about what any participant says.

They help all the participants to maintain respect for each other and for each other's cultures.

They listen attentively to what is said, repeating and reformulating what each participant is saying in order to ensure that there is no misunderstanding and that each party understands the point of view of the other.

" I knew that my parents loved me. The mediator helped me tell my parents that I did not want to decide, and that really lifted a weight off my chest."

Alexander, 11 years

" I love both countries and I did not want to choose. My parents bickered and I felt obliged to choose. This was really difficult for me."

Sandra, 13 years

" The mediator was amazingly patient and he helped my mother see sense. I was able to tell the two of them what I had in my heart and that I wanted to get to know my father [who had been away for eight years]."

Justin, 14 years

The participation of school-aged children is possible in appropriate and carefully evaluated cases. However, parents will not be allowed to use them for their own purposes in the conflict.

They observe reactions and ask questions that assist in advancing matters in a constructive way towards solutions that work for everyone, reflecting the needs of different members of the family, and above all those of the children.

At the end of the process, they summarise for the parents the proposed contents of the agreement between the parties and make sure that they are understood by all the participants. This agreement is generally called a mediated agreement. *Note 5

Mediators are ethically bound to maintain confidentiality and thus not to disclose to third parties any information that comes up during mediation.

Participants in the mediation

A conflict between parents has an impact on their children and may additionally affect their relatives and friends. Thus, the parents might want to include some of these people in the mediation.

If the children are of an age where they can express themselves independently and there is no risk of their participation having a negative impact on them, the mediator will, under certain conditions, welcome their inclusion in the mediation provided both parents agree to it.

It is important to note that the participation of children is a specialised form of mediation. It has been developed primarily to give parents a better understanding of how their children are coping during a separation and what their needs are; to give children a voice in a matter that concerns their daily life and future; and to respect the internationally recognised right of children to be heard in judicial and administrative procedures concerning them. *Note 6

Children are included in the mediation process only with the formal agreement of the mediator, both parents as well as of the children



A child, 9 years



A girl, 11 years

Participation in international family mediation is not confined to parents.

A number of regulations guide the inclusion of children. Usually, the children have separate discussions with the mediator, or a trained specialist, who is able to distinguish the child's unique experiences and needs from those of either parent and who will carefully bring the child's views and voice into the mediation process for consideration.

themselves. The children have to be mature enough to be able to express themselves.

The mediator has to ensure that they understand that they are only being asked to voice their views and feelings, not to take sides in the conflict, and above all not to take any decisions. All this is done under the careful guidance of a person trained in the participation of children in mediation.

It is customary for children to speak independently with the mediator, without the parents being present. In some countries, a child psychologist conducts (or also has to be present during) such discussions. The mediator - or the child psychologist, if present - later carefully shares key aspects of the discussion with the parents, while making sure that they do not feel they are being criticised or rejected by their children. **Note 7* The mediator might decide to let children express themselves in front of their parents if they wish to do so. **Note 8*

Evidence is growing that, when well conducted, this involvement empowers children, and creates for parents a new level of awareness of their children's experiences. This, in itself, can greatly assist parents to find better ways of managing their conflict so as to minimise its impact on the children.

The participation of children in mediation can be a delicate matter, depending on the country and the culture in which the family is living. In a large number of cultures, it is difficult to imagine that children can give their point of view in decision-making on a problem that is perceived to concern adults. In addition, many mediation professionals do not feel they are sufficiently trained in how to involve children in mediation. That is why the participation of children in mediation is still rare.

The inclusion of people from outside the immediate family (uncles, aunts, godmothers and godfathers, nannies, teachers and others who might play an important role in the life of the participants) also

" I think she [the mother] heard something in that session with the child consultant, because she always point blank refused to budge, but one day she came out and said ' I don't want to fight about the money any more. All that's really important is the kids'."

A father

" It would be very positive if someone from the Shariah Council could intervene [...] because a lot of people seem to be ignorant about what Islam says. If they [mediators] could back up their reasoning with what Islamic law says that would be brilliant."

A woman

Do not hesitate to tell the mediator about the importance of certain people in your life and the role that they play. Such people could, with the approval of both parents and the mediator, be invited to participate in the mediation process.

requires the agreement of the mediator and both parties in the conflict. The mediator has to evaluate their relevance to the mediation.

Even though external parties cannot make decisions about the issues that come up during mediation, their presence can often turn out to be valuable, sometimes essential. What form the participation of external parties takes varies, depending on the cultural environment in which the mediation is taking place and the code of conduct adopted by the mediator.

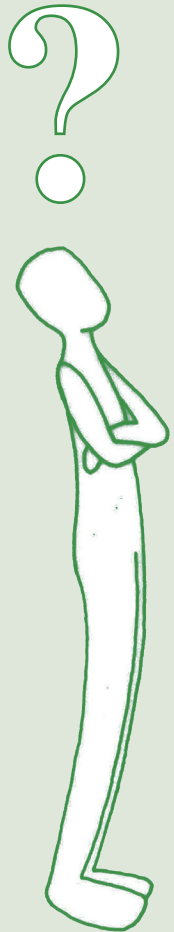
Other people who might participate

There is another category of people who might participate in a mediation session, by virtue of the role they play in supporting the family or as community leaders. These fall into three groups: professionals working with families, such as lawyers, social workers or psychotherapists (however, lawyers will not participate actively in the discussions); persons supporting the family in the area of spiritual practices or traditions (imams, rabbis, priests, chaplains, etc.); and persons playing an important role within the community of which the parents are a part. Their participation would first be discussed with the mediator and they would also be bound to confidentiality.



International Family Mediation and the Law

Section 5



Will my rights be respected during mediation?

Does an agreement resulting from mediation have legal standing?

What happens if mediation does not result in anything concrete?

Will the mediated agreement have legal effect in another country?

We are in the middle of legal proceedings. Do we have to suspend them in order to go for mediation?

Will a mediator also give legal advice?

" Knowledge and experience of the area of child abduction, for example, is essential.

My view is that you do not need to be a mediator with a specialist family law background although there is need for that specialist legal expertise to be available to the mediator either in the room, in a co-worker or via a consultant."

An international family mediator

In the majority of situations that come up in international family mediation, the law plays a dominant role *before, during and after the mediation*. It is therefore necessary to ensure that you have the services of a specialist legal adviser.

Any relocation abroad by one member of the family should be planned carefully and in accordance with the applicable law in the country of residence.

Note that the law relating to international relocation varies from one country to another, and from one legal situation to another!

Cross-border family disputes concerning children

We all have a right to change our place of residence and thus begin a new life in another country. However, such a decision cannot be taken by a parent if it violates the rights of the other parent and the rights of their children to maintain regular links with both parents. *Note 9

It is important to realise that questions of law play a critical role in cross-border family disputes. The legal situation can be extremely complex due to the interaction of two or more legal systems and various international, regional and/or bilateral legal instruments that are applicable.

Of particular relevance to children are a number of multilateral or regional instruments that aim to protect the right of the child to maintain "personal relations and direct contact with both parents on a regular basis" as set forth in the United Nations Convention on the Rights of the Child. These instruments include the 1996 Hague Convention on the Protection of Children, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1980 Council of Europe Convention on Custody of Children, the 2003 Council of Europe Convention on Contact Concerning Children, and the Brussels II bis Regulation of the European Union.

The decision to make an international move with a child should only be taken if it does not contravene the relevant national and international laws. Otherwise, the relocation would be considered to be wrongful removal of a child. *Note 10

Due to the legal complexity of such cases, mediation in international family disputes has to be supported by specialised legal advice. An attempt at mediation or a successful mediation will not affect your rights to initiate or pursue court proceedings.

"In some cases, parents had applied for a return of the child when really they would be happy with contact. In many cases, it was necessary to discuss the court process, legal terms, long-term court proceedings and possible outcomes. In a few cases, parents understood the Hague process but still needed points clarified."

A mediator on a case of child abduction

The role of the mediator is to draw the attention of the parties to some legal aspects of the matter and to emphasise the importance of obtaining specialist legal advice. It is not to give such advice.

For example, a legal adviser may tell you that you need to request an adjournment or suspension of the court proceedings for the duration of the mediation process.

Meeting legal deadlines is essential! While mediation is an excellent complement to legal proceedings, it must nevertheless take account of the time limits that are set out by the law.

Content of specialised legal advice

Lawyers specialised in cross-border cases and other experts have knowledge of the different international and national laws that apply to a case. This includes the regulations, limitation periods and time frames imposed by the relevant laws.

Specialised legal advice also empowers the parties to ensure that the mediation proceeds while respecting the rights of all persons concerned, particularly those of the children.

Legal advisers can give you information relating to the following points, among others, both *before* and *during* mediation:

- your rights and duties in relation to the law, above all in the area of parental responsibility, so that you can make informed decisions during mediation;
- any legal matters concerning separation or divorce that the parties cannot decide upon during mediation in a legally binding way;
- whether the mediated agreement conforms with all legal requirements in all the countries concerned;
- how the agreement can be made legally binding and enforceable in all the legal systems concerned;
- whether, in the case of a separation, the law requires you to take certain decisions or take certain actions before you begin mediation;
- protective measures that you can take if you think that there is a danger to the well-being of your child.

For practical information on the content of your discussion with a person offering specialised legal advice (see Section 7, p. 89).

"Most parents were not aware that issues of contact would need separate legal action and were not aware of the cost of this future litigation. Other parents were not aware of a possible future application for leave to remove a child and not aware of the potential cost or likelihood of success. Other parents were not aware of legal and welfare entitlements or the chances of child support being paid outside the country."

A mediator

An agreement reached through mediation can be made binding and enforceable. This will enable the parties to take the matter to court if the agreement is not respected.

Watch out! Agreements reached during mediation are not always enforceable in all countries, so steps need to be taken to make them legally binding in the countries that are relevant to the dispute. Section 7, p. 89 of the guide has a list of some questions that you could ask a specialist legal adviser.

An agreement reached through mediation can be made binding and enforceable

If a mediation is successful, the decisions taken by the participants are usually put in writing. This document is, depending on the countries, called a memorandum of understanding, a mediation summary or a mediated agreement.

Specialised lawyers or other experts giving specialist legal advice can assist in ensuring that the content and wording of this agreement are compatible with all applicable laws. They can also help to formulate it in the way necessary for it to be binding and enforceable in all the countries concerned. *Note 11

As an agreement may not of itself be legally binding, steps may have to be taken to give it legal effect; this will enable the parties to take the matter to court if the agreement is not respected.

Giving the agreement legal effect may include, in legal terms, homologation of the agreement by a court or inclusion of the agreement's content in a court decision, requesting recognition of that decision in the other country (/ -ies) concerned or asking for homologation of the agreement in the other country (/ -ies). A specialised lawyer will be able to give you the relevant information on how to have this done.



Section 6

Wrongful
Removal or
Non-return of
a Child

*I retained
my children in my
home country and
I'm afraid to go back.
What can I do?*

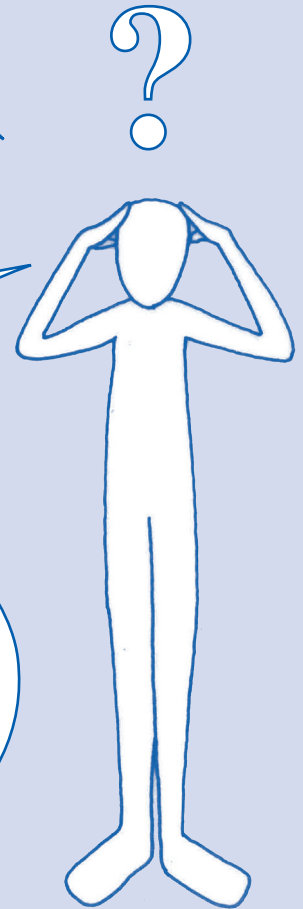
*How can
mediation help
me get my
child back?*

*Is it ever
too late for
mediation?*

*I have
the impression that
mediation is weaker than a
judicial procedure...*

*Will mediation
work if the contact
between myself and the
children who have been
taken away has been
completely cut off?*

*My ex has
taken the children and
it is impossible to speak
to him. Do you really
believe that the mediator
can do so?*



"The way I'm looking back on it now is that we were being treated not as developing human beings but as weapons. Weapons of an emotionless soul."

An adult, abducted by one of his parents

"What happened, being abducted and getting all these negative messages, is serious child abuse. Sheer mental torture that I went through as a kid. Fear. And now, looking back and seeing that it was for her own interest, I mean, this was pure child abuse."

A woman, abducted as a child by her mother

"Hearing the criticisms from one parent and the other one was painful."

Paul, 15 years

"All I know is, I was abducted by my mother for the purpose of preventing me from ever seeing my father again."

A man

"We were pretexts to feed their conflicts."

A woman speaking about her childhood

"They do not realise our sadness and our helplessness, too selfish!"

Alia, 14 years

"My mom had created a bubble around us and had said that our dad was a monster."

Piotr, 9 years

"I have no chance to get my kids back if I do not have any contact with them, if I don't see them, if I don't spend time with them. Today, my children are already very far from me [...], they are conditioned, manipulated, they don't call me Mom any more, they call me by my first name. They are cold, distant; I don't recognise them anymore. They don't want to talk to me. As they've been told atrocious things about me, I almost became a stranger to them... In two years it will be worse, and they will never want to come back to live with me; two years go very quickly, they are 10 years old now, they'll be 12 then, and I'll lose them for good."

A mother

An example: *You are abroad on holidays with your children visiting your family in your country of origin. The relationship with the children's father, who stayed back home, is not going well. Your parents and friends suggest that you should simply stay with the children and not return to your partner. Keep in mind that, even though leaving your country of habitual residence with the children for the purpose of your holidays was authorised, if you are staying longer than agreed, the non-return of the children might constitute a wrongful retention, which would have grave consequences.*

One speaks of wrongful removal of children when a parent takes the children to another country without the authorisation of the other parent, who is legally entitled to be consulted about such a move. Wrongful retention is when the parent does not return the children to the country of habitual residence. *Note 10

If you are considering moving to another country with your children, make sure you have the right to make this decision. It is most likely that the consent of the other parent, or the authorisation of a court, is necessary *before* leaving.

Sole custody does not necessarily grant the right to decide *on one's own* where the children will live. In certain countries, the non-custodial parent has the right to decide on any change in the place of residence of a child.

When a move or relocation to another country is considered wrongful

A parent, particularly one who is the primary caretaker of the children, might think it totally legitimate to move to another country with the children. However, in most cases such a move is lawful only with the consent of the other parent or after authorisation of the relocation by a court or other authority.

Depending on the laws of the country in which the children have their habitual residence, the other parent's agreement might also be needed for relocation to a distant location in the same country. Even where the law grants sole custody to one parent, the other parent might have a veto right when it comes to relocation. There could also be other holders of parental responsibility, such as a legal guardian, whose approval might be needed. Should the necessary consent not be given, an application might have to be made to a court or other authority to permit relocation.

It is, therefore, crucially important for a parent who is considering settling abroad with the children to get information on whose authorisation is needed. Among the sources to consult for such information are specialised lawyers, the Central Authority in the country of habitual residence under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and International Social Service advisers. *Note 12

Consequences for the child

Psychologically, there is a big difference between the effects of a lawful relocation abroad and a wrongful removal or non-return of a child.

In cases of lawful relocation, children can maintain personal relations and direct contact with both parents and can travel back to their previous country of residence, enabling them to visit friends and family there.

" I knew that my mother wanted to go far away from my father and take me with her, and I also knew why. And I felt bad that I didn't tell him [her father]."

Ina, 8 years

" The way it affected my relationships: it's made me very conscious that the people who love you and whom you love are very capable of hurting you."

Adult man, abducted when he was a child

" A secure world collapsed; it was completely shattered after the abduction."

A woman

The effects of suddenly being torn away from a familiar environment are serious for a child. At all costs, try to avoid wrongful removal or non-return of children.

The consequences are serious and often traumatic for all members of a family. You will also need to pay attention to the reactions of the children and not hesitate to provide them with care and external professional support if necessary.

In contrast, wrongful removal or non-return of children entails an abrupt and possibly definitive interruption of their links with their habitual environment (such as home, school, sports, extended family, friends, neighbours, pets) and, most importantly, their contact with the other parent. Thus, a wrongful removal or non-return can have grave psychological consequences for children and threatens their important right, guaranteed by the United Nations Convention on the Rights of the Child, to have continuing contact with both parents.

In such situations, children may react with aggressive behaviour, depression and/or withdrawal. They may also be overwhelmed by fear of rejection or abandonment and find it difficult to trust their parents or people in general. They might develop emotional problems that could make it difficult for them to express affection, or they could suffer loss of self-regard or create distorted images of reality. The physical health of the children might also be affected.

The wrongful removal or non-return of a child might set off a chain reaction that could include police and judicial intervention as well as personal actions by some family members to return the child to the other parent. Such actions could aggravate the harmful impact on the child. In extreme cases, children have been known to end up living in hiding or in a situation of permanent flight, which is gravely damaging to their development.

Mediators make parents who are undergoing severe conflict aware of these risks and emphasize that children need to have a loving and emotionally stable relationship with each parent and with the members of their extended family.

Consequences for the parent who leaves with the child

A cross-border wrongful removal or non-return of a child generally has grave legal consequences. Civil remedies for breach of custody rights through cross-border removal or non-return of a child exist under international, regional and national laws. The parent who leaves the country

" I realised later that I was used as a weapon against my father by my mother. Not having seen my father for most of my childhood makes him a stranger to me today. I no longer have contact with my mother."

Adult, abducted as a child

" Fifty percent of the time, when I called my son, his mother told me that they were in the middle of eating. But with the time difference, I was not able to call earlier because I was still at work."

A father

" The distance is terrible. After every call, I fall to pieces and it takes me a lot of time to get over it. Imagine: 846 nights without your children, asking yourself how are they doing, how does it go at school, how do they grow up, who kisses them in the evenings, who tells them stories. Our phone conversations are so short that my children don't tell me anything; basically, I'm the only one speaking! And I'm telling them and reaffirming to them: I'm here, I'm fighting, I'm waiting for you, and I will do everything to see you again!"

A mother

Wrongful removal or non-return of children affects both parents. It is important to keep in mind that this act has psychological, legal and affective repercussions that are difficult to deal with for all members of the family.

with the children or keeps them abroad beyond an agreed time period without the necessary permission may have to face civil court proceedings in the current country of residence, which could result in a court order to return the children.

In addition, a criminal prosecution in that parent's previous country of habitual residence may also have effects in the country to which the children have been taken, and the parent may risk a prison sentence.

Besides the grave risk of social isolation, the stress and feelings of anxiety in connection with the legal consequences may lead to severe depression. This could be accentuated by the children's loss of trust in the parent. Testimonials by adults who were wrongfully removed as a child attest to this.

Consequences for the other parent

For the parent who has been deprived of a child, the wrongful removal or non-return comes as a shock. It brutally and abruptly puts an end to the parent-child relationship and the parent often fears that the child is gone forever.

The resulting feelings of anxiety, helplessness and despair are made worse when the parent does not know the exact whereabouts of the child. Even if the whereabouts are known, the parent may not find a way to make contact with the child.

There could be further difficulties even if the parent is permitted a meeting with the child, for example because of geographic distance, travel costs or visa restrictions. Maintaining contact by using modern technology might also not be possible because of its unavailability at the child's location, or inappropriate given the age of the child. An additional problem might be that the child may, after a certain time, no longer be able to speak the language of this parent.

"Some parents had not spoken with their lawyer at all, some parents had inexperienced lawyers and were not aware that a defence under Article 13b [of the 1980 Convention - Exception to Return] was difficult to run."

A mediator

Do not hesitate to seek help in trying to maintain your contact with the children! It is never too late to re-establish contact with the other parent or to seek assistance to do so and to prevent the conflict from escalating.

Information is available on www.hcch.net as to whether the country in which you are living is a Contracting State to the 1980 Hague Child Abduction Convention.

You can find the contact details for the Central Authority for your country, in relation to child abduction matters, on the Hague Conference website. **Note 12*

States encourage parents to try mediation. In certain countries, legal return procedures are linked with specialist mediation services.

Feelings of abandonment, powerlessness, extreme anger and deep despair may also be triggered among the extended family of the parent from whom the child was wrongfully removed. The parent and the family may be tempted to re-abduct the child.

The Hague Convention of 1980

The Hague Convention of 1980 on the Civil Aspects of International Child Abduction defines as wrongful every removal or non-return of children under the age of 16 from their place of habitual residence that violates the custody rights of a parent. **Note 13*

The Convention establishes procedures that aim to secure the prompt return of the children to their country of habitual residence, as well as to ensure that the contact rights of the parent who has been deprived of the children are protected. The courts of the country to which they have been removed, or from which the children have not been returned, must order their immediate return to the country of habitual residence. The Convention only allows extremely limited exceptions from this general principle.

In order to prevent conflicting custody decisions, the Convention provides that no decision on the merits of custody can be rendered in the country where the children are currently resident while the return proceedings are going on. The idea is that after the children have been returned to the country of habitual residence, the courts of that country will determine the division of parental responsibility and decide where the children should reside.

Information about whether the 1980 Hague Convention applies in individual cases can be obtained from the Central Authorities established in each Contracting State under the Convention. **Note 12* The Central Authority may also be able to provide information on the applicability of other regional, multi- or bilateral instruments that provide remedies in cases of cross-border wrongful removal or non-return of a child.

" I sensed that my wife wanted to leave with the children to return to 'her home'. I was able to convince her to go to mediation. It was there that she realised what the legal consequences of such a precipitous departure would be. She also understood that it was important to me. Mediation offered us a space to talk, which avoided aggravation of the conflict, increase in fear and distrust and tension."

A father

International family mediation is quite compatible with a legal procedure following a case of wrongful removal of children. In more and more countries, it is even encouraged by administrative and judicial authorities because it has proven itself.

In a case of wrongful removal or non-return of children, it is important to act quickly. Mediation must be organised as rapidly as possible in order to respect the time limits set by law.

Where the 1980 Hague Convention does not apply

Where the 1980 Hague Convention on the Civil Aspects of International Child Abduction is not in force between the two countries concerned, there may be other relevant multilateral, bilateral or regional legal instruments that can be of assistance. Furthermore, recourse can be made to the remedies offered by national law.

In most countries, parents who have unlawfully removed a child can be imprisoned for six months to 10 years. They can be pursued for committing a criminal offence (child abduction) and be held in contempt of court if they have not complied with a court order to return the child.

Mediation to resolve a case of wrongful removal or non-return of a child

Cross-border family mediation always faces a number of challenges that are distinct from those in domestic conflicts – the geographic distance between family members, the interaction of various judicial systems, and time – as there is always the risk of children losing contact with one of their parents. In cases of wrongful removal or non-return of children, a particular challenge is the tight time frame within which mediation has to take place, in accordance with the applicable judicial provisions and frameworks. *Note 14

In a number of countries, specialised mediation services have been developed that run parallel to, and in coordination with, mechanisms under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Yet, the content of the mediation remains strictly confidential. In general, the judge will only be informed about the outcome of the mediation, not its content.

In general, international family mediation can be used at all stages of the judicial proceedings without disrupting communication or cooperation with the administrative and legal institutions. *Note 12

" Being repatriated was awful. It's as if they had ripped out my life and given me another, without asking my opinion. I did not have any choices, it was imposed on me."

A person speaking about her return under the 1980 Hague Convention procedure

" After several weeks, I came back with my son. My wife did not trust me anymore and did not want to leave me alone with him. It was in mediation that I was able to make her understand that I cared for his well-being, that I wanted him to have a mother, that I was worried [about him having only one parent]."

A father

Further information on specialist mediation services and on the particular challenges of mediation in cases of wrongful removal or non-return of children can be found in the Hague Conference Guide to Good Practice on Mediation.

This Guide is available in all European languages as well as Arabic and Russian at www.hcch.net under 'Publication' and then 'Guides to Good Practice'. *Note 14

Mediation is possible immediately after the wrongful removal or non-return of the children, or when an application for return or a complaint is filed (at the beginning of proceedings). Parents are often informed by courts or administrative authorities of the possibilities of mediation at this stage, as it may avoid the forced return of children. The mediators are aware of the constraints of time limits and are used to intervening rapidly.

When mediation is commenced after a judicial decision (such as a court order for the immediate return of a child) has been rendered, or after an appeal has been lodged, it can assist in speeding up the process of resolving the issue and agreeing on arrangements for the return of the child. Even when the positions of the two parents are very far apart, the fact that an appeal process could be long and without guarantee of success would be an added incentive for the parties to ensure the success of the mediation.

Post-judicial mediation in cases of wrongful removal or non-return of a child is advisable, since it also takes into account the longer-run interests of all the parties. The return or non-return of a child does not resolve the human conflict between the parents and the possibility of another equally traumatic wrongful removal and its consequences may still exist after a judicial decision. De-escalation of tensions and resentment through mediation could enable the working out of durable solutions anchored in the reality (in terms of financial, geographical and communication factors) of each parent's life.

Does mediation work in cases of wrongful removal or non-return of children?

International, regional and bilateral instruments explicitly encourage amicable solutions and resolution of cross-border family conflicts through international family mediation. The experience of the specialised mediation services that have been operating in some countries for several years shows that mediation can work even in the very conflictive situation of a wrongful removal or non-return of a child.

"Mediation was indispensable - as an exercise to discover what each parent actually wanted (which in our case was that neither of us wanted a return) and to hear independent professional mediators calmly and diplomatically saying why each parent's ideas were or were not practical. It made me feel as though there was hope in my case, and as though I had a voice, and as though the contact which I had already been giving was very accommodating."

A mediation participant

"The ultimate result for me was not achieved, that of my son returning to Australia, but this is what mediation is about. I am happy with the end result as I have an acceptable outcome which could be better than if I went to court. Hopefully it also creates a less stressful environment for my son."

A mediation participant

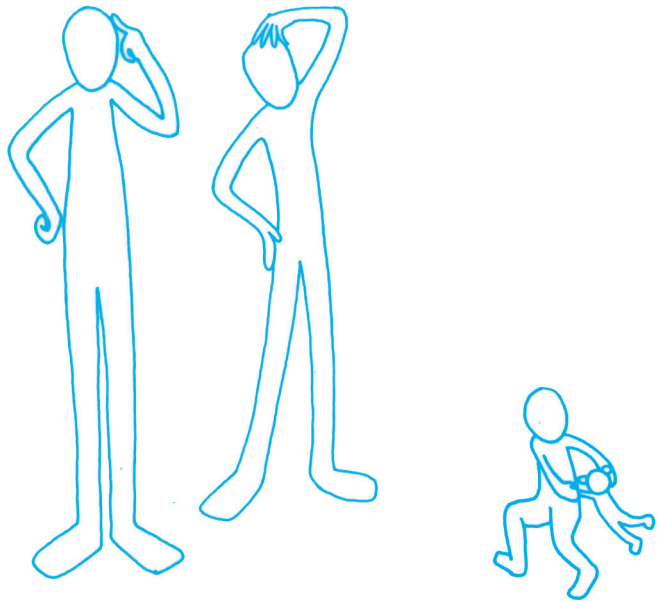
The mediator will ensure that all is done to avoid a mediation being disadvantageous for one of the parents.

Mediation does not always bring about an agreement and it is not suitable in some cases. If, after initially assessing the situation together with the parents, mediators conclude, for tangible reasons, that the mediation would have only a very small chance of succeeding, they tell the parents so.

When underpinned by the relevant legal instruments, mediation is an opportunity to:

- get back in touch and spend time with the children for the parent who was deprived of them;
- end in an amicable way the nightmare that the wrongful removal or non-return has created for the parents, the children, and often the extended family;
- restore communication and discuss how to find the way back to cooperation as parents in the best interests of the children;
- work out an agreement with regard to the wrongfully removed or non-returned child, as well as the modalities of cross-border parent-child contact where applicable, and to present the agreement to the court in which the return proceedings are taking place;
- end the parental dispute quickly; otherwise, it could go on for a very long time since return proceedings in a court would only restore the initial situation of the child back in his country, leaving the question of who is to have custody of the child and where the child will live, etc., to be decided later in separate court proceedings.

The existence of unresolved cases of wrongful removal and re-abduction indicates that the legal instruments put in place to protect children would benefit from increased use of a complementary mechanism that has the human conflict as its focus. Evidence shows that the number of agreements reached in mediation increases when parents engage in the process fully. Parents report satisfaction with the results and effects of mediation even when it did not solve all the problems confronting them. *Note 15



Practical Questions

Section 7



What is discussed in mediation?

How can I prepare for mediation?

What can be included in a mediated agreement?

Where can I find a mediator?

What are the important questions to ask a specialised legal adviser?

Where can I get information about child abduction?

Key Principles of International Family Mediation

1. Voluntary participation

Mediation is a voluntary process. There may be a requirement to attend an information and assessment meeting with a professional family mediator to consider ways of resolving a dispute over arrangements for children and related matters before making an application to the family court. However, mediation itself is voluntary and both (or all) parties need to be willing to take part. Judges may encourage participation in mediation and, prior to an initial court hearing, may direct parties to attend an information and assessment meeting with a mediator. If mediation is accepted, the participants need to show commitment to resolving their differences and working out terms for agreement. Participants and/or the mediator may suspend or terminate the mediation process at any time if they no longer consider it suitable or if no progress can be made towards agreement in good faith.

2. Impartiality and independence of the mediators

Mediators are trained to manage the mediation process in a balanced and even-handed way, giving equal attention to each participant and to the needs of any child concerned. The mediator must not have any conflict of interest or personal interest in the outcome of the mediation.

3. Qualifications of mediators and adherence to national Code/s of Practice

Mediators must meet existing national requirements for their training and practice as mediators. They must adhere to any existing national Code of Practice for Family Mediators and must possess additional qualifications for international family mediation.

4. Respect for individuals of all cultures

Mediators must ensure that individuals from every culture are treated with equal respect. They must take special care to respect cultural diversity and differences. Religious beliefs and cultural norms and values need to be understood and taken into account. The mediation process is flexible and allows for the participation of religious or community leaders and senior family members where necessary and appropriate.

5. Consideration of the personal safety of participants and safeguarding of children

Depending on the circumstances and on how mediation is organised in a particular country, the mediator may meet initially with each party separately, to explore whether mediation or another dispute resolution process would be suitable in the circumstances, and if so, whether both parties

would be willing to take part. If there is any indication of a child or other person being at risk of harm, mediation is unlikely to be suitable and other assistance may be needed, including immediate referral to the appropriate safeguarding agency. Participants in mediation should be able to meet safely, without risk or fear. Arrangements should be put in place to enable them to arrive at and leave mediation meetings without risk or anxiety that conflict could erupt between participants outside the mediation room or building.

6. Consideration of the needs and well-being of the child

Mediators encourage parents to focus on the needs and interests of their children, as well as on their own needs. The mediation process must give special regard to the needs and well-being of children.

7. Recognition of the rights of the child

International conventions (including the United Nations Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights) recognise that children of sufficient age and maturity have the right to be consulted on decisions and arrangements that affect their lives. Children may be consulted within or alongside the mediation process, if appropriate, and with the necessary consents.

8. Decision-making by the parties

Mediators do not have any decision-making power. Participants retain control over their own decisions and are assisted to reach well-informed and considered decisions and agreements that are acceptable to all concerned.

9. Confidentiality of the mediation process subject to the applicable law

Mediators must not disclose any information obtained during the mediation process except where there are indications of a child being at risk of harm or where, in exceptional circumstances, a court orders disclosure of information provided in mediation.

10. Access for each party to independent legal advice to ensure informed decision-making

Participants are encouraged to take independent legal advice on their proposals for settlement before reaching final decisions. Participants should take legal advice before giving joint written consent to making their mediation summary or mediated agreement available to a court to facilitate a consent order.

*** Note 1:**

The United Nations Convention on the Rights of the Child:
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

*** Note 2:**

The agreement reached in mediation can also, depending of the country, be called a Memorandum of Understanding or a Mediation Summary.

*** Note 3:**

The African Charter on the Rights and the Welfare of the Child:
<http://www.umn.edu/humanrts/africa/afchild.htm>
or: http://www.unicef.org/esaro/African_Charter_articles_in_full.pdf

*** Note 4:**

To find a professional mediator specialised in international family conflicts, contact:

ISS: International Social Service – General Secretariat, Geneva:
info@iss-ssi.org; 0041 22 906 77 00

AIFI: Association internationale francophone des intervenants auprès des familles séparées:
<https://www.aifi.info/membres>

Network of Cross-Border Mediators
www.crossbordermediator.eu
or for more detailed queries: <http://www.crossbordermediator.eu/node/78>

Central Authorities for The Hague Conventions
http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24

*** Note 5:**

See Note 2.

*** Note 6:**

According to Art. 12 of the UN Convention on the Rights of the Child:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the

child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

*** Note 7:**

The specialised form of mediation that involves children is generally referred to child inclusive mediation.

*** Note 8:**

With older adolescents, direct participation in mediation is sometimes helpful and possible. A mediator using a systemic approach may also propose that younger children be heard in the presence of the parents, the mediator helping the children to express their needs in front of them. In any case, children are never asked to take decisions, and if they have a preference for any part of their discussion to remain private, that is respected, provided of course that this privacy does not jeopardise the safety of the child or anyone else.

*** Note 9:**

According to Art. 9 of the UN Convention on the Rights of the Child:

1. States Parties shall ensure that a child shall not be separated from his or her 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.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. 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.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

******* NOTES *******

***Note 10:**

According to Art. 3 of the “Hague Convention of 1980 on the Civil Aspects of International Child Abduction”:The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

***Note 11:**

It is in your interest to ensure that the countries relevant to the conflict are obliged to recognise the agreement and that the agreement can be enforced by the judicial authorities in those countries.

***Note 12:**

The list and contact details of Central Authorities established in each Contracting State under the Convention are available at the following website:
http://www.hcch.net/index_en.php?act=conventions.authorities&cid=24

***Note 13:**

See Note 10.

***Note 14:**

The Hague Conference “Guide to Good Practice on Mediation” is available in all European languages as well as Arabic and Russian at the following website:
http://www.hcch.net/index_en.php?act=publications.details&pid=5568

***Note 15:**

More testimonies can be found in the comprehensive study “Mediation Pilot Scheme” published by reunite International Child Abduction Centre at the following website:
http://www.reunite.org/pages/mediation_pilot_scheme.asp

******* NOTES *******

***Note 16:**

See Note 12.

***Note 17:**

Contact the General Secretariat of International Social Service in Geneva for an ISS branch in your country.
Email: info@iss-ssi.org
Telephone: 0041 22 906 77 00

***Note 18:**

The list and contact details of existing “Central Contact Points for International Family Mediation” can be found at the following website:
http://www.hcch.net/index_en.php?act=publications.details&pid=5360&dtid=52



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