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another that is likely to impact upon the mother's reactions if she is not allowed to move.³¹⁰ Taking these factors into account will greatly assist judges in their decision making process and improve the quality of the best interests of the child assessment.

3.7 Recommendations on international jurisdictions

There have been a number of attempts to agree on a common standard for the resolution of relocation disputes internationally. The following section discusses the attempts by countries to try and solve the uncertainty within the area of relocation globally.

3.7.1 American Academy of Matrimonial Lawyers draft Model Relocation Act 1997

In recognising this problem, the American Academy of Matrimonial Lawyers drafted a Model Relocation Act for consideration by state legislatures. The Academy explicitly states that the proposed Act is meant to serve as a template for those jurisdictions desiring a statutory solution to the relocation quandary across the 50 states.³¹¹ The Model Act lacks in taking into account the importance of the thwarted primary caregivers interests which deserve their own due weight and consideration. The purpose of solving the relocation conundrum has been captured by the Model Act and it serves as a great starting point for the South African legislature specifically as it provides a definition for relocation, but it should merely be used as a guide.

3.7.2. National Conference of Commissioners on Uniform State Law 2008

In the United States of America there had been numerous attempts to achieve consistency in the approach to relocation within their 50 states over the years. In the United States of America in 2008, the National Conference of Commissioners on Uniform State Laws drafted a Relocation of Children Act. This Act provided a list of factors the court should consider in determining the best interests of the child namely:

³¹⁰ Parkinson P and Cashmore J 'When mothers stay: adjusting to loss after relocation disputes' (2013) 47.1 *Family Law Quarterly* 95-96

³¹¹ The AAML was only taken up by Louisiana and no other American state has passed this legislation.

- (a) 'the quality of relationship and frequency of contact between the child and each parent;
- (b) the likelihood of improving the quality of life of the child;
- (c) the views of the child (depending on the child's age and maturity); and,
- (d) the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the child'.³¹²

Unfortunately, this attempt was not implemented as no agreement could be reached, and each state continues to apply its own law.

3.7.3 International Family Justice Judicial Conference 2009

Lord Justice Thorpe hosted the International Family Justice Conference for Common Law and Commonwealth Jurisdictions in 2009, and together with his office they provided several resolutions relating to relocation disputes. Paragraph 8 of the Conclusions and Resolutions from the Conference stated that:

- (a) the search for common principles should be applied in the judicial resolution of relocation disputes both nationally and internationally in the best interests of the children;
- (b) participating jurisdictions should use their best efforts and resources to ensure that relocation disputes are resolved as promptly as possible; and,
- (c) more research and longitudinal studies should be carried out into the impact of relocation decisions on the children and parents concerned, whether relocation is permitted or not (including comparative studies on the impact of the non-custodial parent's decision to relocate).³¹³

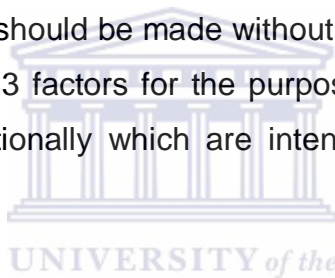
³¹² Taylor N & Freeman M 'Relocation: The international context' (2010) 1.2 *Journal of Family Law and Practice* 25.

³¹³ Taylor N & Freeman M 'Relocation: The international context' (2010) 1.2 *Journal of Family Law and Practice* 25-26.

3.7.4 The International Conference on Cross-Border Family Relocation 2010

The Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, with the support of the US Department of State, hosted The International Conference on Cross Border Family Relocation in Washington DC, USA in 2010.³¹⁴ The purpose of the conference was to develop a better understanding of the dynamics of relocation and the factors which are relevant in judicial decision making, to investigate the possibility of developing a more consistent judicial approach towards relocation cases and to examine the potential for closer international judicial co-operation in relocation cases.³¹⁵ The conference created the 'Washington Declaration on International Family Relocation'.

The Declaration in clause 3 states that the best interests of the child should be paramount and determinations should be made without any presumptions for or against relocation. Clause 4 contains 13 factors for the purpose of promoting a more uniform approach to relocation internationally which are intended to guide judicial discretion namely:



- I. 'the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest
- II. the views of the child having regard to the child's age and maturity;
- III. the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;
- IV. where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;
- V. any history of family violence or abuse, whether physical or psychological;

³¹⁴ Conference held in March 2010 was attended by 50 judges and experts from Argentina, Australia, Brazil, Canada, France, Egypt, Germany, India, Mexico, New Zealand, Pakistan, Spain, the United Kingdom and USA.

³¹⁵ Taylor N & Freeman M 'Relocation: The international context' (2010) 1.2 *Journal of Family Law and Practice* 26.

- VI. the history of the family and particularly the continuity and quality of past and current care and contact arrangements;
- VII. pre-existing custody and access determinations;
- VIII. the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;
- IX. the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;
- X. whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;
- XI. the enforceability of contact provisions ordered as a condition of relocation in the State of destination;
- XII. issues of mobility for family members; and
- XIII. any other circumstances deemed to be relevant by the judge³¹⁶

The exercise of judicial discretion should be guided by these factors as they are based on concrete research findings concerning the needs and development of children in the context of relocation. The Declaration provides a more neutral and balanced approach to relocation and follows a non-presumptive approach, in which each case has to be decided on its own facts.³¹⁷ The Declaration is a welcome move towards assisting judicial discretion as it follows the neutral approach in determining relocation cases; it should nevertheless be recalled that the principles merely serve as a guide.

3.7.5 Virtual visitation in relocation disputes

Virtual visitation refers to electronic visitation through the use of email, instant messaging, Webcam, Skype and other internet tools.³¹⁸ International courts have ordered virtual visitation in several relocation cases. In New Jersey, US received its first endorsement for virtual visitation in the case of *Chen v Heller* where the court ordered that each party set up computer-assisted video conferencing in their respective homes

³¹⁶ Clause 4 of the 'Washington Declaration on International Family Relocation'.

³¹⁷ Freeman M & Taylor N 'The Reign of Payne II' (2013) 4.2 *Journal of Family Law and Practice* 32.

³¹⁸ Knoetze L 'Not so far apart: Virtual visitation in relocation disputes' (2013) *De Rebus* 24.

2. The Business Dictionary available at <http://www.businessdictionary.com/definition/desk-research.html> (accessed 19 August 2011).
3. Smith and Partners 'Child relocation disputes – what happens when one parent wants to move' available at <http://www.smithpartners.co.nz/library/articles/family-law/child-relocation-disputes-what-happens-when-one-parent-wants-to-move/> (accessed 22 October 2015).
4. The Centre for Child Law 'The best interests of the child' available at <http://www.roylaw.co.za/home/article/the-best-interest-of-the-child/pageid/children> (accessed 17 January 2013).

